
STATUTORY INSTRUMENTS

2023 No. 464

ENERGY

**The Energy Bills Discount Scheme
(Non-Standard Cases) 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 makes these Regulations in exercise of the powers conferred by sections 19, 26(2)(a) and (b) and (9), and 27(2)(b) of the Energy Prices Act 2022⁽¹⁾.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Energy Bills Discount Scheme (Non-Standard Cases) Regulations 2023.

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

(3) They extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In these Regulations—

“the Act” means the Energy Prices Act 2022;

“eligible energy” means, in relation to a non-standard customer, relevant energy in respect of which all the conditions applicable to that energy under section 5 of the Scheme Terms are met;

“end user” means an end user as defined in section 19(3) of the Act other than an excluded end user;

“energy products” means heating or hot water (or both) provided through a heat network;

“excluded end user” means a person to whom a relevant intermediary located in Northern Ireland supplies or makes available energy⁽²⁾ or energy products (or both) at premises located outside England, Wales, Scotland or Northern Ireland;

“excluded person” means a person engaged in the provision of either or both of—

- (a) accommodation within the meaning of standard industrial classification divisions 55.1, 55.2, 55.3 (except relevant accommodation providers) and 55.9 (except persons providing student residences, school dormitories, workers hostels and rooming and boarding houses), and
- (b) energy or energy products (or both) to such accommodation;

“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 (and 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);

“licensed electricity supplier”—

- (a) in England and Wales and Scotland, has the meaning given in section 10(2) of the Act;
- (b) in Northern Ireland, has the meaning given in section 12(2) of the Act;

“licensed gas supplier”—

- (a) in England and Wales and Scotland, has the meaning given in section 10(6) of the Act;
- (b) in Northern Ireland, has the meaning given in section 12(5) of the Act;

“main scheme GB Regulations” means the Energy Bills Discount Scheme Regulations 2023⁽³⁾;

“main scheme NI Regulations” means the Energy Bills Discount Scheme (Northern Ireland) Regulations 2023⁽⁴⁾;

“non-domestic supply” means—

- (a) the provision of relevant energy in England and Wales or Scotland that—
 - (i) if the relevant energy is electricity, would be GB non-domestic electricity supply within the meaning of section 10(4) of the Act if the electricity were provided by a licensed electricity supplier;
 - (ii) if the relevant energy is gas, would be GB non-domestic gas supply within the meaning of section 10(8) of the Act if the gas were provided by a licensed gas supplier;
- (b) the supply, in Northern Ireland, of—
 - (i) electricity—
 - (aa) to premises at which the supply is not taken wholly or mainly for a domestic purpose, or
 - (bb) for which the tariff is not one that the supplier applies to supply taken wholly or mainly for a domestic purpose, or
 - (ii) gas to premises where that supply is not NI domestic gas supply (as defined in the Energy Prices (Domestic Supply) (Northern Ireland) Regulations 2022⁽⁵⁾),
as the case may be;

(2) Defined in section 28(4) of the Energy Prices Act 2022.

(3) S.I. 2023/453.

(4) S.I. 2023/454.

(5) S.I. 2022/1105.

“non-standard customer” means a person that receives a non-domestic supply of eligible energy at its premises;

“pass-through” means the act of a relevant intermediary of passing through all or part of a scheme benefit to an end user;

“pass-through amount” means an amount, being all or part of a scheme benefit, which is passed through to an end user by a relevant intermediary under these Regulations;

“relevant accommodation providers” means—

- (a) in England, Wales or Scotland, persons providing mobile homes on protected sites as defined in the Mobile Homes Act 1983(6), or
- (b) in Northern Ireland, persons providing caravans on protected sites as defined in the Caravans Act (Northern Ireland) 2011(7);

“relevant energy” means—

- (a) electricity conveyed by electric lines, within the meaning of section 64(1) of the Electricity Act 1989(8), that—
 - (i) is provided, otherwise than by a licensed electricity supplier, to a person that consumes it, and
 - (ii) before being provided to the person that consumes it, is not provided to another person by a licensed electricity supplier;
- (b) gas, consisting wholly or mainly of methane, conveyed by pipes, that—
 - (i) is provided, otherwise than by a licensed gas supplier, to a person that consumes it, and
 - (ii) before being provided to the person that consumes it, is not provided to another person by a licensed gas supplier,

and, for the purposes of paragraphs (a)(i) and (b)(i), the provision of electricity or gas to a person includes its provision to itself of electricity or gas that it acquires as a Trading Party or a Shipper User;

“relevant intermediary” means a relevant person (other than an excluded person) to whom a scheme benefit is provided in circumstances in which there is at least one end user other than the relevant person. In regulation 11, “relevant intermediary” includes a person who will have entitlement to have a scheme benefit provided to it but to whom it has not yet been so provided;

“relevant person” means a person—

- (a) that is provided with relevant energy,
- (b) that—
 - (i) provides relevant energy by way of non-domestic supply to a person within paragraph (a) that is not a Trading Party or a Shipper User, or
 - (ii) purchases relevant energy with a view to its being provided (by itself or another) to a person within paragraph (a), or
- (c) that provides a service to a person within paragraph (a) or (b) in respect of the provision of relevant energy or energy products (or both);

“scheme agreement” means an agreement between the Secretary of State and a relevant person, which incorporates—

(6) 1983 c. 34. Section 5 was amended by sections 318 and 321(1) of, and Schedule 16 to the Housing and Regeneration Act 2008 (c. 17).

(7) 2011 c. 12 (N.I.).

(8) 1989 c. 29. Section 64 has been amended, but the definition of “electric line” contained in it has not.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) the Scheme Terms, or
- (b) the Scheme Terms as amended by the Secretary of State in accordance with the Scheme Terms (or the Scheme Terms as amended by the Secretary of State) and published after the date of publication of the Scheme Terms;

“scheme benefit” means energy price support⁽⁹⁾ in the form of—

- (a) financial assistance provided to a relevant intermediary (as a non-standard customer) under a scheme agreement, where—
 - (i) the amount of such financial assistance determined in respect of each category of eligible energy (as defined in section 6.1 of the Scheme Terms) is treated as a separate scheme benefit, and
 - (ii) the amount of the scheme benefit is the amount notified to that relevant intermediary in accordance with the terms of that agreement, or
- (b) where the end user is also a relevant intermediary, a pass-through made by virtue of these Regulations where the amount of the scheme benefit is the pass-through amount provided to the end user concerned (as intermediary),

and the amount of the scheme benefit may be an amount in pounds sterling or in pounds sterling per kWh (as appropriate) of energy or energy products (or both) and a scheme benefit may have been provided in respect of a period before these Regulations came into force;

“the Scheme Terms” means the document entitled “Energy Bills Discount Scheme for Non-Standard Customers in Great Britain and Northern Ireland: Scheme Terms” dated 24th April 2023 and published by the Secretary of State on that date⁽¹⁰⁾;

“Shipper User” has the meaning given in the Uniform Network Code (being the code of that name whose preparation and modification is provided for in the conditions of transportation licences granted under section 7 of the Gas Act 1986⁽¹¹⁾ as it was in force on 1st April 2023⁽¹²⁾);

“standard industrial classification” means the Office for National Statistics’ “UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007)”⁽¹³⁾;

“Trading Party” has the meaning given in the Balancing and Settlement Code (being the code for governance of electricity balancing and settlement in Great Britain that is maintained in accordance with the conditions of licences granted under section 6(1)(b) of the Electricity Act 1989⁽¹⁴⁾ as it was in force on 1st April 2023⁽¹⁵⁾).

⁽⁹⁾ “energy price support” is defined in s.19(4) of the Act.

⁽¹⁰⁾ See <https://www.gov.uk/government/publications/energy-bills-discount-scheme-non-standard-cases> A hard copy may be obtained from the Department for Energy Security and Net Zero, 1 Victoria Street, London, SW1H 0ET.

⁽¹¹⁾ 1986 c. 44. Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and amended by sections 3(2) and 76 of the Utilities Act 2000 (c. 27); there are other amendments, but they are not relevant.

⁽¹²⁾ See paragraph 2.2.1 of Section B of the General Terms of the Uniform Network Code. The documents comprising the Uniform Network Code are accessible on the website of the Joint Office of Gas Transporters at <https://www.gasgovernance.co.uk/UNC> (their postal address is Radcliffe House, Blenheim Court, Warwick Road, Solihull, B91 2AA; their email address is enquiries@gasgovernance.co.uk). The current version of General Terms, Section B is available at <https://www.gasgovernance.co.uk/index.php/general>; implemented modifications to the code may be accessed from <https://www.gasgovernance.co.uk/closedmods>.

⁽¹³⁾ Published by the Office for National Statistics. For information on how to obtain a hard copy, contact the Office for National Statistics, Classifications and Harmonisation Unit, Government Buildings, Cardiff Road, Newport, South Wales, NP10 8XG. For an electronic copy, see <https://www.ons.gov.uk/methodology/classificationsandstandards/ukstandardindustrialclassificationofeconomicactivities/uksic2007>.

⁽¹⁴⁾ 1989 c. 29. Section 6(1)(b) was substituted by section 136(1) of the Energy Act 2004 (c. 20).

⁽¹⁵⁾ See section X-1 of the Balancing and Settlement Code. The code is accessible on the website of Elexon Limited at <https://www.elexon.co.uk/bsc-and-codes/> (their postal address is 4th Floor, 350 Euston Road London NW1 3AW; their email address is bscservicedesk@cgi.com).

PART 2

Relevant agreements

Interpretation of this Part

3. In this Part, “relevant agreement” means an agreement or other arrangement between—
- (a) two or more relevant persons, or
 - (b) one or more relevant persons and one or more persons who are not relevant persons,
- in connection with the provision of relevant energy or energy products produced using relevant energy (or both), or related services, to a relevant person.

Duty of relevant persons to provide information to the Secretary of State

4.—(1) In this regulation, “relevant information” means information or documents that are specified, or of a description specified, in a notice given under paragraph (2).

(2) The Secretary of State may give to a relevant person, or a person that the Secretary of State has reasonable grounds to believe is a relevant person, a notice requesting specified information or documents, or information or documents of a specified description, relating to—

- (a) the existence, contents or effect of a relevant agreement, or
- (b) any matter connected with its operation (including information about any plant, equipment or apparatus used to implement it).

(3) A notice under paragraph (2) may specify the form in which relevant information is to be provided and must—

- (a) be in writing;
- (b) specify the period within which the recipient of the notice is required to respond to it;
- (c) identify, so far as practicable—
 - (i) the relevant agreement about which the relevant information is requested;
 - (ii) the relevant energy or energy products (or both) to which the Secretary of State believes that the relevant agreement relates.

(4) A notice under paragraph (2) may only be given for the purposes of—

- (a) facilitating—
 - (i) the entry of a relevant person into a scheme agreement, or
 - (ii) the implementation of a scheme agreement;
- (b) enabling or assisting the Secretary of State—
 - (i) to determine whether a scheme agreement has been entered into or implemented (including as regards any payments made under it) in accordance with any terms incorporated or otherwise included in it;
 - (ii) to reach a decision about whether, or how, to exercise any function or discretion of the Secretary of State set out in those terms (including as regards their amendment);
 - (iii) to ensure the proper accounting for, tracing and control of public money in connection with scheme agreements;
 - (iv) to determine, or to assist a relevant person to determine, whether a relevant person has complied with its obligations under these Regulations in relation to relevant energy or energy products (or both) that is or are provided to another relevant person

that is its counterparty under a relevant agreement, or to which it is linked by a chain of relevant agreements.

- (5) A person that receives a notice under paragraph (2) must respond to it—
- (a) in writing, within the period specified in the notice for responding to it, and
 - (b) by providing the Secretary of State—
 - (i) with the relevant information, if it has it or can readily obtain it,
 - (ii) if it does not have, and cannot readily obtain, the relevant information, but is able to provide other information or documents that may enable the Secretary of State to obtain it, with that other information or those other documents, or
 - (iii) with an explanation of why it is unable to comply with either paragraph (i) or paragraph (ii) (which may include that it is not a relevant person).
- (6) A person's duty under paragraph (5)—
- (a) is owed to the Secretary of State, and enforceable in civil proceedings—
 - (i) for an injunction,
 - (ii) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988⁽¹⁶⁾, or
 - (iii) for any other appropriate remedy or relief;
 - (b) does not apply to so much of the relevant information as the person would in legal proceedings be entitled to refuse to provide on grounds of legal privilege.

Implied terms

- 5.—(1) The following terms are implied into each relevant agreement—
- (a) a term to the effect that in complying with a duty owed under regulation 4(5), a relevant person that is a party to the agreement does not breach any obligation owed under the relevant agreement to any other person that is a party to it;
 - (b) a term to the effect that each party to the agreement (“A”) owes each other party (“B”) a duty to take such steps as B may reasonably request A to take in order to facilitate—
 - (i) the entry of B, or another relevant person, into a scheme agreement that it is entitled to enter into, or
 - (ii) the receipt by B, or another relevant person, of financial assistance from the Secretary of State in accordance with the terms of a scheme agreement;
 - (c) a term to the effect that each relevant party must comply with its obligations under these Regulations.
- (2) The following terms are implied into each relevant agreement under which a relevant person provides eligible energy to a non-standard customer that is not a Trading Party or a Shipper User—
- (a) a term to the effect that if—
 - (i) one party to the relevant agreement (“X”) is notified, by the Secretary of State, that an amount received by X under a scheme agreement must be repaid to the Secretary of State in accordance with the terms of that scheme agreement,
 - (ii) X has in accordance with those terms paid any part of that amount (such part being the “relevant amount”) to another party to the relevant agreement (“Y”), and
 - (iii) X informs Y of the notification it has received as referred to in sub-paragraph (i) and of the relevant amount,

(16) 1988 c.36.

- Y undertakes to repay to X, or to the Secretary of State, at X's request, the relevant amount;
- (b) a term to the effect that the relevant person who provides eligible energy under the relevant agreement ("P") may recover over a reasonable period from the person to whom it is provided under that agreement ("C") an amount that represents an appropriate share of P's relevant costs.
- (3) A term implied by paragraph (1) or (2)—
- (a) is implied into a relevant agreement only if, and to the extent that, the agreement does not otherwise make provision to the same or similar effect;
 - (b) prevails over or disapplies any other term of a relevant agreement into which it is implied to the extent that that other term may be construed as conflicting with the implied term or preventing it from being given effect.
- (4) For the purposes of paragraph (2)(b)—
- (a) P's "relevant costs" are its costs, reasonably and efficiently incurred in implementing a scheme agreement to which it is a party and under which it receives, or may receive, payments in respect of the provision of the eligible energy that it provides to C;
 - (b) a share of P's relevant costs is "appropriate" if it reflects the share of all the eligible energy provided by P to non-standard customers to which P's scheme agreement relates that is accounted for by the eligible energy that P provided to C under the relevant agreement during the period to which the scheme agreement relates.

PART 3

Energy and Trade Intensive Industries and Domestic Heat Consumers

Interpretation of this Part

6.—(1) In this Part—

"ETII proportion" and "QHS proportion" mean, in respect of a non-standard customer or provider and any period, the proportions determined as such in accordance with regulation 8;

"higher-tier provider" means, in relation to a provider, another provider who directly supplies or makes available to the first provider energy or energy products (or both);

"lower-tier provider" means, in relation to a provider, another provider to whom the first provider directly supplies or makes available energy or energy products (or both);

"provider" means a person that supplies or otherwise makes available to another person—

- (a) eligible energy, or
- (b) energy products produced using eligible energy,

that is or has been conveyed to the premises of a non-standard customer;

"qualifying claim period" has the meaning given in the Scheme Terms⁽¹⁷⁾.

(2) In the application of these Regulations in England and Wales and Scotland, the following terms have the meanings given to them in the main scheme GB Regulations, and in the application of these Regulations in Northern Ireland, they have the meanings given to them in the main scheme NI Regulations—

"certification date";

"certified ETII operator";

⁽¹⁷⁾ See section 22 of the Scheme Terms.

“certified heat supplier”;
 “ETII certificate”;
 “immediate ETII provider”;
 “qualifying heat consumer”;
 “QHS certificate”.

Qualifying claim periods

7.—(1) A provider must, as soon as reasonably practicable after determining a qualifying claim period in accordance with the Scheme Terms, notify each lower-tier provider of that qualifying claim period.

(2) A provider that is notified by a higher-tier provider of a qualifying claim period must, as soon as reasonably practicable, notify each lower-tier provider of that period.

Determination and redetermination of ETII and QHS proportions

8.—(1) Subject to paragraphs (2) and (3), a provider that is an immediate ETII provider or certified heat supplier must, as soon as reasonably practicable—

- (a) for each qualifying claim period—
 - (i) after the end of that period, determine, and
 - (ii) after a benefit redetermination event occurs, redetermine, the ETII proportion or (as the case may be) the QHS proportion for that period, and
- (b) if it is not a party to a scheme agreement, notify to the higher-tier provider any ETII proportion or QHS proportion determined or redetermined by it under sub-paragraph (a).

(2) Where such a provider receives an ETII certificate, not having previously received any ETII certificate under regulation 18 of the main scheme GB Regulations or the main scheme NI Regulations, as the case may be, then in relation to any qualifying claim period which ends after the certification date of such certificate, the provider must comply with paragraph (1)(a)(i) as soon as reasonably practicable after receiving the ETII certificate.

(3) A provider (P) that is not an immediate ETII provider or certified heat supplier must, for each qualifying claim period, as soon as reasonably practicable after each lower-tier provider has given to P the corresponding notification under paragraph (1)(b)—

- (a) determine or redetermine, and
- (b) notify to the higher-tier provider that is party to a scheme agreement,

the ETII proportion and the QHS proportion for that period.

(4) In determining or redetermining the ETII proportion or the QHS proportion for a qualifying claim period in accordance with paragraph (3), the provider must rely on the notifications given to it by lower-tier providers as to their ETII proportions or QHS proportions for that period.

(5) If the Secretary of State considers that a provider’s determination of an ETII proportion or a QHS proportion (a “relevant proportion”) is not in conformity with the requirements of these Regulations, the Secretary of State may determine the relevant proportion by giving notice of such determination to—

- (a) the provider that determined the relevant proportion, and
- (b) the certified ETII operator or (if it is not that provider) certified heat supplier, as the case may be, by reference to which the relevant proportion was determined

(each an “affected person”).

- (6) Before making a determination under paragraph (5) the Secretary of State must—
- (a) give notice to each affected person—
 - (i) setting out the provider’s determination;
 - (ii) setting out the reasons for which the Secretary of State proposes to make a determination;
 - (iii) setting out the determination which the Secretary of State proposes to make;
 - (iv) inviting any affected person to make representations in respect of the proposal by a time specified in the notice;
 - (b) consider any representations made by any affected person by that time.

(7) Where the Secretary of State makes a determination under paragraph (5), these Regulations apply, in relation to the contract between the affected persons, on the basis of the determination made by the Secretary of State, and the provider must comply with that determination.

(8) For the purposes of this regulation, there is a “benefit redetermination event” in relation to a provider and a qualifying claim period where, after the provider has determined or redetermined (under paragraph (1)(a)(i) or (3)) and, where applicable, notified to a higher-level provider the ETII proportion or the QHS proportion for that qualifying claim period, any of the following occurs—

- (a) the provider receives an ETII certificate or QHS certificate relating to a person (and heat network, in the case of a QHS certificate) that was not previously counted as a certified ETII operator, or certified heat supplier in relation to that heat network, in determining such ETII proportion or QHS proportion, and the certification date of such certificate is earlier than the end of the qualifying claim period,
- (b) the provider is notified that the ETII certificate or QHS certificate has been revoked with effect from a date before the end of the qualifying claim period,
- (c) the provider corrects an error in the determination of such ETII proportion or QHS proportion,
- (d) the Secretary of State determines such ETII proportion or QHS proportion under paragraph (5), or
- (e) the provider is notified by a lower-tier provider of any redetermination of an ETII proportion or QHS proportion in respect of that qualifying claim period.

ETII and QHS proportions

9.—(1) The ETII proportion and the QHS proportion applying for any period in respect of a non-standard customer or a provider are determined as follows—

- (a) the ETII proportion in respect of a non-standard customer which is a certified ETII operator and is not a provider, is 1;
- (b) the ETII proportion in respect of a provider (P), is a proportion of the base scheme benefit for that period calculated as—

$$(A+B) / C$$

- (c) the QHS proportion in respect of a provider (P), is a proportion of the base scheme benefit for that period calculated as—

$$D / C$$

Where

A, if P is a certified ETII operator, is that part of the base scheme benefit which is not required to be passed on by P to any person under these Regulations, and, if P is not a certified ETII operator, is zero;

B is that part of the base scheme benefit which is required to be passed on under these Regulations (by any immediate ETII provider, whether or not that is P) to certified ETII operators;

C is the base scheme benefit;

D is that part of the base scheme benefit which is required to be passed on under these Regulations (by any certified heat supplier, whether or not that is P) to qualifying heat consumers,

provided that if a qualifying heat consumer is also a certified ETII operator, the amount of base scheme benefit required to be passed on to it—

(i) is counted in determining D;

(ii) is not counted in determining B.

(2) In this regulation—

(a) “base scheme benefit” means, in respect of a provider (P), for any period, the amount of energy cost support that would be provided for that period to P under a scheme agreement or under Part 4 of these Regulations, calculated in accordance with the Scheme Terms, as if—

(i) the GSDP decrement and the MER increment were zero, and

(ii) the applicable government supported discount price and maximum ECS rate in respect of QHS eligible energy were equal to the government supported discount price and maximum ECS rate for general eligible energy;

(b) “general eligible energy”, “government supported discount price”, “GSDP decrement”, “maximum ECS rate”, “MER increment” and “QHS eligible energy” have the meanings given in the Scheme Terms(18).

PART 4

Pass-through Requirement

Interpretation of this Part

10. In this Part—

“period” in relation to—

(a) a scheme benefit falling under paragraph (a) of the definition of that term in regulation 2, means the period in respect of which that scheme benefit was provided to the relevant intermediary, and

(b) a pass-through amount, means the period in connection with which such pass-through was effected;

“usage” means the quantity of—

(a) energy in respect of which a scheme benefit has been provided, or

(b) energy products produced using energy in respect of which a scheme benefit has been provided,

(18) See sections 3 and 6 of the Scheme Terms.

made available by a relevant intermediary to an end user.

Pass-through requirement

11.—(1) A relevant intermediary must not—

(a) do, or refrain from doing, anything, as a result of which action or failure to act there is a reasonable likelihood that it will not receive a scheme benefit to which it may otherwise be expected to be entitled either as a non-standard customer or pursuant to the operation of these Regulations;

(b) provide a pass-through amount to an excluded end user.

(2) A relevant intermediary must ensure that as soon as reasonably practicable after a scheme benefit has been provided to it in a period, it provides to each of its end users in respect of that period a just and reasonable pass-through amount in respect of the scheme benefit provided to that relevant intermediary.

(3) If and to the extent that the relevant intermediary does not pass through the whole of the scheme benefit provided to it in respect of a period to its end users, it is for the relevant intermediary to demonstrate to end users that the pass-through it has effected in respect of the period concerned is just and reasonable, and in so doing it is entitled to take into account the extent to which its charges to end users reflect the increased cost of energy or energy products (or both) as a result of the energy crisis.

(4) The pass-through amount must be calculated in accordance with regulation 12.

(5) Unless the circumstances in paragraph (7) apply, a scheme benefit is provided to a relevant intermediary—

(a) when it is notified that a scheme benefit has been provided to it in accordance with terms incorporated or otherwise included in a scheme agreement, or

(b) if the relevant intermediary is also an end user, when a pass-through amount is provided to it under these Regulations.

(6) A scheme benefit is deemed to have been provided to a relevant intermediary when such relevant intermediary is notified that it has been identified as an end user for the purpose of these Regulations but the pass-through amount set out in such notification is zero.

(7) A scheme benefit is not treated as having been provided to a relevant intermediary for the purposes of these Regulations to the extent that the relevant intermediary has notified the person that provided the scheme benefit that it has been provided in error and the relevant intermediary is taking reasonable steps to return such scheme benefit to that person.

(8) An end user can also be a relevant intermediary in respect of a scheme benefit provided to that end user and vice versa.

(9) Where a person is an end user, and that person is also a relevant intermediary in respect of some or all of the same energy or energy products (or both), that person must comply with these Regulations.

(10) To give full effect to the pass-through requirement a relevant intermediary must take all such reasonable steps as may be necessary to secure that it is provided with the scheme benefit to which it is entitled so that it may effect a pass-through to its end users.

(11) If a scheme benefit has been provided to a relevant intermediary in respect of energy or energy products (or both) supplied or made available to an excluded end user, the relevant intermediary must notify the person that provided the scheme benefit of this and such scheme benefit is not treated as having been provided to the relevant intermediary for the purposes of these Regulations.

(12) Where a relevant intermediary determines a pass-through amount in respect of an end user that is an affected person within the meaning of regulation 8(5), its determination must be consistent with any determination of the Secretary of State under regulation 8(5) relating to that person.

Calculation of pass-through amount

12.—(1) Subject to paragraph (3), the requirement for a relevant intermediary to provide to end users a pass-through amount that is just and reasonable is treated as having been met in any case where—

- (a) the relevant intermediary makes energy or energy products (or both) available through equipment where—
 - (i) tariffs per unit of energy or energy products (or both) used are automatically charged by the equipment, and
 - (ii) the energy or energy products (or both) are paid for by end users at the time that the energy or energy products (or both) are made available, and
- (b) the relevant intermediary effects a pass-through by adjusting its tariffs charged by the equipment to reflect the scheme benefit provided to the relevant intermediary under its scheme agreement as soon as reasonably practicable after the scheme benefit is provided to the relevant intermediary in accordance with regulation 11(5), adjusting the tariffs charged by the equipment—
 - (i) if there is one end user, to pass on the whole of the scheme benefit to that user, or
 - (ii) if there are multiple end users, to reflect the relevant intermediary's reasonable assessment using best available information of the adjustment required to allocate the scheme benefit between those end users in accordance with one of the approaches described in paragraphs (2) or (3).

(2) Subject to paragraph (3), where the relevant intermediary was charging end users at the point at which the scheme benefit was provided to it either—

- (a) according to the proportion which each end user's usage represents of the aggregate quantity of energy or energy products (or both) supplied or made available to the relevant intermediary which led to provision of the scheme benefit, or
- (b) according to the proportion each end user pays of the total amount paid by the relevant intermediary in relation to the aggregate energy or energy products (or both) supplied or made available to the relevant intermediary which led to the provision of the scheme benefit,

a pass-through amount is just and reasonable for the purposes of regulation 11(2) if the relevant intermediary applies the same approach, as the case may be, to calculate the pass-through amount for each end user on this basis.

(3) Where paragraph (2) does not apply, in considering what is just and reasonable for the purposes of regulation 11(2), the relevant intermediary must apply the best available information to allocate the scheme benefit amongst end users and in doing so may take into account the basis on which the relevant intermediary was allocating charges amongst end users at the point at which the scheme benefit was provided to it.

(4) When calculating the pass-through amount in accordance with this regulation, a relevant intermediary must take into account circumstances in which a person is an end user for part of a period, such that the pass-through to that end user relates only to that part of the relevant period in which they were an end user.

(5) A relevant intermediary is not required to pass-through to end users amounts in excess of the scheme benefit provided to it (as adjusted to take account of its own end user usage, where relevant).

(6) When calculating pass-through amounts, a relevant intermediary which is also an end user in respect of a scheme benefit provided to it must not retain more of the scheme benefit for itself than is proportionate to its own usage (or, if it is not practicable to assess the volume of its usage, the proportion of overall charges for energy or energy products (or both) borne by the relevant intermediary and its end users that the relevant intermediary itself bears).

(7) A relevant intermediary is entitled to include energy or energy products (or both) used to provide common services to end users as part of its own usage for the purposes of the calculation in paragraphs (2) or (3) to the extent that the cost of such energy or energy products (or both) is or will not be borne by its end users as part of the arrangements in place when the scheme benefit was provided to the relevant intermediary in accordance with regulation 11(5).

Provision of information to end users

13.—(1) Within the period of 30 days beginning with the day on which the scheme benefit was provided to it in accordance with regulation 11(5) or was deemed to have been provided to it in accordance with regulation 11(6), the relevant intermediary must take reasonable steps to notify its end users in writing (where possible using the means of communication it customarily uses to communicate with its end users)—

- (a) that the relevant intermediary has either—
 - (i) had a scheme benefit provided to it and has identified the end user as a person entitled to a just and reasonable proportion of such benefit by virtue of the application of these Regulations, or
 - (ii) been notified that it has been identified as an end user for the purpose of these Regulations but the pass-through amount set out in such notification is zero (and in such circumstances the relevant intermediary must also provide to its end users the details in sub-paragraphs (b) and (c) provided to it in the notice from its relevant intermediary and the information set out in sub-paragraphs (f) and (g)),
- (b) the amount of scheme benefit provided to the relevant intermediary and that the scheme benefit has been passed through by virtue of these Regulations,
- (c) the amount or proportion of scheme benefit provided to the relevant intermediary (if any) which it intends to pass-through to the end user concerned together with supporting details demonstrating why the relevant intermediary considers such pass-through amount to be just and reasonable,
- (d) to the extent applicable, when and how the relevant intermediary will provide the pass-through amount to the end user,
- (e) to the extent applicable, of any steps it is taking to correct an error in the way in which the relevant intermediary has previously passed-through a scheme benefit to an end user,
- (f) how the end user may submit a query to the relevant intermediary about the matters set out in the notice, and
- (g) that if the pass-through amount to which it is entitled by virtue of these Regulations is not provided to the end user, it is entitled to recover it from the relevant intermediary as a civil debt pursuant to regulation 15(1).

(2) Where the relevant intermediary makes energy or energy products (or both) available through equipment which automatically charges a tariff per unit of energy or energy products (or both) used, paid by end users at the time the energy or energy products (or both) are made available—

- (a) paragraph (1) does not apply, and
- (b) the relevant intermediary must, as soon as reasonably practicable after the scheme benefit was provided to it, notify its end users by notice on or near such equipment in a place in which it will be seen by end users of—

- (i) the tariff adjustment which the relevant intermediary has applied pursuant to these Regulations to effect the pass-through to end users of the scheme benefit which has been provided to it, and
- (ii) the contact details of the relevant intermediary which can be used should the end user require further information about its entitlements under these Regulations, including the ability to query with the relevant intermediary the basis on which the tariffs have been adjusted to reflect the scheme benefit provided to the relevant intermediary.

Effecting the pass-through

14.—(1) Notwithstanding any provision in the contract between the relevant intermediary and the end user at the time the scheme benefit was provided to the relevant intermediary, the relevant intermediary must effect the pass-through so that the pass-through amount is provided to the end user as soon as reasonably practicable.

(2) Where the relevant intermediary makes energy or energy products (or both) available through equipment which automatically charges a tariff per unit of energy or energy products (or both) used, paid by end users at the time that the energy or energy products (or both) are made available, the relevant intermediary must as soon as reasonably practicable make such adjustments to its tariff as is necessary to effect the pass-through required under regulation 11(2).

(3) Without prejudice to paragraph (1), a pass-through can be effected, in pounds sterling or pounds sterling per kWh by—

- (a) application of a credit in the next invoice, statement of account or other similar document provided by the relevant intermediary to the end user,
- (b) a payment in cash or by any other means, including a bank transfer,
- (c) tariff adjustment on tariff equipment,
- (d) adjusting the amount of money taken pursuant to a 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 relevant intermediary at the time at which the scheme benefit was provided to the relevant intermediary in accordance with regulation 11(5),

or a combination of the methods set out in this paragraph.

(4) A relevant intermediary has discharged its duty under regulations 11(2), 12(1) or 13(2), and paragraph (1) in respect of an end user if and to the extent it has taken reasonable steps to notify and effect a pass-through of a just and reasonable pass-through amount to that end user but is unable to do so.

(5) An end user has no right to a pass-through amount if the relevant intermediary has discharged its duty under regulations 11(2), 13(1) or 13(2), and paragraph (1) pursuant to paragraph (4) and a period of six months has elapsed after the scheme benefit concerned was provided to the relevant intermediary.

(6) If the contract between the relevant intermediary and the end user expires or is terminated before the pass-through required by these Regulations is effected (such that the full value of the pass-through amount has not been provided to the end user), the relevant intermediary must effect a pass-through to the end user to reflect the end user's entitlement (or remaining entitlement) under these Regulations as soon as reasonably practicable following such expiry or termination.

Enforcement

15.—(1) Where a relevant intermediary fails to effect a pass-through to which an end user is entitled under these Regulations, that end user may, subject to regulation 14(5), recover the relevant pass-through amount from the relevant intermediary as a civil debt.

(2) Where a relevant intermediary fails to effect a pass-through to which an end user is entitled by virtue of these Regulations, the end user may claim interest to be paid by the relevant 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 relates was provided to the relevant intermediary.

(3) 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⁽¹⁹⁾ (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

PART 5

Supplementary

Amendment of the Energy Bill Relief Scheme (Non-Standard Cases) Regulations 2023

16. In regulation 2 of the Energy Bill Relief Scheme (Non-Standard) Cases Regulations 2023⁽²⁰⁾(interpretation), at the end of the definition of “Scheme Terms”, insert “as amended and republished on 24th April 2023”.

24th April 2023

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

⁽¹⁹⁾ 1998 c. 11.
⁽²⁰⁾ S.I. 2023/9.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the Energy Bills Discount Scheme for Non-Standard Customers in Great Britain and Northern Ireland (“the Scheme”) by which the Secretary of State provides non-domestic customers with financial assistance to meet costs related to the use of electricity and gas that is not supplied by a licensed supplier. Assistance is provided under “scheme agreements”, that incorporate published “Scheme Terms”. Amongst other things, the Scheme Terms set out the criteria that customers, and the energy that they consume, must meet if they are to receive assistance.

Regulation 2 introduces a number of defined terms that reflect the operation of the Scheme.

Regulations 3 and 4 provide the Secretary of State with a power to obtain information about the supply of gas or electricity to persons who are or may be eligible for assistance under the Scheme.

Regulation 5 implies terms into certain descriptions of contract connected with the provision of energy to persons who are or may be eligible for assistance under the Scheme.

Regulations 6 to 9 provide for the determination of “ETII proportions” and “QHS proportions”. These are used in calculating the benefits that certain non-standard customers operating in energy and trade intensive industries, or as heat suppliers, are entitled to under the Scheme Terms.

These Regulations also make provision for pass-through requirements in relation to the Scheme. Pass-through requirements are imposed on a “relevant intermediary” and establish that they must pass-through the benefits of the scheme to an “end user” to whom energy, heating or hot water has been made available. These provisions apply in respect of relevant intermediaries other than those providing certain types of hospitality accommodation (defined as “excluded persons” under these Regulations).

Regulation 11 establishes the requirement for relevant intermediaries to pass-through a just and reasonable amount of the benefit provided to them under the Scheme to each of their end users.

Regulation 12 provides for the calculation of the pass-through amount and sets out the way in which relevant intermediaries are to determine what is a just and reasonable amount for the purposes of regulation 11.

Regulation 13 sets out the information which relevant intermediaries are required to provide to each of their end users about the scheme benefit provided to them, the amount or proportion the relevant intermediary intends to provide to the end user, and supporting details about how they have calculated that this is a just and reasonable amount.

Regulation 14 makes provision about the way in which the pass-through is to be given effect including that it must be provided to the end user as soon as reasonably practicable after the scheme benefit has been provided to the relevant intermediary.

Regulation 15 provides for unpaid pass-through amounts to be recoverable from the relevant intermediary by the end user as a civil debt.

A full impact assessment of the effect the Scheme, 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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