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STATUTORY INSTRUMENTS

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**2023 No. 9**

**ENERGY**

**The Energy Bill Relief Scheme (Non-Standard Cases) Regulations 2023**

*Approved by both Houses of Parliament*

<i>Made</i>	- - - -	<i>10th January 2023</i>
<i>Laid before Parliament</i>		<i>11th January 2023</i>
<i>Coming into force</i>	- -	<i>12th January 2023</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 19, 26(2)(a) and (b) and (9), and 27(2)(b) of the Energy Prices Act 2022<sup>(1)</sup>.

**PART 1**

**Introductory**

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Energy Bill Relief Scheme (Non-Standard Cases) Regulations 2023 and come into force on 12th January 2023.

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

**Interpretation**

**2.** In these Regulations—

“the Act” means the Energy Prices Act 2022;

“licensed electricity supplier”—

(a) in England and Wales and Scotland, has the meaning given in section 10(2) of the Act;

(b) in Northern Ireland, has the meaning given in section 12(2) of the Act;

“licensed gas supplier”—

(a) in England and Wales and Scotland, has the meaning given in section 10(6) of the Act;

(b) in Northern Ireland, has the meaning given in section 12(5) of the Act;

“non-domestic supply” means—

- (a) the provision of relevant energy in England and Wales or Scotland that—
  - (i) if the relevant energy is electricity, would be GB non-domestic electricity supply within the meaning of section 10(4) of the Act if the electricity were provided by a licensed electricity supplier;
  - (ii) if the relevant energy is gas, would be GB non-domestic gas supply within the meaning of section 10(8) of the Act if the gas were provided by a licensed gas supplier;
- (b) the provision of relevant energy in Northern Ireland that—
  - (i) if the relevant energy is electricity, is NI non-domestic electricity supply within the meaning of section 12(4) of the Act<sup>(2)</sup>;
  - (ii) if the relevant energy is gas, is NI non-domestic gas supply within the meaning of section 12(7) <sup>(3)</sup> of the Act;

“non-standard customer” means a person that receives a non-domestic supply of relevant energy;

“relevant energy” means—

- (a) electricity conveyed by electric lines, within the meaning of section 64(1) of the Electricity Act 1989<sup>(4)</sup>, that—
  - (i) is provided, otherwise than by a licensed electricity supplier, to a person that consumes it, and
  - (ii) before being provided to the person that consumes it, is not provided to another person by a licensed electricity supplier;
- (b) gas, consisting wholly or mainly of methane, conveyed by pipes, that—
  - (i) is provided, otherwise than by a licensed gas supplier, to a person that consumes it, and
  - (ii) before being provided to the person that consumes it, is not provided to another person by a licensed gas supplier;

and, for the purposes of paragraphs (a)(i) and (b)(i), the provision of electricity or gas to a person includes its provision to itself of electricity or gas that it acquires as a Trading Party or a Shipper User;

“relevant person” means a person—

- (a) that is a non-standard customer,
- (b) that—
  - (i) provides relevant energy by way of non-domestic supply to a non-standard customer that is not a Trading Party or a Shipper User, or
  - (ii) purchases relevant energy with a view to its being provided (by itself or another) to a person within paragraph (a), or
- (c) that provides a service to a person within paragraph (a) or (b) in respect of the provision of relevant energy;

“scheme agreement” means an agreement between the Secretary of State and a relevant person, which incorporates—

- (a) the Scheme Terms,

<sup>(2)</sup> See also regulation 2(1) of [S.I. 2022/1106](#), made under section 12(4).

<sup>(3)</sup> See also regulation 2(1) of [S.I. 2022/1106](#), made under section 12(7).

<sup>(4)</sup> [1989 c. 29](#). Section 64 has been amended, but the definition of “electric line” contained in it has not.

(b) the Scheme Terms as amended by the Secretary of State in accordance with the Scheme Terms (or the Scheme Terms as amended by the Secretary of State) and published after the date of publication of the Scheme Terms, or

(c) any substantially similar terms published by the Secretary of State under which the Secretary of State provides support for meeting costs related to the use of relevant energy;

“the Scheme Terms” means the document entitled “Energy Bill Relief Scheme for Non-Standard Customers in Great Britain and Northern Ireland: Scheme Terms” dated 9th January 2023 and published by the Secretary of State on 9th January 2023<sup>(5)</sup>;

“Shipper User” has the meaning given in the Uniform Network Code (being the code of that name whose preparation and modification is provided for in the conditions of transportation licences granted under section 7 of the Gas Act 1986<sup>(6)</sup>: see paragraph 2.2.1 of Section B of the General Terms of that code<sup>(7)</sup>) as it was in force on 1st January 2023;

“Trading Party” has the meaning given in the Balancing and Settlement Code (being the code for governance of electricity balancing and settlement in Great Britain that is maintained in accordance with the conditions of licences granted under section 6(1)(b) of the Electricity Act 1989<sup>(8)</sup>: see section X-1 of that code<sup>(9)</sup>) as it was in force on 1st January 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 services relating to the provision of relevant energy.

#### 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

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(5) See <https://www.gov.uk/government/publications/energy-bill-relief-scheme-non-standard-cases>. A hard copy may be obtained from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

(6) 1986 c. 44. Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and amended by sections 3(2) and 76 of the Utilities Act 2000 (c. 27); there are other amendments, but they are not relevant.

(7) The documents comprising the Uniform Network Code are accessible on the website of the Joint Office of Gas Transporters at <https://www.gasgovernance.co.uk/UNC> (their postal address is Radcliffe House, Blenheim Court, Warwick Road, Solihull, B91 2AA; their email address is [enquiries@gasgovernance.co.uk](mailto:enquiries@gasgovernance.co.uk)). The current version of General Terms, Section B is available at <https://www.gasgovernance.co.uk/index.php/general>; implemented modifications to the code may be accessed from <https://www.gasgovernance.co.uk/closedmods>.

(8) 1989 c. 29. Section 6(1)(b) was substituted by section 136(1) of the Energy Act 2004 (c. 20).

(9) The Balancing and Settlement Code is accessible on the website of Elexon Limited at <https://www.elexon.co.uk/bsc-and-codes/> (their postal address is 4th Floor, 350 Euston Road London NW1 3AW; their email address is [bscservicedesk@cgi.com](mailto:bscservicedesk@cgi.com)).

- (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 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.
- (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(10), 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 that that person owes 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.
- (2) The following terms are implied into each relevant agreement under which a relevant person provides relevant 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 relevant 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 relevant energy that it provides to C;
  - (b) a share of P’s relevant costs is “appropriate” if it reflects the share of all the relevant energy provided by P to non-standard customers to which P’s scheme agreement relates that is accounted for by the relevant energy that P provided to C under the relevant agreement during the period to which the scheme agreement relates.

## PART 3

### Pass-through Requirement

#### Interpretation of this Part

##### 6. In this Part—

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

“excluded end user” means a person to whom a relevant intermediary located in Northern Ireland supplies or makes available energy<sup>(11)</sup>, heating and/or hot water at premises located outside England, Wales, Scotland or Northern Ireland;

“excluded person” means a person engaged in either or both of the provision of 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) and the provision of energy, heating and/or hot water to such accommodation;

“heating and/or hot water” means heating and/or hot water 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;

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

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

“period” in relation to—

- (a) a scheme benefit falling under paragraph (a) of the definition of that term in this regulation, means the period in respect of which that scheme benefit was provided to the relevant intermediary, and
- (b) a pass-through amount, means the period in connection with which such pass-through was effected;

“relevant accommodation providers” means—

- (a) in England, Wales or 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 relevant person (other than an excluded person) to whom a scheme benefit is provided in circumstances in which there is at least one end user other than the relevant intermediary. In regulation 7, “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 benefit” means energy price support<sup>(14)</sup> in the form of—

<sup>(11)</sup> Defined in s. 28(4) of the Energy Prices Act 2022.

<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> “energy price support” is defined in s.19(4) of the Act.

- (a) financial assistance provided to a relevant intermediary (as a non-standard customer) under a scheme agreement where the amount of the scheme benefit is the amount notified to that relevant intermediary in accordance with the terms of that agreement, or
- (b) where the end user is also a relevant intermediary, a pass-through made by virtue of 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 may be an amount in pounds sterling or in pounds sterling per kWh (as appropriate) of energy, heating and/or hot water and a scheme benefit may have been provided in respect of a period before these Regulations came into force;

“usage” means the quantity of—

- (a) energy in respect of which a scheme benefit has been provided, or
- (b) heating and/or hot water produced using energy in respect of which a scheme benefit has been provided,

made available by a relevant intermediary to an end user.

### **Pass-through requirement**

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

- (a) do anything which results in a reasonable likelihood that it will not receive a scheme benefit to which it may otherwise be expected to be entitled either as a non-standard customer or pursuant to the operation of these Regulations;
- (b) 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.

(3) If and to the extent that the relevant intermediary does not pass through the whole of the scheme benefit provided to it in respect of 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, heating and/or hot water as a result of the energy crisis.

(4) The pass-through amount must be calculated in accordance with the rules set out in regulation 8.

(5) Unless the circumstances in paragraph (7) apply, a scheme benefit is provided to a relevant intermediary—

- (a) when it is notified that a scheme benefit has been provided to it in accordance with terms incorporated or otherwise included in a scheme agreement, or
- (b) if the relevant intermediary is also an end user, when a pass-through amount is provided to it by virtue of 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 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 that it has been provided in error and the relevant intermediary is taking reasonable steps to return such scheme benefit to that person in accordance with the requirements of its scheme agreement (as appropriate).

(8) An end user can also be a relevant intermediary in respect of a scheme benefit 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, heating and/or hot water, 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 has been provided to a relevant intermediary in respect of energy, heating and/or hot water 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.

### **Calculation of pass-through amount**

**8.—(1)** Subject to regulation 8(3), the requirement for a relevant intermediary to provide to end users a pass-through amount that is just and reasonable is treated as having been met in any case where—

- (a) the relevant intermediary makes energy, heating and/or hot water available through equipment where—
  - (i) tariffs per unit of energy, heating and/or hot water used are automatically charged by the equipment, and
  - (ii) the energy, heating or hot water is paid for by end users at the time that the energy, heating and/or hot water is made available, and
- (b) the relevant intermediary effects a pass-through by adjusting its tariffs charged by the equipment to reflect the scheme benefit provided to the relevant intermediary under its scheme agreement as soon as reasonably practicable after the scheme benefit is provided to the relevant intermediary in accordance with regulation 7(5).

(2) Subject to regulation 8(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, heating and/or hot water 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, heating and/or hot water supplied or made available to the relevant intermediary which led to the provision of the scheme benefit,

a pass-through amount is just and reasonable for the purposes of regulation 7(2) if the relevant intermediary applies the same approach, as the case may be, to calculate the pass-through amount for each end user on this basis.

(3) If neither paragraph (1) nor paragraph (2) applies, in considering what is just and reasonable the relevant intermediary must apply the best available information to allocate the scheme benefit amongst end users and in doing so 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 (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 energy, heating and/or hot water charges borne by the relevant intermediary and its end users that the relevant intermediary itself bears).

(7) A relevant intermediary is entitled to include energy, heating and/or hot water 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, heating and/or hot water is 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 7(5).

### **Provision of information to end users**

**9.—(1)** Within the period of 30 days beginning with the day on which the scheme benefit was provided to it in accordance with regulation 7(5) or was deemed to have been provided to it in accordance with regulation 7(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 by virtue of the application of 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 (f) and (g)),
- (b) the amount of scheme benefit provided to the relevant intermediary and that the scheme benefit has been passed through by virtue of 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,
- (d) to the extent applicable, when and how the relevant intermediary will provide the pass-through amount to the end user,
- (e) to the extent 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,
- (f) how the end user may appeal to the relevant intermediary about the matters set out in the notice, and
- (g) that if the pass-through amount to which it is entitled by virtue of 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 11(1).

(2) Where the relevant intermediary makes energy, heating and/or hot water available through equipment which automatically charges a tariff per unit of energy, heating and/or hot water used, paid by end users at the time the energy, heating and/or hot water is 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 pursuant to 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 appeal to the relevant intermediary in respect of the basis on which the tariffs have been adjusted to reflect the scheme benefit provided to the relevant intermediary.

### **Effecting the pass-through**

**10.**—(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, heating and/or hot water available through equipment which automatically charges a tariff per unit of energy, heating and/or hot water used, paid by end users at the time that the energy, heating and/or hot water is 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 7(2).

(3) Without prejudice to paragraph (1), a pass-through can be effected, in pounds sterling or pounds sterling per kWh (as appropriate) 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 7(5),

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

(4) A relevant intermediary has discharged its duty under regulations 7(2), 9(1) or 9(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 7(2), 9(1) or 9(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.

## **Enforcement**

**11.**—(1) Where a relevant intermediary fails to effect a pass-through to which an end user is entitled by virtue of these Regulations, that end user may, subject to regulation 10(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 by virtue of 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(**15**) (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

*Graham Stuart*  
Minister of State for Climate  
Department for Business, Energy and Industrial  
Strategy

10th January 2023

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## EXPLANATORY NOTE

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

These Regulations make provision about the Energy Bill Relief Scheme for Non-Standard Customers in Great Britain and Northern Ireland (“the Scheme”) by which the Secretary of State provides certain non-domestic customers with financial assistance to meet costs related to the use of electricity and gas. Assistance is provided under “scheme agreements”, that incorporate published “Scheme Terms”. Amongst other things, the Scheme Terms set out the criteria that customers, and the energy that they consume, must meet if they are to receive assistance.

Regulation 2 introduces a number of defined terms that reflect the operation of the Scheme.

Regulations 3 and 4 provide the Secretary of State with a power to obtain information about the supply of gas or electricity to persons who are or may be eligible for assistance under the Scheme.

Regulation 5 implies terms into certain descriptions of contract connected with the provision of energy to persons who are or may be eligible for assistance under the Scheme.

These Regulations also make provision for pass-through requirements in relation to the Scheme. Pass-through requirements are imposed on a “relevant intermediary” (defined in regulation 6) and establish that they must pass-through the benefits of the scheme to an “end user” to whom energy, heating and/or hot water has been made available. These Regulations apply in respect of relevant intermediaries other than those providing certain types of hospitality accommodation (defined as “excluded persons” under these Regulations).

Regulation 7 establishes the requirement for relevant intermediaries to pass-through a just and reasonable amount of the benefit provided to them under the Scheme to each of their end users.

Regulation 8 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 7.

Regulation 9 sets out the information which relevant intermediaries are required to provide to each of their end users about the scheme benefit provided to them, the amount or proportion the relevant intermediary intends to provide to the end user, and supporting details about how they have calculated that this is a just and reasonable amount.

Regulation 10 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 11 provides for unpaid pass-through amounts to be recoverable from the relevant intermediary by the end user as a civil debt.

An impact assessment of the effect the Scheme, including the related pass-through requirements, will have on the costs of business and the voluntary sector is available from the Department for Business Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.