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STATUTORY INSTRUMENTS

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**2023 No. 463**

**ENERGY**

**The Energy Bills Discount Scheme Pass-through Requirement 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 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 Bills Discount Scheme Pass-through Requirement Regulations 2023 and come into force on 26th April 2023.

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

**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;

“current period” means, in relation to a supply redetermination event, the period in which a relevant intermediary is provided with an SRE adjustment;

“customer” means—

- (a) in England, Wales and Scotland, a person supplied or to be supplied by a supplier with electricity by way of GB non-domestic electricity supply<sup>(2)</sup> or gas by way of GB non-domestic gas supply<sup>(3)</sup>; or
- (b) in Northern Ireland—
  - (i) a person, other than an excluded electricity consumer, supplied or to be supplied by a supplier with electricity by way of NI non-domestic electricity supply;
  - (ii) a person supplied or to be supplied by a supplier with gas by way of NI non-domestic gas supply;

“deemed contract”—

- (a) in England, Wales and Scotland, has the meaning given in the relevant standard conditions<sup>(4)</sup>;
- (b) in Northern Ireland, means as between a relevant supplier and a customer, a contract for the supply of electricity or gas (as applicable) deemed to have been made under paragraph 3 of Schedule 6 to the Electricity (Northern Ireland) Order 1992<sup>(5)</sup> (in respect of the supply of electricity) or section 12 of the Energy Act (Northern Ireland) 2011<sup>(6)</sup> (in respect of the supply of gas);

“deemed supply contract” has the meaning given in regulation 23(2) of the EBDS Regulations or regulation 24(2) of the NI EBDS Regulations;

“discount” means the reduction (in p/kWh) in the supply price under a supply contract to be applied under the scheme in respect of that contract, determined under regulation 29 of the EBDS Regulations or regulation 30 of the NI EBDS Regulations;

“EBDS Regulations” means the Energy Bills Discount Scheme Regulations 2023<sup>(7)</sup>;

“electricity scheme” means—

- (a) in England, Wales and Scotland the support scheme<sup>(8)</sup> in respect of GB non-domestic electricity supply provided for in the EBDS Regulations, or
- (b) in Northern Ireland the support scheme in respect of NI non-domestic electricity supply provided for in the NI EBDS Regulations;

“end user” means an end user as defined in section 19(3) of the Energy Prices Act 2022 other than an excluded end user;

“energy products” means heating or hot water (or both);

“excluded electricity consumer” means a person that—

- (a) takes a supply of electricity that is NI non-domestic electricity supply within paragraph (a) of the definition of that term, but
- (b) is eligible for a reduction in charges for supply under a domestic electricity price reduction scheme for Northern Ireland established by the Secretary of State under section 5 of the Energy Prices Act 2022.

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

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

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

(5) S.I. 1992/231 (N.I. 1). Schedule 6 was substituted by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007 No 321), regulation 5(2) and Schedule 1.

(6) 2011 c. (N.I.)6.

(7) S.I. 2023/453.

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

“excluded end user” means a person to whom a relevant intermediary located in Northern Ireland supplies or makes available energy 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),
- (b) energy<sup>(9)</sup> or energy products (or both) to such accommodation;

“first scheme period” means the period from 1st April 2023 to 30th September 2023 inclusive;

“gas scheme” means—

- (a) in England, Wales and Scotland, the support scheme in respect of GB non-domestic gas supply provided for in the EBDS Regulations, or
- (b) in Northern Ireland, the support scheme in respect of NI non-domestic gas supply provided for in the NI EBDS Regulations.

“heating” means heating provided through a heat network;

“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);

“hot water” means hot water provided through a heat network;

“NI EBDS Regulations” means the Energy Bills Discount Scheme (Northern Ireland) Regulations 2023<sup>(10)</sup>;

“NI non-domestic electricity supply” means the supply of electricity in Northern Ireland—

- (a) to premises at which the supply is not taken wholly or mainly for a domestic purpose, or
- (b) for which the tariff is not one that the supplier applies to supply taken wholly or mainly for a domestic purpose;

“NI non-domestic gas supply” means the supply of gas to premises where that supply is not NI domestic gas supply (as defined in the Energy Prices (Domestic Supply) (Northern Ireland) Regulations 2022<sup>(11)</sup>);

“opt-out notice” means a notice given for the purposes of regulation 4(3) of the EBDS Regulations or the NI EBDS 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;

“original end user” means the end user to whom a relevant intermediary effected a pass-through in respect of a previous period;

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

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

“period” in relation to—

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

<sup>(10)</sup> S.I. 2023/454.

<sup>(11)</sup> S.I. 2022/1105.

- (a) a scheme benefit falling under sub-paragraph (a) 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;

“previous period” means, in relation to a supply redetermination event, a period in respect of which a scheme benefit has been provided to a relevant intermediary before the current period;

“relevant accommodation providers” means—

- (a) in England, Wales and Scotland, persons providing mobile homes on protected sites as defined in the Mobile Homes Act 1983<sup>(12)</sup>, or
- (b) in Northern Ireland, persons providing caravans on protected sites defined in the Caravans Act (Northern Ireland) 2011<sup>(13)</sup>;

“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 and to the extent that person—

- (a) is an excluded person, or
- (b) is an “intermediary” as defined in regulation 2(1) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023<sup>(14)</sup>,

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;

“scheme” means the electricity scheme or the gas scheme;

“scheme benefit” means—

- (a) discount applied to the price under a supply contract by application of the EBDS Regulations or the NI EBDS 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 30(1)(d) of the EBDS Regulations or the NI EBDS Regulations, or
- (b) where the end user is also a relevant intermediary, a pass-through made under 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—

- (i) may be an amount in pounds sterling or in pounds sterling per kWh (as appropriate) of energy or energy products (or both),
- (ii) may have been provided in respect of a period before these Regulations came into force (other than a scheme benefit in relation to which regulations 4(1) and 6(2) apply), and
- (iii) excludes any SRE adjustment for the relevant period;

“scheme period” means the first scheme period or the second scheme period;

“second scheme period” means the period from 1st October 2023 to 31st March 2024 inclusive;

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

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<sup>(12)</sup> 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).

<sup>(13)</sup> 2011 c. 12 (N.I.).

<sup>(14)</sup> S.I. 2023/455.

“standard industrial classification” means the Office for National Statistics’ “UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007)”**(15)**;

“supplier” means a licensed electricity supplier**(16)** or a licensed gas supplier**(17)**;

“supply contract” means a contract (and treating a deemed supply contract as a separate supply contract) between a supplier and a customer which provides for—

- (a) GB non-domestic electricity supply or NI non-domestic electricity supply, or
- (b) GB non-domestic gas supply or NI non-domestic gas supply,

at any time during a scheme period and includes—

- (i) a deemed contract, and
- (ii) 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;

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

“supply redetermination event” or “SRE” has the meaning given in regulation 24(1) of the EBDS Regulations or the NI EBDS Regulations;

“usage” means the quantity of—

- (c) energy in respect of which a scheme benefit has been provided, or
- (d) energy products produced using energy in respect of which a scheme benefit has been provided,

made available by a relevant intermediary to an end user.

## PART 2

### Pass-through requirement

#### Pass-through requirement

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

- (a) in its capacity as customer under the EBDS Regulations or the NI EBDS Regulations, serve an opt-out notice on a supplier,
- (b) reject, or fail to take all reasonable steps under paragraph (10) to secure, a pass-through amount to which it is entitled under these Regulations, or
- (c) 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 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.

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**(15)** 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>.

**(16)** Defined in section 10(2) of the Energy Prices Act 2022 for England and Wales and Scotland and section 12(2) of that Act for Northern Ireland.

**(17)** Defined in section 10(6) of the Energy Prices Act 2022 for England and Wales and Scotland and section 12(5) of that Act for Northern Ireland.

(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 or energy products (or both) as a result of the energy crisis.

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

(5) Unless the circumstances in paragraph (7) apply, —

(a) a scheme benefit is provided to a relevant intermediary—

(i) when it is notified by a supplier, in its capacity as customer of that supplier, of that scheme benefit under regulation 30(1)(d) of the EBDS Regulations or of the NI EBDS Regulations, or

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

(b) an SRE adjustment is provided to a relevant intermediary—

(i) when it is notified by a supplier, in its capacity as customer of that supplier, of the SRE adjustment under regulation 24(2)(e) of the EBDS Regulations or of the NI EBDS Regulations; or

(ii) if the relevant intermediary is also an end user, when a pass-through amount relating to that SRE adjustment 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 or SRE adjustment 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 or SRE adjustment 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 or SRE adjustment 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 or SRE adjustment 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) If a relevant intermediary has been provided with an SRE adjustment, the relevant intermediary must take such SRE adjustment into account the next time it calculates a pass-through amount under regulation 4.

(13) A relevant intermediary must determine pass-through amounts consistently with any Secretary of State determination of which it has been given notice under regulation 69(2)(b) of the EBDS Regulations or 70(2)(b) of the NI EBDS Regulations.

### 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 for the purposes of regulation 3(2) 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, as soon as reasonably practicable after the scheme benefit is provided to the relevant intermediary in accordance with regulation 3(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 using one of the approaches described in paragraphs (2) or (3).

(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 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 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 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 3(2), 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 over the scheme period (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 not 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).

(8) Paragraphs (9) or (10) apply where in a previous period a scheme benefit has been provided to a relevant intermediary and in the current period, as a result of a supply redetermination event, the relevant intermediary is provided (under regulation 24 of the EBDS Regulations, regulation 25 of the NI EBDS Regulations or paragraph (9) or (10)) with an SRE adjustment.

(9) If the SRE adjustment is an increase in the amount of scheme benefit in respect of the previous period, the relevant intermediary must adjust the pass-through amount calculated under this regulation 4 in respect of the current period to pass on such increase in the amount to the original end user.

(10) If the SRE adjustment is a reduction in the amount of scheme benefit in respect of the previous period, the relevant intermediary may adjust the pass-through amount calculated under this regulation 4 in respect of the current period by way of set-off to pass on such reduction in the amount to the original end user.

(11) Any adjustment of pass-through amount(s) made under paragraphs (9) or (10) must be just and reasonable and calculated in the same way as the pass-through amount were calculated for the original end user in the previous period concerned.

#### **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 under 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 (g) and (h)),
- (b) the amount of scheme benefit provided to the relevant intermediary and that the scheme benefit has been passed through under 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 (such supporting details to include whether the discount was calculated in respect of an ETII supply contract or a general supply contract),
- (d) if applicable, details of any adjustment that the relevant intermediary intends to make to the pass-through amount notified under sub-paragraph (c) to pass-through an SRE adjustment in accordance with these Regulations,
- (e) if applicable, when and how the relevant intermediary will provide the pass-through amount to the end user,



- (f) if 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,
  - (g) how the end user may submit a query to the relevant intermediary about the matters set out in the notice, and
  - (h) that if the pass-through amount to which it is entitled under 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 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 for the purposes of 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.
- (3) In this regulation—
- (a) “ETII supply contract” has the meaning given in the EBDS Regulations or the NI EBDS Regulations(18);
  - (b) “general supply contract” means a supply contract that is not an ETII supply contract or a QHS supply contract; and
  - (c) “QHS supply contract” has the meaning given in the EBDS Regulations or the NI EBDS Regulations(19).

### **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 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 3(2).

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(18) Regulation 23(1)(a) of the EBDS Regulations and regulation 24(1)(a) of the NI EBDS Regulations define an ETII supply contract as a single supply contract in respect of all energy supplied or otherwise made available to, or used to make available heat, hot water or electricity to, certified ETII operators. A certified ETII operator is a person in respect of whom an ETII certificate has been issued under the EBDS Regulations or the NI EBDS Regulations and not revoked.

(19) Regulation 23(1)(b) of the EBDS Regulations and regulation 24(1)(b) of the NI EBDS Regulations define a QHS supply contract as a single supply contract in respect of all energy supplied or otherwise made available to, or used to make available heat, hot water or electricity to, certified heat suppliers. A certified heat supplier means a qualifying heat supplier under the EBDS Regulations or the NI EBDS Regulations in respect of whom a QHS certificate has been issued under those Regulations and not revoked.

(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 3(5),

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

(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 under 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 under 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<sup>(20)</sup> (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

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(20) 1998 c. 11.

24th April 2023

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

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for pass-through requirements in relation to the Energy Bills Discount Scheme (EBDS) Regulations 2023 in England, Wales and Scotland (S.I. 2023/453) and in Northern Ireland (S.I. 2023/454). 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 EBDS to an “end user” (defined in section 19(3) of the Energy Prices Act 2022 (c. 44), subject to an exception for excluded end users as defined in regulation 2) to whom energy or energy products (or both) have been made available. The Regulations apply in respect of relevant intermediaries, other than a) an “intermediary” as defined in regulation 2(1) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023 (S.I. 2023/455) and b) those providing certain types of hospitality accommodation (defined as “excluded persons” under these Regulations). The Regulations also deal with adjustments to pass-through amounts which may be needed if a supply redetermination event occurs under the Energy Bills Discount Scheme Regulations 2023 or the Energy Bills Discount Scheme (Northern Ireland) Regulations 2023.

Regulation 3 establishes the requirement for relevant intermediaries to pass-through a just and reasonable amount of the benefit provided under the EBDS to each of their 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 a relevant intermediary is required to provide to each of its end users about the EBDS scheme benefit provided to it, and 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. The duty to provide information is owed by a relevant intermediary to end users and enforceable in civil proceedings.

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.

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