
STATUTORY INSTRUMENTS

2023 No. 464

**The Energy Bills Discount Scheme
(Non-Standard Cases) Regulations 2023**

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(1), 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,

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.