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STATUTORY INSTRUMENTS

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**2023 No. 464**

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

**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<sup>(1)</sup>.

(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”;

“certified heat supplier”;

“ETII certificate”;

“immediate ETII provider”;

“qualifying heat consumer”;

“QHS certificate”.

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<sup>(1)</sup> See section 22 of the Scheme Terms.

### **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(2).

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