

EXPLANATORY MEMORANDUM TO
THE ENERGY BILLS DISCOUNT SCHEME (NON-STANDARD CASES)
REGULATIONS 2023

2023 No. 464

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to provide for the Energy Bills Discount Scheme for Non-Standard Cases in Great Britain and Northern Ireland (“the Scheme”). The Scheme will provide support for the electricity and gas costs of eligible non-domestic customers of unlicensed gas and electricity supply, including businesses, charities, and public bodies such as schools and hospitals. Support will be provided in respect of energy consumed between 1 April 2023 and 31 March 2024. The Scheme is a grant scheme, delivering support through “scheme agreements” that incorporate published “Scheme Terms”. These regulations supplement those terms and support the operation and delivery of the Scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 The instruments come into force two days after making. The department considers this reasonable and that those affected by the instruments coming into force do not require further time to adapt to the change.
- 3.2 In most cases, customers, or those providing them with energy, will need to apply to participate in the Scheme. Those eligible for the additional support provided to organisations operating in energy and trade intensive industries (ETIIs), and heat networks with domestic customers, will also need to apply. However, the Scheme works by allowing claims to be made in respect of energy costs already incurred and the support will be backdated to 1st April 2023.
- 3.3 The instruments do impose new duties on unlicensed energy suppliers. However, the department has engaged regularly with those likely to be affected and provided advanced notice of what they will be required to do in consequence of the instruments coming into force. The department therefore regards the coming into force date as reasonable, particularly in view of the imperative to provide support to non-domestic customers as soon as possible.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is, the jurisdictions which the instruments form part of the law of) is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 Amanda Solloway, the Parliamentary Under Secretary of State for Energy Consumers and Affordability has made the following statement regarding Human Rights:

“In my view the provisions of the EBDS (Non-Standard Cases) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument forms part of the package of five SIs relating to the Energy Bills Discount Scheme (EBDS), replacing the Energy Bill Relief Scheme (EBRS) which ended on 31 March 2023. These instruments enable continued energy bill support to the non-domestic licensed and unlicensed gas and electricity supply markets and to non-domestic customers in Great Britain (GB) and Northern Ireland (NI) between 1 April 2023 and 31 March 2024.

6.2 The suite of SIs includes The Energy Bills Discount Scheme Regulations 2023 and the Energy Bills Discount Scheme (Northern Ireland) 2023. These ensure that support (a scheme benefit) is passed from suppliers to their customers for non-domestic licensed gas and electricity supply in GB and NI.

6.3 The EBDS (GB) and EBDS (NI) are made under sections 9 and 11 of the Energy Prices Act, which allow the Secretary of State to make provision for and in connection with reducing the amount that would otherwise be charged for licensed non-domestic electricity and gas supply, and for making payments to suppliers in respect of those reductions. Paragraphs 5 and 6 of Schedule 6 to the Act provide that those powers are time limited, in that they may only provide for the reduction in charges for energy supply for a total of two years (from 1 October 2022). Audit and compliance functions may continue beyond this date to ensure that public funds have been used appropriately. Instruments made under the Act may only apply to charges for energy consumed that take place during a period of six months or less (up to four such consecutive periods in total). EBDS takes us up to the end of the third of the four successive periods. Support under EBDS will be provided for a year (divided in two six-month periods), reflecting the limits in the Act.

6.4 The Energy Bills Discount Scheme Pass-through Requirement Regulations 2023 and The Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023 ensures that support, i.e., a scheme benefit, is passed from intermediaries, with the latter focussing on intermediaries that are heat suppliers, to end users for non-domestic licensed gas and electricity supply in GB and NI. The EBDS (Heat Suppliers) Regulations 2023 modify The Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) to provide a complaints process for heat network customers in relation to the requirement on heat suppliers to pass on benefits received from EBRS for non-domestic customers in NI. The role of the General Consumer Council for NI will be similar to its complaints handling for gas and electricity customers.

6.5 This instrument makes provisions for the operation and delivery of the EBDS Non-Standard Cases for (some) non-domestic customers who consume gas (i.e. natural gas or biomethane) or electricity via wire or pipe that is supplied by license-exempt

suppliers and for which they pay a price that is pegged to wholesale energy prices. The Scheme Terms set out the terms of the grant agreement to support eligible non-standard customers to meet the costs related to their energy use. This instrument is made under section 13 of the Energy Prices Act.

- 6.6 This instrument performs a similar role in relation to the Scheme to the role played by the previously laid Energy Bill Relief Scheme (Non-Standard Cases) Regulations (2023) (SI 2023/9) that made provision for non-standard customers under EBRS between 1 October 2022 and 31 March 2023.

7. Policy background

What is being done and why?

- 7.1 The Act addresses the negative social, economic and other impacts of the current unprecedentedly high energy prices and enables the delivery of EBRS and future iterations in GB and NI. EBRS was launched on 1 October 2022 as a temporary six-month measure to support non-domestic customers through the winter of 2022/2023. It provided relief (a scheme benefit) to eligible non-domestic customers (including businesses, the voluntary sector such as charities, and the public sector such as schools and hospitals). This relief (a discount for licensed suppliers' customers, a grant for customers of unlicensed suppliers) was linked to the wholesale element of a customer's gas and electricity bills.
- 7.2 The EBDS strikes a balance between supporting businesses between 1 April 2023 and 31 March 2024 and limiting taxpayers' exposure to volatile energy markets. The EBDS will provide all eligible businesses and other non-domestic energy customers with a discount on high gas and electricity bills with its baseline scheme. It will also provide businesses in sectors with particularly high levels of energy use and trade intensity and domestic end users on heat networks with a higher level of support. The baseline and ETII parts of the scheme were forecast by the OBR at Budget 2023 to be worth £0.5bn, with further support for Qualifying Heat Suppliers estimated at £0.4bn.
- 7.3 Section 19 of the Energy Prices Act also enabled the Secretary of State to impose pass-through requirements on persons to whom energy price support was provided by regulations, or "intermediaries". This ensured that end users who received and paid for their energy consumption via an intermediary, for example the tenant in a tenant and landlord relationship, would also receive a scheme benefit from EBDS.
- 7.4 Relevant intermediaries are any individual or organisation that is party to an electricity and/or gas contract and passes on the costs of the energy supplied under this contract to an end user of the energy supplied. This would also cover intermediaries supplying a product (or service) where contractually a component of the price relates directly to the use of energy. Intermediaries may include but are not limited to landlords, sublets, student accommodation managers, local authorities (for council housing), site owners (for park homes), marinas if using shore power (for boat homes), electric vehicle charging operators and other residential building managers.
- 7.5 The regulations are important to ensure that end users of energy benefit from Scheme support and to set out the expectations on intermediaries and processes they should follow to ensure that this happens. These regulations also provide customers with a mechanism by which they can dispute what their intermediary has or has not done. Changes have been made to the regulations to allow the continuation of support under

EBDS. These instruments ensure that the pass-through requirements on intermediaries are still applicable under EBDS.

- 7.6 Heat networks may be EBDS Non-Standard Customers, but where this is the case, they will also be relevant intermediaries, as they purchase energy through commercial contracts and then use that energy to supply heating and hot water to domestic and non-domestic customers. The Heat Suppliers Regulations require heat networks that benefit from the higher heat network EBDS discount to pass on that benefit to their customers.
- 7.7 The Scheme is a means by which the Secretary of State provides financial assistance, in the form of grants. The Scheme provides support comparable to that given to licensed suppliers under the EBDS Regulations.
- 7.8 The terms on which the Secretary of State is prepared to provide such assistance are set out in a document known as the “the Scheme Terms”. The grants are paid under “scheme agreements” that incorporate the Scheme Terms.
- 7.9 There is high public interest in EBDS, particularly the scale of the reduction in support as compared with EBRs, the eligibility criteria for the various elements of the scheme and the pass-through requirements on intermediaries.

What did any law do before the changes to be made by this instrument?

- 7.10 The Energy Bill Relief Scheme Regulations 2022 and the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 provide for EBRs, which provided support between 1 October 2022 and 31 March 2023, to eligible non-domestic customers, who received their energy from licensed suppliers. Those regulations established who was eligible for the scheme and set out detailed requirements for suppliers to calculate and distribute scheme benefit (‘a discount’) to eligible non-domestic customers. They also set out rules that applied to different types of non-domestic customers and energy supply and provided powers for the Secretary of State to intervene as needed. These instruments also provide further detail on supplier reporting, auditing of suppliers and ensuring that obligations on licensed suppliers can be enforced. Government acted to protect British businesses from the spiralling costs of energy by implementing various energy support schemes.
- 7.11 The EBRs Pass-through Requirement Regulations 2022 and EBRs Pass-through Requirement (Heat Suppliers) Regulations 2022 ensured that relevant intermediaries were legally obliged to pass on the scheme benefit they received to their end users in a just and reasonable way between 1 October 2022 and 31 March 2023. The legislation under EBRs sets out in further detail who is captured under the definition of a relevant intermediary, what must be taken into account in determining and calculating a just and reasonable amount and the obligations on the intermediary to provide this information to the end user. The legislation also sets out the dispute mechanism available to the end user if they wish to dispute what the intermediary has or has not done. The EBRs regulations set out that the relief should take into account (as appropriate) the end user’s usage and amount paid for their energy consumption as well as whether the intermediary itself is consuming and paying for its own energy or for common services provided.

- 7.12 The Energy Bill Relief Scheme (Non-Standard Cases) Regulations ensured that relevant intermediaries were legally obliged to pass on the scheme benefit they received to their end users in a just and reasonable way between 1 October 2022 and 31 March 2023. The legislation under EBRS sets out in further detail who is captured under the definition of a relevant intermediary, what must be taken into account in determining and calculating a just and reasonable amount and the obligations on the intermediary to provide this information to the end user. The legislation sets out the dispute mechanism available to the end user if they wish to dispute what the intermediary has or has not done. It also provides Secretary of State with powers to obtain information from those involved in energy supply chains and implies some terms into contracts between those involved to allow smooth operation of the Scheme.

Why is it being changed?

- 7.13 The law is being changed to allow for the operation and delivery of EBDS NSC when the EBRS NSC support ends on 31 March 2023. This instrument ensures that the pass-through requirements on intermediaries and powers to obtain information are still applicable under EBDS. It also retrospectively widens the eligibility under EBRS NSC to include some non-domestic customers receiving energy supply via wire or pipe.

What will it now do?

- 7.14 The EBDS NSC regulations will facilitate the operation and delivery of the Scheme so that customers will receive scheme benefit under EBDS. The EBDS NSC regulations mostly replicate its predecessors.
- 7.15 The differences between EBRS and EBDS account for the changes that have been from the EBRS to the EBDS NSC Regulations. This includes reflecting that the pass-through amount provided should be calculated in line with the end user's contract type. For example, under EBDS, customers who are in Energy and Trade Intensive Industries (ETIIs) and heat network customers, are entitled to more support. It also includes provisions to ensure that where, under the schemes, the Secretary of State redetermines the amount a supplier is entitled to, the pass-through amount reflects this determination. It also amends the EBRS NSC Regulations to take account of the revised EBRS Scheme Terms published on 24th April 2023, which expand eligibility under EBRS to include the cohort of non-standard customers who receive their energy via wire or pipe. They will be able to apply retrospectively for support under EBRS for the period between 1 October 2022 and 31 March 2023.

8. European Union Withdrawal and Future Relationship

- 8.1 These instruments do not relate to withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act 2018. The GB Scheme does not engage Article 10 of the Windsor Framework (and provision is made to ensure that is the case).-The ETII element of the Scheme as it applies in Northern Ireland engages Article 10 of the Windsor Framework (where the organisations participating in the Scheme trade in goods). Approval from the EU Commission was therefore sought under the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia. That Framework is due to remain in place until 31 December 2023. The Northern Ireland Regulations (under which ETII operators are

certified for the purposes of the Scheme) makes provision to ensure that support is only provided if in accordance with Article 10 of the Windsor Framework.

9. Consolidation

9.1 No consolidation is necessary for this instrument.

10. Consultation outcome

10.1 In designing EBDS NSC, we considered stakeholder feedback about EBRS.

10.2 A HM Treasury-led Review of EBRS took place which determined support levels beyond March 2023. Government had made it clear that the levels of support under EBRS were time limited, and the discount level has been reduced. A Call for Evidence was undertaken between 17 November 2022 to 20 January 2023 in order to understand the situation of companies who were ineligible for EBRS support. Alongside the establishment of the Scheme, the Secretary of State is expanding the scope of EBRS for Non-Standard Cases. As a result, a group of customers that were not originally eligible for EBRS support (and will be eligible for EBDS support from the outset) will now be able to claim it retrospectively. In particular, this includes those who receive their energy via wire or pipe. The Call for Evidence, which received 17 responses, was used to inform the revised EBRS NSC policy. Informal consultations have taken place with energy suppliers, and some end users to test the methodology for applying the discount used in this instrument.

11. Guidance

11.1 The Department for Energy Security and Net Zero is developing guidance in relation to the operation of these instruments. The updated guidance will be published shortly after the instruments are made and will be available here: <https://www.gov.uk/guidance/energy-bills-discount-scheme>. This explains these instruments in further detail for key stakeholders, including individuals and organisations who may be intermediaries or end users.

11.2 The Department for Energy Security and Net Zero will publish the Scheme Terms and guidance in relation to the operation of the Scheme on 24 April 2023.

12. Impact

12.1 The impact of this instrument in itself on business, charities or voluntary bodies is minimal. It does not affect the energy price support to which customers are entitled or set out the requirements for obtaining support under the Scheme – all of which is governed by the Scheme Terms. In addition, the obligation on intermediaries to ensure that support they receive as intermediaries is passed on to the end users, and to provide information about pass-through to them involve minimal administrative costs for these bodies in ensuring fixed and variable charges, statements of accounts, rental charges and other forms of charging customers are adjusted to reflect the impact of EBDS. We consider that the benefits of customers receiving lower energy prices resulting from EBDS pass-through will significantly outweigh these administrative costs to intermediaries. For example, it will offer increased certainty for investment and employment decisions and thus avoid firm closures and redundancies. More detail on the benefits is provided in the accompanying Impact Assessment document.

12.2 The impact on the public sector is deemed to be minimal. Some public sector bodies, such as local authorities, may be classed as intermediaries. Civil courts will be

impacted if end users decide to claim pass-through of scheme benefits as civil debts from intermediaries.

- 12.3 A full Impact Assessment for EBDS is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to provide guidance to relevant intermediaries, including small businesses, to help them understand and implement the requirements under these instruments. Small businesses who are eligible for Energy and Trade Intensive Industry (ETII) support are required to register with the department. For Non-Standard Cases, the approach taken the energy provider will be invited to apply to the scheme on its customers' behalf. The provider will apply for the correct amount of support to reflect e.g. customers' ETII status, and pass on that support, once received from the department, to customers in one of the ways permitted under the Scheme Terms, which may include a discount or rebate. In exceptional circumstances where the energy provider has failed to make an application, the customer may apply directly to (and receive support directly from) the department as outlined in the Scheme Terms. All businesses are treated in the same way irrespective of size to reduce the administrative burden on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is to provide support under the Scheme (for eligible small businesses who receive their energy from unlicensed suppliers) that is comparable with the discounts they would receive under the Main Scheme Regulations if they were supplied by a licensed supplier. Micro-business that are on domestic tariffs will receive support through the Energy Price Guarantee scheme. Those on non-domestic tariffs that are supplied gas and electricity by a licensed supplier will receive support under EBDS.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is that the department will continue to monitor these instruments following their implementation, including any feedback from stakeholders, and will review as necessary. All claims made by energy providers for payments under the Scheme will be subject to compliance checks and ongoing monitoring. The nature of these will be set out in accompanying rules and guidance.
- 14.2 As part of the department's evaluations of the energy affordability schemes, further research is being developed to assess the level of support passed on to heat network customers and others by intermediaries under EBDS. In addition, as part of the evaluation of EBDS and other non-domestic schemes, research with organisations will be conducted to understand the effectiveness of the cost-pass through process, including the awareness and understanding by organisations and intermediaries and to assess the level of pass through by and to organisations.
- 14.3 These instruments do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State for Energy Consumers and Affordability for Climate has made the following statement:

“It is not appropriate in the circumstances to make provision for a review, given that support under the schemes will be provided for 12 months and the need for companies to have certainty during that period.”

15. Contact

- 15.1 James Rees at the Department for Energy Security and Net Zero can be contacted with any queries regarding the instrument. Telephone: 07741687610. Email: James.Rees@beis.gov.uk,
- 15.2 Daniel Harrison, Deputy Director for Energy Affordability, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Amanda Solloway, Parliamentary Under Secretary of State for Energy Consumers and Affordability can confirm that this Explanatory Memorandum meets the required standard.