

Draft Regulations laid before Parliament under sections 211(11), 212(10) and 331(3) of the Energy Act 2023, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2024 No. XXXX

ELECTRICITY

**The Energy-Intensive Industry Electricity Support Payments and
Levy Regulations 2024**

Made - - -

Coming into force in accordance with regulation 2

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The Secretary of State makes these Regulations in exercise of the powers conferred by sections 211(1) to (3), (5), (8) and (10), 212(1), (2), (4), (6), (7) and (9) and 331(2) of the Energy Act 2023^(a).

In accordance with sections 211(11), 212(10) and 331(3) of the Energy Act 2023, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

PART 1 INTRODUCTION

Citation, commencement and extent

1. These Regulations may be cited as the Energy-Intensive Industry Electricity Support Payments and Levy Regulations 2024.
2. These Regulations come into force on whichever is the later of—
 - (a) the day after these Regulations are made;
 - (b) 1st April 2024.
3. These Regulations extend to England and Wales and Scotland.

Interpretation

4. In these Regulations—
 - “applicant” means the person who has submitted an application under regulation 7(1);
 - “associated claim month” has the meaning set out in the definition of “levy month”;
 - “the Balancing and Settlement Code” means the code for the governance of electricity balancing and settlement in Great Britain, as amended from time to time, which is maintained in accordance with the conditions of transmission licences granted under section 6(1)(b) of the Electricity Act 1989^(b);

(a) 2023 c. 52.

(b) 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and amended by section 89(3) of the Energy Act 2004 (c. 20) and S.I. 2011/2704. There are other amendments which are not relevant. The 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).

“calculation date” in relation to any levy month means the first working day of the month before that levy month;

“claim month” means any month in respect of which a claim is made under regulation 7(1);

“EII certificate” has the meaning given by regulation 8(1) of the Excluded Electricity Regulations;

“EII excluded electricity” has the meaning given in regulation 2(1) of the Excluded Electricity Regulations;

“EII levy administrator” means the company appointed under regulation 6(b);

“EII support payments administrator” means the company appointed under regulation 6(a);

“Excluded Electricity Regulations” means the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015(a);

“levy month” means the same month as a claim month, but in the following year (and that claim month shall be known as the “associated claim month” in relation to that levy month);

“network charges” means any charges—

- (a) within the meaning given to the term “use of system charges” in Condition 1 of the Standard Conditions of the Electricity Distribution Licence(b), issued under section 6(1)(c) of the Electricity Act 1989;
- (b) within the meaning given to the term “use of system charges” in Condition C1 of the Standard Conditions of the Electricity Transmission Licence, issued under section 6(1)(b) of the Electricity Act 1989;
- (c) within the meaning given to the term “connection charge” in Condition 1 of the Standard Conditions of the Electricity Distribution Licence, issued under section 6(1)(c) of the Electricity Act 1989;
- (d) within the meaning given to the term “connection charge” in Condition C1 of the Standard Conditions of the Electricity Transmission Licence, issued under section 6(1)(b) of the Electricity Act 1989,

as any of those Conditions are amended from time to time;

“quarter” means a period of three months ending with 31 March, 30 June, 30 September or 31 December in any year;

“working day” means a day other than—

- (a) a Saturday or a Sunday;
- (b) Christmas Day or Good Friday;
- (c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971(c).

Designation of energy-intensive activity

5. The activities described as “specified activities” in the Schedule to the Excluded Electricity Regulations are designated as energy-intensive activities for the purposes of these Regulations.

Appointment of administrators

6. Subject to regulation 31—

- (a) Elexon Ltd (company registration number 03782949) is appointed, with that person’s consent, to be the EII support payments administrator, and

(a) S.I. 2015/721. Relevant amendments were made by S.I. 2017/1051, S.I. 2020/130 and S.I. 2023/415.

(b) Licences granted under section 6 of the Electricity Act 1989 can be viewed online at <https://www.ofgem.gov.uk/licences-codes-and-standards/licences>; at the offices of Ofgem, 10 South Colonnade, Canary Wharf, London, E14 4PU; or by emailing licensing@ofgem.gov.uk.

(c) 1971 c. 80.

- (b) Elexon Ltd (company registration number 03782949) is appointed, with that person's consent, to be the EII levy administrator.

PART 2 SUPPORT FOR ENERGY-INTENSIVE ACTIVITIES

Applications for an electricity support payment

7.—(1) Before the end of a period of one month starting with the last day of each quarter, any person who held an EII certificate for the whole of any month in that quarter may apply to the EII support payments administrator for an electricity support payment in respect of that month.

(2) An application under paragraph (1) must include—

- (a) the name of the applicant;
- (b) an address where the applicant can be contacted;
- (c) an email address where the applicant can be contacted;
- (d) details about the EII certificate referred to in that paragraph, including any unique identifiers.

(3) Subject to paragraph (5), an application under paragraph (1) must include, for each month in respect of which an application is made—

- (a) the total value of the network charges paid by the applicant in respect of electricity which passed through the electricity meter in respect of which that EII certificate was issued;
- (b) either—
 - (i) confirmation from a director of the applicant (or, where an applicant is not a company, another person in an equivalent position) that those network charges were due and were paid, or
 - (ii) other evidence which is sufficient to satisfy the EII support payments administrator that those network charges were due and were paid;
- (c) details of the electricity supplier or suppliers which supplied electricity to the meter in respect of which that EII certificate was issued;
- (d) where paragraph (6) applies, sufficient information on the inaccuracy to allow the EII support payments administrator to understand whether any determination it made under regulation 9, 10 or 12 was inaccurate.

(4) Paragraph (5) applies where—

- (a) an applicant obtains the electricity measured by the meter in respect of which they have been issued an EII certificate, from a third party who is not an electricity supplier;
- (b) the applicant has an agreement with that third party under which the applicant pays them a sum which is directly referable to some or all of the network charges incurred by that third party in respect of the electricity used by the applicant.

(5) Where this paragraph applies, paragraph (3) must be read as if—

- (a) the reference to network charges—
 - (i) includes charges imposed on the applicant by the third party referred to in paragraph (4)(a), which are directly referable to network charges paid by that third party;
 - (ii) does not include operational or other administrative costs incurred either by the applicant or that third party in the operation of their agreement;
- (b) the value of network charges is not to exceed that which can reasonably be attributed to the use of electricity by the applicant;
- (c) reference to the payment of network charges includes payment to the third party referred to in paragraph (4)(a).

(6) This paragraph applies where—

- (a) an applicant has become aware of an inaccuracy in information it provided as part of a previous application under paragraph (1) (including where that inaccuracy arises as a result of updated information);
- (b) the inaccuracy is capable of affecting any sum determined under regulation 9, 10 or 12;
- (c) the inaccuracy has not already been communicated to the EII support payments administrator as required by paragraph (3)(d).

Publication of estimated levy fund size

8.—(1) On the first working day of the sixth month after any claim month, the EII support payments administrator must publish an estimate of the total amount applied for in relation to that month, in accordance with paragraph (2).

(2) The estimate to be made by the EII support payments administrator under paragraph (1) shall be 60% of the total of all of the sums submitted in accordance with regulation 7(3)(a) (including as it applies by reference to regulation 7(5)) in applications made in respect of that claim month.

Determination of applications

9.—(1) This regulation applies in relation to information provided in accordance with regulation 7(3)(a) to (c) in respect of any particular claim month.

(2) If the EII support payments administrator does not consider that it has sufficient information to make the determination described in paragraph (5), it must issue a notice to the applicant setting out—

- (a) details of the application to which this notice relates;
- (b) that it does not have sufficient information to make one or more determinations in relation to that application;
- (c) the information that it needs in order to make all such determinations;
- (d) the date of the notice and the period within which the information referred to in subparagraph (c) must be provided to it;
- (e) the address or email address to which that information must be provided;
- (f) that failure to provide the information requested may result in a claim being rejected or accepted on different terms.

(3) The period set out in paragraph (2)(d)—

- (a) may only be less than 5 working days in exceptional circumstances;
- (b) must come to an end before the calculation date referred to in paragraph (5).

(4) If, at any time, the EII support payments administrator does not consider that it has sufficient information to make the determination described in paragraph (5) it may request information from the electricity supplier which charged the network charges in respect of which the application was made and that supplier is under a duty to provide the requested information within a reasonable period of time.

(5) The EII support payments administrator must, before the calculation date relating to the levy month associated with the claim month in respect of which an application is made, make a determination as to the value of the network charges in respect of which the applicant was entitled to make the application.

(6) Where the EII support payments administrator has issued a notice under paragraph (2), it may not make the determination described in paragraph (5) until after the expiry of the period required to be set out in that notice by paragraph (2)(d).

(7) If the EII support payments administrator does not consider that it has sufficient information to properly assess the information at the point it makes a determination under paragraph (5), it must make a determination of zero.

Corrections to applications

10.—(1) This regulation applies in relation to information provided in accordance with regulation 7(3)(d).

(2) If the EII support payments administrator does not consider that it has sufficient information to make the determination described in paragraph (5) it must issue a notice to the applicant setting out—

- (a) details of the application to which this notice relates;
- (b) that it does not have sufficient information to make one or more determinations in relation to a correction;
- (c) the information that it needs in order to make all such determinations;
- (d) the date of the notice and the period within which the information referred to in subparagraph (c) must be provided to it;
- (e) the address or email address to which the information must be provided;
- (f) that failure to provide the information requested may result in a claim being rejected or accepted on different terms.

(3) The period set out in paragraph (2)(d)—

- (a) may only be less than 5 working days in exceptional circumstances;
- (b) must come to end before the calculation date referred to in paragraph (5).

(4) If the EII support payments administrator does not consider that it has sufficient information to make the determination described in paragraph (5) it may request information from the electricity supplier which charged the network charges in respect of which the application was made and that supplier is under a duty to provide the requested information within a reasonable period of time.

(5) The EII support payments administrator must, as soon as reasonably practicable, make a determination as to the change (whether positive or negative) in the value of any figure previously determined under this regulation, regulation 9 or regulation 12, resulting from the further information provided.

(6) Where the EII support payments administrator has issued a request for information under paragraph (4), it may not make the determination described in paragraph (5) until after the expiry of the period set out in that request under paragraph (2)(d).

(7) If, having made reasonable efforts to secure sufficient information, the EII support payments administrator still does not consider that it has sufficient information to properly make the determination under paragraph (5), it must make a determination that seems reasonable to it given the information it has available at that time.

Dispute Notices

11.—(1) An applicant may dispute any determination made by the EII support payments administrator under regulation 9 or 10 by giving a notice in writing to the EII support payments administrator setting out—

- (a) the determination the applicant is disputing;
- (b) the basis on which they dispute the determination.

(2) For the purposes of paragraph (1), a dispute about a determination made by the EII support payments administrator includes a dispute where the EII support payments administrator has failed to make a determination.

(3) A notice under paragraph (1) must be given by an applicant before—

- (a) the 28th day after the day on which the determination which is the subject of the dispute was notified to the applicant; or

- (b) in the case of a dispute about the failure of the EII support payments administrator to make a determination, the 28th day after the last day by which the determination which is the subject of the dispute should have been made.

(4) Where an applicant has given a notice under paragraph (1) in respect of a determination, that determination still has effect notwithstanding the giving of that notice.

Dispute determinations

12.—(1) Where the EII support payments administrator receives a notice under regulation 11 it must, before the 28th day after the day on which it receives that notice, either—

- (a) reject the notice; or
- (b) accept the notice (in full or in part).

(2) If the EII support payments administrator does not consider that it has sufficient information to make the decision required by paragraph (1) it must issue a notice to the applicant who gave the notice under regulation 11(1), setting out—

- (a) details of the notice to which this notice relates;
- (b) that it does not have sufficient information to accept the notice;
- (c) the information that it needs in order to make one or more of the decisions required by paragraph (1);
- (d) the date of the notice it is issuing and the period within which the information must be provided to it;
- (e) the address or email address to which the information must be provided;
- (f) that failure to provide the information requested may result in a claim being rejected or accepted on different terms.

(3) The period set out in paragraph (2)(d)—

- (a) may only be less than 5 working days in exceptional circumstances;
- (b) must come to end before the day on which it must accept or reject the notice in accordance with paragraph (1).

(4) If the EII support payments administrator does not consider that it has sufficient information to properly make the decision required by paragraph (1) it may request information from the electricity supplier which charged the network charges in respect of which the notice under regulation 11 was issued and that supplier is under a duty to provide the requested information within a reasonable period of time.

(5) Where the EII support payments administrator accepts such a notice (in full or in part) it must, as soon as reasonably practicable, determine the change in value of any previous determination resulting from that acceptance.

(6) Whether the EII support payments administrator rejects or accepts such notice (in full or in part), it must, as soon as reasonably practicable, issue a notice to the person who gave that notice, setting out its decision and the reasons for it.

Calculating individual support payment entitlements

13.—(1) On the calculation date for each levy month the EII support payments administrator must calculate the entitlement of each applicant, in respect of the associated claim month, in accordance with paragraph (2).

(2) An applicant's EII support payment entitlement for the claim month referred to in paragraph (1) is 60% of the sum of the following—

- (a) the EII support payments administrator's determination, in accordance with regulation 9(5) or 9(7) (determination of application), of the applicant's entitlement in respect of that claim month;

- (b) any addition or subtraction, as the case may be, resulting from a correction, determined in accordance with regulation 10(5) or 10(7) (corrections to applications), which has not already been accounted for;
 - (c) any addition or subtraction, as the case may be, resulting from a dispute, determined in accordance with regulation 12 (dispute determinations), which has not already been accounted for.
- (3) Once it has been calculated, the EII support payments administrator must communicate to each applicant—
- (a) the sum calculated in accordance with paragraph (2) in respect of that applicant;
 - (b) the month in respect of which the calculation under paragraph (2)(a) was made;
 - (c) details of any addition or subtraction made under paragraphs (2)(b) or (2)(c).

EII support payments administrator costs

- 14.**—(1) On each calculation date the EII support payments administrator must calculate its costs in carrying out its functions under these Regulations for the previous month.
- (2) The costs referred to in paragraph (1) must not include costs in respect of which provision (including administrative provision) has been made for recovery by other means.
- (3) Subject to paragraph (2) the costs referred to in paragraph (1) may include—
- (a) costs, expenses and any other outgoings incurred in establishing and operating processes supporting the exercise of functions under these Regulations;
 - (b) costs associated with the bringing or defending of legal proceedings arising out of action taken under these Regulations;
 - (c) costs, expenses and any other amounts for which the EII support payments administrator may be legally liable (including to third parties);
 - (d) costs reasonably incurred in connection with action taken under regulation 31.

Reserve funds

- 15.**—(1) The EII support payments administrator must, on the first calculation date and from time to time thereafter, determine an amount that it is to hold as a reserve fund, to be calculated in accordance with paragraph (2).
- (2) Subject to paragraphs (3) and (4), the reserve fund shall be an amount that is twice the amount that the EII support payments administrator reasonably considers is likely to be equal to the largest EII support payment total (within the meaning given in regulation 18(3)) that would occur in the following 12 months.
- (3) The amount of the reserve fund to be accumulated during the first month in respect of which paragraph (1) applies is 1/12th of the amount determined in accordance with paragraph (2).
- (4) The amount of the reserve fund to be accumulated in the months following the month referred to in paragraph (3) above, shall increase each month by 1/12th of the amount determined in accordance with paragraph (2), until the end of the 12th month.
- (5) Any funds collected under these Regulations that remain undisbursed at the end of any month shall be added to the reserve fund.

EII support payment requirement

- 16.** On each calculation date, the EII support payments administrator must inform the EII levy administrator of the following—
- (a) the total amount of all of the sums determined by the EII support payments administrator in accordance with regulation 13(2) for the associated claim month;
 - (b) the EII support payments administrator’s costs, calculated in accordance with regulation 14;

- (c) the amount that is required to ensure that the reserve fund is at the levels described in regulation 15(1), including where that figure has a negative value;
- (d) the total of the sums calculated in accordance with paragraphs (a) to (c).

PART 3 EII LEVY

EII levy administrator costs

17.—(1) Not less than 10 working days before the start of each levy month, the EII levy administrator must calculate its costs in carrying out its functions under these Regulations for the previous month.

(2) The costs referred to in paragraph (1) must not include costs in respect of which provision (including administrative provision) has been made for recovery by other means.

(3) The costs referred to in paragraph (1) include—

- (a) costs, expenses and any other outgoings incurred in establishing and operating processes supporting the exercise of functions under these Regulations;
- (b) costs associated with the bringing or defending of legal proceedings arising out of action taken under these Regulations;
- (c) costs, expenses or any other amounts for which the EII levy administrator may be legally liable (including to third parties);
- (d) costs reasonably incurred in connection with action taken under regulation 31.

EII levy notices

18.—(1) Not more than 10 working days after the start of each levy month, the EII levy administrator must—

- (a) determine, in accordance with paragraph (2), each electricity supplier’s EII levy liability in respect of that levy month;
- (b) issue a notice to each electricity supplier setting out that amount.

(2) The amount of each electricity supplier’s EII levy liability is, subject to paragraph (4), the amount which results from the following calculation—

(Individual electricity supply / total electricity supply x EII support payment total) +
outstanding payments - levy credit

(3) For the purposes of this regulation—

“BSCCo” means Elexon Ltd (or any successor to that company acting in the capacity of the BSCCo within the meaning given in the Balancing and Settlement Code);

“BSC volume allocation run” means any one of the following—

- (a) an Initial Volume Allocation Run, or
- (b) a Reconciliation Volume Allocation Run (including a Final Reconciliation Volume Allocation Run or a Post-Final Volume Allocation Run);

“EII support payment total” means, in relation to any particular levy month, the total of—

- (a) the figure provided to the EII levy administrator on the calculation date associated with that levy month, in accordance with regulation 16(d);
- (b) the sum determined in accordance with regulation 17 (levy administrator costs) prior to that levy month;

“individual electricity supply” means the amount of electricity supplied by that supplier during the claim month associated with the levy month referred to in paragraph (1);

“Initial Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“levy credit” means any amount which, at the calculation date, the electricity supplier in respect of which the calculation is being made has paid under the EII levy which it was not required to pay (including in light of calculations made under regulation 20(2) (corrections to levy information) and determinations made under regulation 22 (dispute determinations)) and which has not been returned, credited or otherwise accounted for;

“outstanding payments” means any amount which, at the calculation date, the electricity supplier in respect of which the calculation is being made was required to have paid under these Regulations but had not (including in respect of calculations made under regulation 20(2) (corrections), determinations made under regulation 22 (dispute determinations) and interest due under regulation 30 (enforcement)) and which has not been paid or otherwise accounted for;

“Reconciliation Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“total electricity supply” means the total amount of electricity supplied by all electricity suppliers during the claim month associated with the levy month referred to in paragraph (1).

(4) For the purposes of this regulation—

- (a) no account shall be taken of any electricity which is EII excluded electricity;
- (b) the amount of electricity supplied by an electricity supplier in any period is the amount of all electricity which the BSCCo determines was supplied by that supplier in that period, on the basis of the most recent BSC volume allocation run which the BSCCo has carried out.

(5) Where the result of a calculation set out in paragraph (2) is a negative number—

- (a) the liability of the electricity supplier in respect of which the calculation took place shall be zero for that levy month;
- (b) that number shall be considered as part of a future calculation of levy credit.

Levy payment obligation

19. Each electricity supplier must pay to the EII levy administrator the amount set out in a notice under regulation 18(1)(b), before the end of 5 working days beginning with the day after the date on which the notice was issued.

Corrections to levy information

20.—(1) This regulation applies if at any time—

- (a) the EII levy administrator becomes aware that information relied on in the calculation of the values for an individual electricity supply or the total electricity supply, under regulation 18 or 23, is inaccurate (including due to the availability of updated information);
- (b) that inaccuracy has not already been accounted for.

(2) Where this regulation applies, the EII levy administrator must, as soon as reasonably practicable, calculate the change (whether positive or negative) in the EII levy liability of each electricity supplier affected by the inaccuracy.

Dispute notices

21.—(1) An electricity supplier may dispute any determination made by the EII levy administrator under regulation 18 (EII levy notices), 20 (corrections to levy information) or 23 (mutualisation charge) by giving a notice to the EII levy administrator setting out—

- (a) the determination which the electricity supplier is disputing;

(b) the basis on which they dispute the determination.

(2) For the purposes of paragraph (1), a dispute about a determination made by the EII levy administrator includes a dispute about that body's failure to make a determination.

(3) A notice under paragraph (1) must be given by an electricity supplier before—

(a) the 28th day after the day on which the determination was notified to that electricity supplier; or

(b) in the case of a dispute about the failure of the EII levy administrator to make a determination, the 28th day after the last day by which the determination which is the subject of the dispute should have been made.

(4) Where an electricity supplier has given a notice under paragraph (1) in respect of a determination, that determination has effect notwithstanding the giving of that notice.

Dispute determinations

22.—(1) Where the EII levy administrator receives a notice under regulation 21 it must, before the 28th day after the day on which it receives that notice either—

(a) reject the notice; or

(b) accept the notice (in full or in part).

(2) Where the EII levy administrator accepts such a notice (in full or in part) it must determine the change in value of any previous determination, resulting from that acceptance.

(3) Whether the EII levy administrator rejects or accepts a notice (in full or in part), it must, as soon as reasonably practicable, issue a notice to the person who gave that notice, setting out its decision and the reasons for it.

Mutualisation charge

23.—(1) Paragraph (2) applies where—

(a) at least one electricity supplier fails to pay some or all of the sums required in accordance with regulation 19 in respect of a levy month, and

(b) the total sums required by the EII levy administrator under regulation 19 in relation to that levy month and not paid (“the shortfall”) exceed the amount of the funds held in accordance with regulation 15 (reserve funds).

(2) Where this paragraph applies then the EII levy administrator must consider whether to impose a mutualisation charge, in accordance with paragraph (3).

(3) If the EII levy administrator does decide to impose a mutualisation charge it must, as soon as reasonably practicable, issue a notice to all electricity suppliers, with the exception of any which did not meet their obligations under regulation 19 in relation to that levy month, setting out that it is imposing a mutualisation charge and the amount of the charge to be paid by that supplier.

(4) The amount of the charge referred to in paragraph (3) is the amount which results from the following calculation—

Individual electricity supply / total mutualised electricity supply x shortfall

where—

“Individual electricity supply” is the amount that was calculated in relation to that supplier, where that term was applied in regulation 18 in respect of that levy month;

“shortfall” has the meaning described in paragraph (1)(b);

“total mutualised electricity supply” means the total electricity supply that was calculated in accordance with regulation 18 in respect of that levy month less the individual electricity supply, as calculated in accordance with regulation 18, of all electricity suppliers that did not meet their obligations under regulation 19.

(5) Each electricity supplier that receives a notice under paragraph (3) must pay the EII levy administrator the sum set out in the notice within 5 working days of the date on which it receives the notice.

PART 4 ELECTRICITY SUPPORT PAYMENTS

Transfer of the levy funds

24.—(1) Before the end of 5 working days after the end of a levy month, the EII levy administrator must—

- (a) reimburse itself, out of the funds accumulated under regulation 19 (levy payment obligation), its relevant costs in respect of that levy month;
- (b) transfer to the EII support payments administrator all remaining funds it has received under these Regulations.

(2) For the purposes of paragraph (1)(a), the EII levy administrator's relevant costs in a levy month are the sum calculated under regulation 17 (EII levy administrator costs) that was used in the calculation of the EII support payment total under regulation 18 for the levy month in respect of which the funds are being transferred under this regulation.

(3) The EII levy administrator must transfer to the EII support payment administrator all funds received under regulation 23 (mutualisation charge) as soon as reasonably practicable after receipt.

Making electricity support payments

25.—(1) Before the end of 10 working days after the end of a levy month, the EII support payments administrator must, out of the funds provided in accordance with regulation 24 or, if necessary, those held in accordance with regulation 15 (reserve fund)—

- (a) reimburse itself the amount of its relevant costs recovered in that levy month;
- (b) pay to each applicant their EII support payment entitlement, determined in accordance with regulation 13, in respect of the claim month associated with the levy month referred to in paragraph (1).

(2) For the purposes of paragraph (1)(a), the EII support payments administrator's relevant costs recovered in a levy month are the sum calculated under regulation 14 (EII support payments administrator costs) that was used in the calculation of the EII support payment total under regulation 18 for the levy month in respect of which the funds are distributed under this regulation.

PART 5 MISCELLANEOUS

Provision of information on network charges

26.—(1) The holder of an EII certificate may, by notice in writing, request its electricity supplier to provide it with any information it reasonably requires in order to—

- (a) submit an application under regulation 7;
- (b) respond to a notice issued under regulation 9(2);
- (c) respond to a notice issued under regulation 10(2);
- (d) dispute a determination made in accordance with regulation 11(1).

(2) Subject to paragraphs (3) and (4), an electricity supplier which receives a notice under paragraph (1) must, as soon as reasonably practicable, provide the person who requested the information with the information requested.

(3) Subject to paragraph (4), where an electricity supplier receives a request under paragraph (1) which is for information to be provided on a regular basis, that supplier must provide the information requested with the regularity requested.

(4) To the extent that an electricity supplier is not able to provide the information requested under paragraph (1), that supplier—

- (a) is not required to provide such information;
- (b) is required to provide an explanation as to why it is not able to provide the information not provided.

Provision of information to the Secretary of State

27.—(1) The Secretary of State may, for any purpose relating to these Regulations, including verifying compliance with entitlements and obligations, issue a notice in writing to—

- (a) the EII levy administrator,
- (b) the EII support payments administrator,
- (c) an electricity supplier, or
- (d) an applicant,

requiring them to provide the Secretary of State with such information as is specified in that notice.

(2) A notice under paragraph (1) may require that the information specified in that notice—

- (a) is to be provided by such date as the Secretary of State reasonably requires;
- (b) is to be provided in such format as the Secretary of State reasonably requires;
- (c) is to be authenticated in such manner as the Secretary of State reasonably requires.

(3) Any person on whom a requirement is made under this regulation must comply with the requirement.

Provision of advice to the Secretary of State

28.—(1) The Secretary of State may request advice relating to any matter contained in these Regulations (including the functioning of the Regulations as a whole), from any of the following persons—

- (a) the EII support payments administrator;
- (b) the EII levy administrator.

(2) A person who receives a request under paragraph (1) must comply with the request within such period as the Secretary of State may reasonably require.

Protection of information

29.—(1) A person who, by virtue of these Regulations, has obtained information which relates to the affairs of any individual or to any particular business must not use or disclose that information except as provided in paragraph (2).

(2) Paragraph (1) does not prohibit the use or disclosure of information which is—

- (a) with the consent of the person to whom the information relates;
- (b) required or permitted by or under these Regulations or any other enactment;
- (c) which is already publicly available (other than by reason of a breach of this regulation);
- (d) in accordance with an order of a court.

Enforcement

30.—(1) Where an electricity supplier does not make all or some of a payment as required by regulation 19 (levy payment obligation) or 23 (mutualisation), that supplier must pay the EII levy administrator simple interest on any unpaid amount at the rate of 5 per cent per annum over the relevant Bank of England base rate, from the day after the day on which that payment should have been made.

(2) The relevant Bank of England base rate—

- (a) in respect of interest which starts to run on or after 1st January and before 1st July in any year, is the Bank of England base rate in force on 31st December in the previous year;
- (b) in respect of interest which starts to run on or after 1st July in any year, is the Bank of England base rate in force on 30th June in that year.

(3) Any requirement to pay interest by virtue of these Regulations is a requirement to pay the amount of that interest before the first working day after the day on which that interest has accrued.

(4) In this regulation, “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(a) is in force, any equivalent rate determined by the Treasury under that section.

(5) Interest under paragraph (1) may not be charged in respect of any part of a payment required under regulation 19 which itself represents interest accrued in accordance with paragraph (1).

(6) Where an electricity supplier does not make (all or some of) a payment as required by regulation 19 or 23, the EII levy administrator may recover any outstanding sum as a civil debt due to it, including any interest due under paragraph (1).

Change of administrator

31.—(1) Elexon Ltd may signal its intention to withdraw its consent to be the EII support payments administrator and/or the EII levy administrator, by issuing a written notice to that effect to the Secretary of State.

(2) Six months after the date on which the Secretary of State receives a notice under paragraph (1)—

- (a) Elexon Ltd shall cease to be appointed, and
- (b) the Secretary of State shall be appointed,

as the relevant administrator.

(3) In the event that a notice has been issued under this regulation, Elexon Ltd must provide the Secretary of State with all such advice and support as the Secretary of State may reasonably request, relating to the termination of the appointment of Elexon Ltd as a relevant administrator.

(4) At the point that the Secretary of State becomes appointed, in accordance with paragraph (2), all property, rights, liabilities, obligations, duties and entitlements which vested in or were held by Elexon Ltd by virtue of its appointment as the relevant administrator, shall transfer to the Secretary of State.

(5) After it has ceased to be a relevant administrator, Elexon shall continue to share data derived from BSC Volume Allocation Runs (as defined in regulation 18) with the Secretary of State, for the purposes of these Regulations.

(a) 1998 c. 11.

(6) For the purposes of this regulation “relevant administrator” means whichever (or both, as the case may be) of the roles in respect of which a notice was issued to the Secretary of State under paragraph (1).

Name
Title
Department for Business and Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision setting out the entitlement of certain persons to electricity support payments and how such payments are to be funded (through a levy on electricity suppliers) and administered. Claims made in respect of any month will be funded through levy payments made a year later and then paid to claimants in the month after that.

Regulation 4 defines certain terms used in these Regulations, including in relation to the “network charges” in respect of which claims for support can be made.

Regulation 5 specifies the activities which can form the basis of an application for support, drawing on existing definitions in the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015.

Regulation 6 appoints Elexon Ltd (“Elexon”) as the administrator for both the support payments and the levy.

Regulation 7 makes provision for those carrying out specified activities to be able to apply for support payments every quarter and sets out the information to be included in such applications.

Regulation 8 requires the administrator to publish an estimate of the size of each monthly levy, six months before it is to be recovered.

Regulation 9 establishes powers for the support payments administrator to be able to acquire further information when it needs it and sets out how to determine the amount of the network charges for which each applicant can make a claim for support.

Regulation 10 allows for corrections to be made to support payment entitlements, for example where network charges are adjusted in light of updated information. Such corrections are then included in the next round of applications to be considered by the administrator.

Regulations 11 and 12 make provision for disputing determinations made about an applicant’s entitlement to support payments.

Regulation 13 makes provision for the calculation of the total entitlement of an applicant in respect of each claim month, including resulting from corrections and resolved disputes.

Regulations 14 and 17 make similar provision, allowing the EII support payments administrator and the EII levy administrator (respectively) to add its administrative costs for the previous month to the levy total, for recovery under the levy. Regulations 14(2) and 17(2) also make specific provision allowing that administrator to recover its costs in other ways (though not to double recover). This might, for example, allow Elexon to recover its costs under the Balancing and Settlement Code instead.

Regulation 15 requires the EII support payments administrator to make provision for and hold a reserve fund. Provision is also made for a phased scaling up of the levy so electricity suppliers are not required to deliver it in the first month.

Regulation 16 requires the EII support payments administrator to inform the EII levy administrator of the sum it thinks needs to be recovered under the levy in the next month.

Regulation 18 makes provision for how the EII levy administrator is to calculate the scale of each electricity supplier’s liability under each levy month. Paragraph (4) has the effect of carving EII excluded electricity out of the calculations which make up the individual levy liabilities, so no levy is chargeable in respect of electricity which is EII excluded electricity.

Regulation 19 creates the statutory obligation on electricity suppliers to pay the levy as determined by the EII levy administrator.

Regulations 20 to 22 make provision for electricity suppliers to correct or dispute the findings of the EII levy administrator in making levy calculations.

Regulation 23 makes provision for the EII levy administrator to be able to make a mutualisation charge. This takes effect where one or more suppliers have failed to pay their levy payments and there is not enough in the reserve fund (regulation 15) to cover the shortfall.

Regulations 24 and 25 make provision for the EII levy administrator to recover its relevant costs and transfer the remaining sums to the EII support payment administrator, which is then entitled to recover its own costs and disseminate the remainder among applicants.

Regulation 26 allows holders of EII certificates to seek information from their electricity suppliers, in order to allow them to exercise certain functions under these Regulations.

Regulation 27 allows the Secretary of State to require information for purposes relating to these Regulations.

Regulation 28 creates a duty on Elexon to provide information and advice to the Secretary of State.

Regulation 29 limits the purposes for which information acquired under these Regulations can be used or transferred.

Regulation 30 allows for enforcement of debts under these Regulations and simple interest to accrue on them.

Regulation 31 makes provision for Elexon to withdraw its consent to be one or both of the relevant administrators by giving six months' notice. If no replacement is found the positions revert to the Secretary of State.

An impact assessment setting out the key impacts of this policy has been completed. The Impact Assessment is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk. A copy is also available by contacting EII.correspondence@businessandtrade.gov.uk, or the Department for Business and Trade at Old Admiralty Building, Admiralty Place, London, SW1A 2DY.

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