
STATUTORY INSTRUMENTS

2022 No. 1103

ENERGY

**The Energy Bill Relief Scheme Pass-through Requirement
(England and Wales and Scotland) Regulations 2022**

Approved by both Houses of Parliament

<i>Made</i>	- - - -	<i>at 3.33 p.m. on 27th October 2022</i>
<i>Laid before Parliament</i>		<i>at 4.00 p.m. on 31st October 2022</i>
<i>Coming into force</i>	- -	<i>1st November 2022</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 19 and 26(2)(a) and (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 Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022 and come into force on 1st November 2022.

(2) These Regulations extend to England and Wales, and Scotland.

Interpretation

2. In these Regulations—

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

“climate change levy” means the climate change levy as defined in section 30 of and Schedule 6 to the Finance Act 2000⁽²⁾;

⁽¹⁾ 2022 c. 44.

⁽²⁾ 2000 c. 17; Schedule 6 has been extensively amended, but the amendments are not relevant for the purposes of identifying the levy, and paragraphs 1 to 3 of the Schedule, which contain the core definition of the levy, have not been amended.

“customer” means a person supplied or to be supplied by a supplier with electricity by way of GB non-domestic electricity supply(3) or gas by way of GB non-domestic gas supply(4);

“deemed contract” has the meaning given in the relevant standard conditions(5);

“discount” means the reduction (in p/kWh) in the supply price under a supply contract to be applied pursuant to the scheme in respect of that contract, determined in accordance with regulation 18 of the EBRs Regulations;

“EBRS Regulations” means the Energy Bill Relief Scheme Regulations 2022(6);

“electricity scheme” means the support scheme(7) in respect of GB non-domestic electricity supply provided for in the EBRs Regulations;

“excluded person” means a person engaged in either or both of the provision of accommodation within the meaning of standard industrial classification divisions 55.1, 55.2, 55.3 (except persons providing mobile homes on protected sites as defined in the Mobile Homes Act 1983(8)) and 55.9 (except persons providing student residences, school dormitories, workers hostels and rooming and boarding houses) and the provision of energy(9) to such accommodation;

“gas scheme” means the support scheme in respect of GB non-domestic gas supply provided for in the EBRs Regulations;

“opt-out notice” means a notice given pursuant to regulation 4(4) of the EBRs Regulations in which a customer gives notice to a supplier that no discount is to apply in respect of energy supplied under a supply contract between them from the date specified in the notice;

“out-of-contract contract” means a supply contract that continues to apply to a customer, and under which the supplier continues to supply energy to that customer, after it has been terminated or has expired through the passage of time;

“pass-through” means the act of a relevant intermediary of passing through all or part of a scheme benefit to an end user(10);

“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 pursuant to these Regulations;

“period” in relation to—

- (a) a scheme benefit falling under sub-paragraph (a) or (b) of the definition of that term in this regulation, means a billing period, and
- (b) a pass-through amount, means the period in connection with which such pass-through was effected;

“qualifying amount” means any amount payable by a customer to a supplier under a supply contract other than any amount payable in respect of value added tax or climate change levy;

“QFDC” means a qualifying financially disadvantaged customer within the meaning of Part 5 of the EBRs Regulations;

“relevant intermediary” means a person to whom a scheme benefit has been provided in circumstances in which there is one or more end user other than the relevant intermediary, except where that person—

(3) Defined in the Energy Prices Act 2022, section 10(4).

(4) Defined in the Energy Prices Act 2022, section 10(8).

(5) Defined in the Energy Prices Act 2022, section 10(5) in relation to GB non-domestic electricity supply and section 10(9) in relation to GB non-domestic gas supply.

(6) S.I. 2022/1100.

(7) Defined in Schedule 1, paragraph 1 to the Energy Prices Act 2022.

(8) 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).

(9) “Energy” is defined in section 28(4) of the Energy Prices Act 2022.

(10) Defined in section 19(3) of the Energy Prices Act 2022.

- (a) is an excluded person, or
- (b) is an “intermediary” as defined in regulation 2(1) of the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022⁽¹¹⁾,

and for the purpose of regulation 3, “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;

“required reduction” means a reduction applied to a qualifying amount payable by a QFDC in accordance with regulation 53 of the EBRs Regulations;

“scheme” means the electricity scheme or (as the case may be) the gas scheme;

“scheme benefit” means—

- (a) discount applied to the price under a supply contract by virtue of the application of the EBRs Regulations where the amount of the scheme benefit is the amount of the discount as notified by a supplier to the relevant intermediary in its capacity as customer of that supplier under regulation 19(1)(d) of the EBRs Regulations,
- (b) required reductions applied to qualifying amounts payable by QFDCs where the amount of the scheme benefit is the amount of such reductions notified by a supplier to the relevant intermediary in its capacity as QFDC under regulation 53(1)(c) of the EBRs Regulations (or the amount determined by the relevant intermediary using the information provided by the supplier in such notification), or
- (c) 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 kw/h of energy and a scheme benefit (other than a scheme benefit in relation to which regulations 4(1) and 6(2) apply) may have been provided in respect of a period before these Regulations came into force;

“scheme period” means the period from 1st October 2022 to 31st March 2023 inclusive;

“standard industrial classification” means the Office for National Statistics’ “UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007)”⁽¹²⁾;

“supplier” means a licensed electricity supplier⁽¹³⁾ or a licensed gas supplier⁽¹⁴⁾;

“supply contract” means a contract (including a deemed contract or an out-of-contract contract) between a supplier and a customer which provides for GB non-domestic electricity supply or GB non-domestic gas supply at any time during the scheme period;

“supply price” has the meaning given in regulation 9 of the EBRs Regulations;

“usage” means the quantity of energy made available by a relevant intermediary to an end user, that quantity of energy having been supplied to the relevant intermediary for the purposes of the EBRs Regulations.

⁽¹¹⁾ S.I. 2022/1101.

⁽¹²⁾ Published by the Office of the 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, NP108 XG. For an electronic copy, see <https://www.ons.gov.uk/methodology/classificationsandstandards/ukstandardindustrialclassificationofeconomicactivities/uksic2007>.

⁽¹³⁾ Defined in the Energy Prices Act 2022, section 10(2).

⁽¹⁴⁾ Defined in the Energy Prices Act 2022, section 10(6).

PART 2

Pass-through requirement

Pass-through requirement

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

- (a) in its capacity as customer under the EBRs Regulations, serve an opt-out notice on a supplier pursuant to regulation 4(4) of the EBRs Regulations, or
- (b) reject, or fail to take all reasonable steps in accordance with paragraph (10) to secure, a pass-through amount to which it is entitled pursuant to the operation of these Regulations.

(2) A relevant intermediary must ensure that as soon as reasonably practicable after a scheme benefit has been provided to it in respect of 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 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 as a result of the energy crisis.

(4) The pass-through amount must be calculated in accordance with the rules set out in regulation 4.

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

- (a) when it is notified by a supplier, in its capacity as customer of that supplier, of that scheme benefit under regulation 19(1)(d) of the EBRs Regulations,
- (b) when it is notified by a supplier, in its capacity as a QFDC of that supplier, of that scheme benefit (or the basis on which it can be determined) under regulation 53(1)(c), or
- (c) if the relevant intermediary is also an end user, when a pass-through amount is provided to it by virtue of 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 in accordance with the requirements of the EBRs Regulations.

(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, 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.

Calculation of pass-through amount

4.—(1) Subject to regulation 3(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 available through equipment where—
 - (i) tariffs per unit of energy used are automatically charged by the equipment; and
 - (ii) the energy is paid for by end users at the time that the energy is 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 by virtue of the EBRs Regulations as soon as reasonably practicable after the scheme benefit is provided to the relevant intermediary in accordance with regulation 3(5).

(2) Subject to regulation 3(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 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 supplied or made available to the relevant intermediary which led to provision of the scheme benefit a pass-through amount is just and reasonable for the purposes of regulation 3(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) If neither paragraph (1) nor paragraph (2) applies, in considering what is just and reasonable the relevant intermediary must apply the best available information to allocate the benefit amongst end users and in so doing 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 energy charges borne by the relevant intermediary and its end users that the relevant intermediary itself bears).

(7) A relevant intermediary is entitled to include energy 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 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 3(5).

Provision of information to end users

5.—(1) Within the period of 30 days beginning with the day on which the scheme benefit was provided to it in accordance with regulation 3(5) or was deemed to have been provided to it in accordance with regulation 3(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 appeal 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 7(1).
- (2) Where the relevant intermediary makes energy available through equipment which automatically charges a tariff per unit of energy used, paid by end users at the time the energy is 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 appeal to the relevant intermediary in respect of the basis on which the tariffs have been adjusted to reflect the scheme benefit provided to the relevant intermediary.

Effecting the pass-through

6.—(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 available through equipment which automatically charges a tariff per unit of energy used, paid by end users at the time that the energy is 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 3(2).

(3) Without prejudice to paragraph (1), a pass-through can be effected, in pounds sterling or pounds sterling per kw/h 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 3(5),

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

(4) A relevant intermediary has discharged its duty under regulations 3(2), 5(1) or 5(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 3(2), 5(1) or 5(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.

PART 3

General

Enforcement

7.—(1) Where a relevant intermediary fails to effect a pass-through to which an end user is entitled by virtue of these Regulations, that end user may, subject to regulation 6(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

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

- (b) where an order under section 19 of the Bank of England Act 1998⁽¹⁵⁾ (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

Graham Stuart
Minister of State for Climate
Department for Business, Energy and Industrial
Strategy

At 3.33 p.m. on 27th October 2022

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for pass-through requirements in relation to the Energy Bill Relief Scheme (EBRS) in England and Wales and Scotland. Pass-through requirements are imposed on a “relevant intermediary” (as defined in regulation 2) and establish that they must pass-through the benefits of the EBRS scheme to an “end user” to whom energy has been made available (defined in section 19(3) of the Energy Prices Act 2022 (c. 44)). The Regulations apply in respect of relevant intermediaries, other than a) an “intermediary” as defined in regulation 2(1) of the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022 (S.I. 2022/1101) and b) those providing certain types of hospitality accommodation (defined as “excluded persons” under these Regulations).

Regulation 3 establishes the requirement for relevant intermediaries to pass-through a just and reasonable amount of the benefit provided to it under the EBRS scheme to each of its end users.

Regulation 4 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 3.

Regulation 5 sets out the information which relevant intermediaries are required to provide to each of its end users about the EBRS scheme benefit provided to it, the amount or proportion it intends to provide to the end user together with supporting details about how it has calculated that this is a just and reasonable amount.

Regulation 6 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 7 provides for unpaid pass-through amounts to be recoverable from the relevant intermediary by the end user as a civil debt.

An impact assessment of the effect the EBRS scheme, including the related pass-through requirements, will have on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.