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STATUTORY INSTRUMENTS

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**2022 No. 1100**

**The Energy Bill Relief Scheme Regulations 2022**

**PART 2**

**Discounted supply price**

**CHAPTER 1**

**Determination of prices**

**Supply price**

- 9.**—(1) In these Regulations “supply price” in relation to a supply contract means—
- (a) the price (before the application of a discount under the scheme) of energy supplied under that contract, so far as that price is to be paid in respect of the quantity of energy supplied in any period, or
  - (b) if the supply contract provides for different prices (in respect of energy supplied at different times of day or measured by different meters, or otherwise), the average of such prices—
    - (i) weighted by the quantities in the relevant period to which each such price applies, or
    - (ii) where applicable, and to the extent that determining the average under subparagraph (b)(i) is not practicable, weighted by the number of hours in the day for which each such price applies.
- (2) The supply price does not include amounts in respect of—
- (a) value added tax;
  - (b) climate change levy.

**Reference wholesale price – fixed price and variable price contracts**

**10.**—(1) The Secretary of State must establish and publish a methodology for determining reference wholesale prices applicable to fixed price contracts and variable price contracts, including a timetable for publishing those prices.

- (2) The methodology may—
- (a) make different provision in respect of fixed price contracts and variable price contracts;
  - (b) in relation to a fixed price contract, make reference to the price-fix date of that contract;
  - (c) provide, in relation to any category of supply contract, for a reference wholesale price to be determined for the whole of the scheme period or for different reference wholesale prices to be determined for different periods within the scheme period;
  - (d) refer to published quotations of wholesale prices for gas or electricity traded in the wholesale markets at different times and for delivery at different times;
  - (e) permit the Secretary of State to decide the times at which it is appropriate, for the proper operation of the scheme, that reference wholesale prices should be published.

(3) The methodology must not refer to—

- (a) any particular details of a variable price contract;
- (b) any particular details of a fixed price contract other than the price-fix date.

(4) Where the methodology provides, in relation to a category of supply contract, for different reference wholesale prices to be determined for different periods, the methodology must provide for how it is to be determined which of those reference wholesale prices applies to any particular supply contract in that category.

(5) The Secretary of State must determine and publish, in accordance with and at the times determined under the methodology, the reference wholesale prices for variable price contracts and fixed price contracts.

(6) The Secretary of State may amend the methodology by giving notice of the amendment.

(7) Where, in accordance with the methodology or any amendment of it, the Secretary of State revises any wholesale reference price which has already been determined in respect of variable price contracts—

- (a) the Secretary of State must publish the date, which must not be earlier than the date on which such revised price was published, on which the revision takes effect (“effective date”);
- (b) the revised wholesale reference price—
  - (i) applies in respect of variable price contracts entered into on or after the effective date;
  - (ii) where so determined by the Secretary of State, applies in respect of energy supplied on and after the effective date under variable price contracts entered into before that date.

### **Reference wholesale price – flexible price contracts**

**11.—**(1) In relation to a flexible price contract the reference wholesale price for any period (“P”) in which energy is supplied is the contracted wholesale price on a volume-weighted average basis for that period.

(2) The volume-weighted average contracted wholesale price for P is determined by reference to any of the following that apply under that contract—

- (a) any elections (and the quantities, periods and prices subject to those elections) made by the customer to fix the contracted wholesale price;
- (b) any cancellations by the customer of such an election;
- (c) any amounts (so far as relating to wholesale prices) payable by or to the customer in respect of such elections or cancellations;
- (d) any amounts payable by the customer in respect of quantities of energy in default of such elections;
- (e) the quantities, periods and prices on the basis of which the contracted wholesale price was fixed under any other mechanism under the contract;
- (f) other amounts referable to the wholesale cost of electricity in accordance with the principle in paragraph (3),

each so far as attributable to energy supplied under the contract in P.

(3) The principle is that amounts payable by the customer under the supply contract—

- (a) should be included in the contracted wholesale price where such payment has the effect of passing through to the customer a cost or risk incurred by the supplier and related to the cost of wholesale energy;

- (b) should not be included in the contracted wholesale price where such amount is payable to compensate or reward the supplier for bearing, and not passing through to the customer, such a cost or risk.
- (4) A supplier must—
  - (a) establish a methodology setting out the basis on which it will determine the reference wholesale price under each flexible price contract, or each kind of flexible price contract, that it enters or has entered into;
  - (b) keep the methodology under review and update it if appropriate;
  - (c) maintain, in respect of each flexible price contract, the data necessary to make those determinations in accordance with the relevant methodology;
  - (d) apply the relevant methodology in making those determinations.

## CHAPTER 2

### Categorisation of supply contracts

#### Categories of supply contracts

**12.**—(1) Subject to paragraph (2) and any rule made under regulation 21(b) or (d), any supply contract is to be treated for the purposes of the scheme as a fixed price contract, flexible price contract or variable price contract.

(2) If a contract between a supplier and customer provides for the supply of both electricity and gas, it must be treated for the purposes of these Regulations as comprising separate supply contracts for electricity and gas respectively.

#### Treatment of fixed price contracts at end of term

**13.**—(1) Paragraphs (2) and (3) apply where, as a result of a relevant amendment of a fixed price contract—

- (a) the contracted wholesale price is fixed under the new contract for any period starting at or after the end of the original fixed term;
- (b) at any time before the end of the original fixed term, the contracted wholesale price fixed under the new contract differs from the contracted wholesale price under the original contract.

(2) In a case within paragraph (1)(a), subject to paragraph (3), the new contract is to be treated for the purposes of the scheme as a new fixed price contract for which the price-fix date is determined by reference to the time when the relevant amendment was made.

(3) In a case within paragraph (1)(b), until the end of the original fixed term, the base discount applicable in respect of the new contract is the base discount that was applicable to the original contract.

(4) Where with effect from the end of the original fixed term—

- (a) a supply contract continues in force, and
- (b) the contracted wholesale price is not fixed for any period after the original fixed term,

the contract is to be treated as a variable price contract entered into at the time of any relevant amendment to it or (in the absence of any relevant amendment) at the end of the original fixed term.

(5) In this regulation—

- (a) the “original contract” is the fixed price contract before the relevant amendment;

- (b) the “original fixed term” is the term for which the contracted wholesale price was fixed under the original contract;
- (c) the “new contract” is the contract which results from the relevant amendment;
- (d) a “relevant amendment” is any amendment, extension or variation of the fixed price contract, or the entry by the contract parties into another contract which replaces the fixed price contract, or any other arrangement between the contract parties which has a similar effect.

#### **Duty of supplier to categorise contracts**

- 14.**—(1) A supplier must, in respect of each of its supply contracts—
- (a) where required under rules made under regulation 21(b), determine whether, and if so on what basis, it is to be treated as comprising more than one supply contract, in which case the further provisions of this paragraph apply in respect of each of those supply contracts;
  - (b) determine whether it is a fixed price contract, a flexible price contract or a variable price contract;
  - (c) in the case of a fixed price contract—
    - (i) determine the price-fix date;
    - (ii) determine whether it is an excluded fixed price contract.
- (2) A supplier must give notice to the customer of the determinations made under paragraph (1).

#### **Times by which determinations are to be made and notices given**

- 15.** The determinations in respect of a supply contract under regulation 14(1) must be made and notice under paragraph 14(2) given—
- (a) in the case of a supply contract in force at the scheme introduction date, as soon as practicable after that date, and no later than 45 days after the scheme introduction date;
  - (b) in the case of a supply contract entered into after the scheme introduction date, by the later of—
    - (i) the time at which the supply contract is entered into, and
    - (ii) 45 days after the scheme introduction date.

#### **Methodology for contract categorisation**

- 16.** A supplier must—
- (a) establish a methodology setting out the basis on which it will make the determinations under regulation 14(1);
  - (b) keep the methodology under review and update it if appropriate, having regard in particular to—
    - (i) any change in the basis or terms on which it enters or offers to enter into supply contracts;
    - (ii) any determination of the Secretary of State in respect of the categorisation of the supplier’s supply contracts under Chapter 4 of Part 6;
  - (c) maintain, in respect of each supply contract, the data necessary to make the determinations under regulation 14(1) in accordance with the methodology;
  - (d) apply the methodology in making those determinations, and ensure that it has in place reliable systems and procedures to apply the methodology.

## CHAPTER 3

### Discounting supply price under supply contracts

#### Calculation of base discount

17.—(1) Subject to paragraph (3), the “base discount” in respect of a supply contract for any period (“P”) is determined as—

$$(RWP-GSP)$$

Where—

RWP is the reference wholesale price applicable to that supply contract for P, subject to paragraph (4);

GSP is the government supported price

(2) The Secretary of State must determine the base discounts for fixed price contracts and variable price contracts, and publish them with the corresponding reference wholesale prices.

(3) Where regulation 48 applies, the base discount is reduced in accordance with that regulation.

(4) Where regulation 39(1) applies, the reference wholesale price is determined under sub-paragraph (c) of that regulation.

#### Calculation of discount

18. The reduction (in p/kWh) in the supply price under a supply contract to be applied pursuant to the scheme in respect of that contract for any period (“P”) (“the discount”) is calculated as—

$$\max \{ \min (BD, MD, (SP - MP)), 0 \}$$

Where—

BD is the base discount in respect of that supply contract for P;

MD is—

(a) in relation to a variable price contract or a flexible price contract, the maximum discount;

(b) in relation to a fixed price contract—

(i) except as provided in sub-paragraph (ii), the base discount;

(ii) if the price-fix date is later than the date the contract is entered into, in respect of any period before the price-fix date, the maximum discount;

SP is the supply price for P;

MP is the minimum supply price.

#### Duty of suppliers to provide the discount

19.—(1) A supplier must, in respect of each supply contract—

(a) determine the base discount and the discount for any period in respect of that contract;

(b) reduce the supply price under each supply contract by the discount;

(c) reduce the amount charged to the customer in respect of supply in any billing period by an amount calculated as the billed supply quantity multiplied by the discount;

- (d) for each billing period, inform the customer in, or within 15 days of issuing, its invoice or other statement of account in relation to the supply contract in respect of that period, of—
  - (i) the amount of the discount;
  - (ii) the discounted supply price;
  - (iii) the amount by which its charges for supply in the billing period have been reduced by applying the discount, or the basis on which that amount can be determined.
- (2) In relation to a flexible price contract the information provided by the supplier under paragraph (1)(d) must include an explanation of how the reference wholesale price for the relevant billing period has been calculated.
- (3) Where a supplier adjusts its charges to a customer in consequence of energy reconciliation in respect of any period, the adjustment must be made on the basis of the discounted supply price applicable to such period.
- (4) In respect of the period from the scheme commencement date to the scheme introduction date, a supplier must, no later than 45 days after the scheme introduction date—
  - (a) determine the amount by which its charges to a customer for energy supplied in that period are to be reduced by the application of the discount;
  - (b) where it has issued an invoice or statement of account to the customer in respect of any such charges, revise such invoice or statement or issue a credit note to reflect such reduction in charges;
  - (c) where the customer has paid any amount in respect of such charges, credit to the customer's account the amount by which such payment exceeds what was payable on the basis of the discounted supply price, or at the customer's request reimburse such amount to the customer.
- (5) A supplier must ensure that—
  - (a) the amounts which are the subject of arrangements it makes with or requirements it imposes on any customer in connection with the payment (or assurance of payment) or collection of charges under a supply contract, are amounts calculated by reference to the discounted supply price;
  - (b) where a customer takes its supply through a prepayment meter, the prepayment meter is set or reset, or other arrangements are made, as soon as reasonably practicable after the scheme introduction date, to ensure that the amounts paid by the customer over the scheme period reflect charges at the discounted supply price for supply in the scheme period.
- (6) Arrangements referred to in paragraph (5)(a) include (without limitation) arrangements for advance payment, payment by direct debit, payment by instalments, security or credit cover for payment.

### **Consequences of change in contract categorisation**

**20.** Where the categorisation of a supply contract under regulation 14 is revised, either by agreement of the contract parties or by determination of the Secretary of State under these Regulations, the supplier must—

- (a) redetermine the amount of any charges for energy supplied under the contract prior to the date of such revision on the basis of the discounted supply price applicable to the contract as re-categorised;
- (b) determine the amount by which any such charges already included in any invoice or statement of account are to be revised to reflect such redetermination;
- (c) notify the customer of its determinations under paragraphs (a) and (b) and take the necessary steps to ensure the amount in paragraph (b) is credited or debited to the customer

by way of credit note, or adjustment of an existing invoice or statement of account, or inclusion in a future invoice or statement of account.

## CHAPTER 4

### Rules as to matters in this Part

#### **Rules as to matters in this Part**

**21.** The Secretary of State may make rules—

- (a) about the determination (including as to what is, and what is not, to be taken into account in the determination) of weighted average contracted wholesale prices in respect of flexible supply contracts in accordance with regulation 11;
- (b) about the basis on which it is to be determined whether a supply contract is a fixed price contract, a variable price contract or a flexible price contract;
- (c) about the basis on which the price-fix date of a fixed price contract is to be determined;
- (d) requiring that, in circumstances specified in the rules, a supply contract must be treated for the purposes of the scheme as comprising, as to different portions of the energy supplied under it, as more than one contract, and, for these purposes, the two or more contracts which it is to be treated as comprising may be of the same or different categories as referred to in regulation 12(1).