
STATUTORY INSTRUMENTS

2022 No. 1106

The Energy Bill Relief Scheme
(Northern Ireland) Regulations 2022

PART 6

Further provisions

CHAPTER 1

Duties of suppliers in connection with the scheme

Increases in charges and other changes in relation to supply contracts

60.—(1) A supplier must not, in respect of energy supplied under a supply contract, unreasonably—

- (a) increase the rates at which it charges qualifying amounts,
- (b) expose a customer to any additional risk, or
- (c) change—
 - (i) the terms of the supply contract;
 - (ii) the terms on which the supplier offers to enter into supply contracts;
 - (iii) the process by which prices or charges payable under supply contracts are set;
 - (iv) the way in which the supplier exercises its rights under its supply contracts,so that any of them are less favourable to the customer.

(2) For the purposes of determining whether a supplier has behaved unreasonably in doing any of the things referred to in paragraph (1)(a) to (c)—

- (a) a supplier's conduct is, in particular, unreasonable if, and to the extent that, the conduct, or the supplier's ability to retain the customer as a customer while engaging in it, is facilitated by the existence or operation of the scheme;
- (b) it is, in particular, reasonable for a supplier to increase its charges—
 - (i) to its customers collectively, by an amount that in aggregate does not exceed the efficiently incurred costs of complying with these Regulations;
 - (ii) to any customer, by an amount that does not exceed its fair and reasonable share of such efficiently incurred costs but this does not entitle a supplier to increase the qualifying amounts payable by a QFDC above the levels resulting from the application of regulation 58(1)(b).

CHAPTER 2

Deemed terms of supply contracts

Deemed terms of supply contracts

61.—(1) Subject to paragraphs (3) and (4), terms to the following effect are implied into a supply contract—

- (a) that in respect of energy supplied under the contract during the scheme period, the supply price is reduced by the discount as required under Part 2 and Part 4;
- (b) if the customer is a qualifying financially disadvantaged customer, that the qualifying amounts payable by it are reduced as required under regulation 53(1)(b);
- (c) that where the application of the Regulations changes the discount or a quantity of energy to which the discount applies, the rights and obligations of the supplier and customer in respect of payment for energy supplied are determined, or as necessary redetermined, so as to reflect such change in discount or quantity;
- (d) that no term of the contract, and no act or omission on the part of the customer, is to be construed as entitling the supplier to require the customer, at any time or in any circumstances—
 - (i) to pay a greater amount than the supplier would have been entitled to require it to pay if acting in accordance with the Regulations, or
 - (ii) to be otherwise subject to terms that it would not have been lawful under the Regulations for the supplier to have included in a supply contract,in respect of any energy supplied by the supplier in the scheme period;
- (e) that nothing done by the supplier or the customer in order to comply with these Regulations or rules made under them, or in following guidance issued by the Secretary of State in relation to the scheme, is a breach of any provision of the contract;
- (f) that none of: the coming into force of the Act, the making of these Regulations or rules under them, or the issuing of guidance by the Secretary of State in relation to the scheme, is—
 - (i) a change in the law for the purposes of any provision (however expressed) of the contract which permits the supplier to increase its prices or charges or take any other action in consequence of a change in the law;
 - (ii) an event or circumstance which under any provision of the contract (however expressed) excuses the supplier or the customer from performance of its obligations, or from liability for failure to perform its obligations, under the contract.

(2) In paragraph (1)(b), the reference to—

- (a) the application of the Regulations includes the making or revision of any determination or other decision under the Regulations;
- (b) a change includes a change applying in respect of energy already supplied to the customer;
- (c) rights and obligations include rights and obligations for adjustment of charges already made or paid.

(3) Paragraph (1) does not apply to an excluded fixed price contract or a supply contract for which an opt-out notice has been given, and has not been withdrawn, under regulation 4(4).

(4) None of the terms listed in paragraph (1) is to be construed as preventing a supplier from increasing its charges to a customer in order to recover the costs of complying with Parts 2 and 3 if and to the extent it is permitted to do so under the terms of its supply contract, its electricity supply licence or gas supply licence and regulation 60(2)(b).

CHAPTER 3

Reporting, information requests and audit

Regular reporting by suppliers

62.—(1) The Secretary of State may by notice require suppliers to provide to the Secretary of State at specified intervals a report about the operation of the scheme as respects the supplier and its customers.

(2) The notice shall specify—

- (a) the matters which are to be included in the report;
- (b) the dates when the report is to be provided.

(3) The Secretary of State may by further notice modify, revoke or replace a notice given under paragraph (1).

(4) A supplier must provide reports as required by the notice.

Information requests

63.—(1) Where the Secretary of State considers it necessary or expedient to do so for any of the purposes set out in regulation 65, the Secretary of State may give notice to any supplier or any customer requiring it, by a time specified in the notice—

- (a) to produce to the Secretary of State or a person nominated by the Secretary of State any document specified, or of a description specified, in the notice that is held by that supplier or customer, or
- (b) to provide to the Secretary of State or a person nominated by the Secretary of State, such information as may be specified or described in the notice.

(2) Where the Secretary of State considers it necessary or expedient to do so for any of the purposes set out in regulation 65, the Secretary of State may give notice to any network operator requiring it, by a time specified in the notice, to provide to the Secretary of State or a person nominated by the Secretary of State, such information as may be specified or described in the notice.

(3) No person is to be compelled under this regulation to produce any document which they could not be compelled to produce in civil proceedings in the court or to provide any information which they could not be compelled to give in evidence in any such proceedings.

Audit

64.—(1) Where the Secretary of State considers it appropriate to do so for the purposes set out in regulation 65(a), (b) or (c), the Secretary of State may by notice to a supplier require that an audit of the books, records, systems, processes and methodologies of the supplier is performed by a suitably qualified person (the “auditor”) appointed by the Secretary of State.

(2) Where the Secretary of State requires an audit to be performed under paragraph (1)—

- (a) the supplier shall procure for the auditor access to its personnel, books, records, systems, processes and methodologies sufficient for performance of the audit;
- (b) the audit shall be performed so far as practicable without causing disruption to the supplier in carrying on its business;
- (c) the costs of the auditor are to be borne by the Secretary of State.

Purposes for which powers under this Chapter may be exercised

65. The purposes are—

- (a) ascertaining whether any provision of the Regulations is being complied with;
- (b) ascertaining whether pursuant to any provision of Part 3 or Part 4, any significant amount—
 - (i) is payable to, or
 - (ii) upon that provision being complied with, would become payable to, or would not be payable by
 the Secretary of State;
- (c) otherwise ensuring the proper accounting for, tracing or control of public money in discount recovery;
- (d) obtaining information in connection with any review, including a review under section 11(5) of the Act, by the Secretary of State of the operation and effects of the scheme;
- (e) otherwise obtaining information in connection with the exercise of any of the functions of the Secretary of State in or under these Regulations.

Application of data protection legislation

66.—(1) Nothing in these Regulations authorises or requires a disclosure of information if the disclosure would contravene the data protection legislation, as defined in section 3 of the Data Protection Act 2018(1).

(2) In determining whether a disclosure would contravene that legislation, the powers conferred and duties imposed by regulations 62 to 64 are to be taken into account.

CHAPTER 4

Certain determinations made under the Regulations

Interpretation of this Chapter

67.—(1) In this Chapter—

- (a) “applicant” in relation to a review request, means the supplier or, under regulation 65(1), customer making the request;
- (b) reference to a “determination” includes a redetermination;
- (c) “Part 2 or Part 4 matter” means any matter which is to be determined or declared in relation to a supply contract by a supplier or customer under Part 2 or Part 4;
- (d) “Part 3 decision” means a decision by the Secretary of State—
 - (i) under regulation 27, to withhold payment to a supplier of any amount in respect of a recovery claim amount;
 - (ii) under regulation 28, as to the release of an amount withheld under regulation 27;
 - (iii) under regulation 29, as to the reconciliation cut-off date in relation to any supplier;
 - (iv) under regulation 31(1), to decline to make payment (in whole or part) in respect of a discount recovery claim on the grounds of invalidity;
 - (v) under regulation 31(2), to adjust the amount of a discount recovery claim;
 - (vi) under regulation 31(3), to give a notice that is to be treated as a discount recovery claim;

(1) 2018 c. 12; relevant provisions of section 3 were amended by S.I. 2019/419.

- (e) “other party” in relation to a review request under regulation 65(1), means the contract party which is not the applicant;
 - (f) “reconsidered decision” has the meaning given in regulation 70(4)(c)(i);
 - (g) “relevant decision” in relation to a review request, means the determination or decision in respect of which the request is made;
 - (h) a “review request” is a request made to the Secretary of State under regulation 70(1) or 70(2).
- (2) For the purposes of this Chapter a referral under regulation 68 or a review request does not meet the applicable threshold if—
- (a) it is vexatious or frivolous,
 - (b) the financial consequences for the applicant or (where applicable) the other party of a determination under regulation 68(3) or a reconsidered decision would not be material, or
 - (c) the referral or review request is not made within a period which (in all the circumstances) is reasonable after—
 - (i) the customer was notified or otherwise informed of the supplier’s determination referred to in regulation 68(1)(a), or
 - (ii) (as the case may be) the relevant decision was made.

Referrals in respect of disagreement between contract parties

68.—(1) Where, in relation to a supply contract, the customer disagrees with a determination made by the supplier in respect of a Part 2 or Part 4 matter—

- (a) the customer may, within a reasonable time after the supplier gave notice to or otherwise informed the customer of the determination, give notice to the supplier setting out what it disagrees with and explaining why it does;
- (b) following such notice the customer and the supplier must endeavour to resolve the disagreement, but this does not require or entitle the supplier to make any determination which is not consistent with these Regulations.

(2) If the disagreement is resolved, the supplier shall, if such resolution so requires, redetermine the matter in question and give a revised notice to or otherwise inform the customer of such redetermination accordingly.

(3) If the disagreement is not resolved within a reasonable time after the notice was given—

- (a) the supplier’s determination shall remain effective, and the relevant matter shall be determined on the basis of what is said in the notice, pending any determination pursuant to a reference under sub-paragraph (b);
- (b) the supplier or the customer may refer the matter for determination by the Secretary of State;
- (c) the Regulations shall apply in relation to the supply contract on the basis of the determination made by the Secretary of State and the contract parties shall comply with that determination.

(4) The Secretary of State may decline to determine a matter referred under this regulation where the Secretary of State considers that the referral does not meet the applicable threshold, by giving notice to that effect to the contract parties setting out the reasons for so considering.

Power of the Secretary of State to make determinations

69.—(1) This regulation applies if the Secretary of State considers that, in relation to a supply contract—

- (a) a determination by the supplier of any Part 2 or Part 4 matter, or a declaration by the customer in respect of a Part 4 matter, is not in conformity with the Regulations or is otherwise incorrect, or
- (b) a determination by the supplier or declaration by the customer which should have been made in respect of a Part 2 or Part 4 matter has not been made.

(2) Where this regulation applies the Secretary of State may determine the Part 2 or Part 4 matter in question by giving notice of such determination to the contract parties.

(3) Before making a determination under this regulation the Secretary of State must—

- (a) give notice to the contract parties—
 - (i) setting out the matter in question;
 - (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 the contract parties to make representations in respect of the proposal by a time specified in the notice;
- (b) consider any representations made and not withdrawn by either contract party by that time.

(4) The Regulations apply, in relation to the supply contract, on the basis of the determination made by the Secretary of State and the contract parties must comply with that determination.

Review of decisions of the Secretary of State

70.—(1) A supplier or a customer may request the Secretary of State to review a determination made by the Secretary of State under regulation 68 or 69 in respect of a Part 2 or Part 4 matter.

(2) A supplier may request the Secretary of State to review a Part 3 decision.

(3) The Secretary of State may decline to review a relevant decision where the Secretary of State considers that the request does not meet the applicable threshold, by giving notice to that effect to the applicant setting out the Secretary of State's reasons for so considering.

(4) Except as provided in paragraph (3), upon receiving a review request, the Secretary of State must—

- (a) where the request relates to the determination of a Part 2 or Part 4 matter, give the other party a reasonable opportunity to submit its views on the determination;
- (b) reconsider the relevant decision;
- (c) give notice to the applicant and (where applicable) the other party of—
 - (i) the outcome of the reconsideration (the “reconsidered decision”), and
 - (ii) the reasons for the reconsidered decision.

(5) The reconsidered decision is final and binding on the applicant and (where applicable) the other party, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

Rules in relation to this Chapter

71.—(1) The Secretary of State must, no later than 14 days after the scheme introduction date, make rules setting out procedures for—

- (a) a supplier or customer to make a referral under regulation 68;
 - (b) the Secretary of State to determine a matter referred under regulation 68;
 - (c) the Secretary of State to determine a matter under regulation 69;
 - (d) a supplier or customer to request a review under regulation 70(1);
 - (e) a supplier to request a review under regulation 70(2);
 - (f) the Secretary of State to reconsider a relevant decision under regulation 70.
- (2) The rules may specify—
- (a) time periods within which any step to be taken in respect of a referral or review request must be taken;
 - (b) thresholds of materiality for the purposes of regulation 67(2)(b).

CHAPTER 5

Enforcement

Supplier obligations enforceable as relevant requirements

72.—(1) The obligations of suppliers under the following provisions are enforceable by the Northern Ireland Regulator as if they were relevant requirements on a regulated person for the purposes of section 41A and 41B of the Energy (Northern Ireland) Order 2003(2)—

- (a) Chapters 2 and 3 of Part 2;
- (b) Part 4;
- (c) Part 5;
- (d) Chapters 1, 2 and 3 of this Part.

(2) Paragraph (1) applies in respect of a person which has ceased to hold an electricity supply licence or gas supply licence as described in regulation 4(3).

(3) For the purposes of considering whether a supplier has contravened any obligation enforceable under paragraph (1), no—

- (a) determination of the Secretary of State under regulation 63 or 64;
- (b) reconsidered decision of the Secretary of State under regulation 65,

shall be called into question.

(4) The obligations of network operators under regulation 63(2) are enforceable by the Northern Ireland Regulator as if they were relevant requirements on a regulated person for the purposes of section 41A and 41B of the Energy (Northern Ireland) Order 2003.

(5) Where it appears to the Secretary of State that a person may be contravening, or may have contravened, any of the requirements referred to in paragraph (1) or (4) the Secretary of State may so inform the Northern Ireland Regulator.

(6) The Northern Ireland Regulator must keep the Secretary of State informed of the number of matters that it is currently considering in respect of its enforcement obligations under these Regulations.

Civil penalties for customers

73.—(1) A customer is liable to the civil penalty referred to in paragraph (4) where the customer fails to make a relevant declaration by the required time.

(2) 2003 No. 419 (N.I. 6).

(2) A customer is liable to the civil penalty referred to in paragraph (5) where the information in a relevant declaration made by the customer is defective.

(3) But the customer is not liable—

- (a) to the civil penalty referred to in paragraph (4), if the customer demonstrates to the satisfaction of the Secretary of State that it had a reasonable excuse for failing to make the relevant declaration by the required time or (in the case of paragraphs (4)(b) and (c)) within the relevant period after the required time (but see paragraph 12);
- (b) to the civil penalty referred to in paragraph (5), if the customer demonstrates to the satisfaction of the Secretary of State that it took reasonable care to ensure that the information in the relevant declaration was not defective.

(4) For the purposes of paragraph (1) the civil penalty is—

- (a) £1,000 for failure to make a relevant declaration by the required time;
- (b) an additional £1,000 for failure to make a relevant declaration within 28 days after the required time;
- (c) an additional civil penalty equal to 10 per cent of the default amount, for failure to make a relevant declaration within a further 30 days after that 28 days.

(5) For the purposes of paragraph (2) the civil penalty is 10 per cent of the default amount.

(6) If the Secretary of State considers that a customer is liable to the civil penalty referred to in paragraph (4) or (5) the Secretary of State must impose the civil penalty on the person by giving a notice (a “penalty notice”) to the customer.

(7) The penalty notice must set out—

- (a) the grounds for liability;
- (b) the amount of the penalty;
- (c) the date by which the penalty must be paid (the “due date”), which must not be less than 28 days after the day on which the notice is given;
- (d) how payment may be made;
- (e) information about rights of appeal.

(8) The customer to whom a penalty notice is given must pay the civil penalty set out in the notice as set out in the notice on or before the due date.

(9) A civil penalty imposed by a penalty notice is recoverable by the Secretary of State as a civil debt.

(10) A customer may appeal to the court against the imposition of a civil penalty.

(11) In this regulation—

- (a) “default amount” means the amount by which the charges for energy supplied to the customer in the default period are increased as a result of the application of Part 4 following the making of the relevant declaration or the correction of the defective declaration;
- (b) in paragraph (a) the “default period” is the period between—
 - (i) the required time or (as the case may be) the making of a defective declaration, and
 - (ii) the time when the declaration was made or (as the case may be) a declaration which is not defective was made, or (if earlier) the end of the scheme period;
- (c) a declaration is “defective” where it is false or materially misleading or incomplete;
- (d) “penalty notice” has the meaning given in paragraph (5);
- (e) “relevant declaration” means a declaration required to be made by a customer under Part 4;

(f) “required time” means the time by which, under the relevant provision of Part 4, a customer was required to make a relevant declaration;

(12) For the purposes of paragraph (3)(a) it is not a reasonable excuse that a supplier did not inform the customer of a determination under regulation 38(2)(b), 43(2)(b) or 52(2)(b), or send a declaration under regulation 47(2).

CHAPTER 6

Notices

Notices

74.—(1) Any notice or other communication to be given by the Secretary of State, a supplier or a customer under these Regulations must be given in writing.

(2) Any notice to be given by the Secretary of State under the Regulations (unless it is to be given to a particular supplier or customer) may be given by the Secretary of State publishing the notice in such manner as the Secretary of State considers appropriate.