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STATUTORY INSTRUMENTS

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**2022 No. 1100**

**The Energy Bill Relief Scheme Regulations 2022**

**PART 6**

Further provisions

**CHAPTER 4**

Certain determinations made under the Regulations

**Interpretation of this Chapter**

**62.—(1) In this Chapter—**

- (a) “applicant” in relation to a review request, means the supplier or, under regulation 65(1), customer making the request;
- (b) reference to a “determination” includes a redetermination;
- (c) “Part 2 or Part 4 matter” means any matter which is to be determined or declared in relation to a supply contract by a supplier or customer under Part 2 or Part 4;
- (d) “Part 3 decision” means a decision by the Secretary of State—
  - (i) under regulation 27, to withhold payment to a supplier of any amount in respect of a recovery claim amount;
  - (ii) under regulation 28, as to the release of an amount withheld under regulation 27;
  - (iii) under regulation 29, as to the reconciliation cut-off date in relation to any supplier;
  - (iv) under regulation 31(1), to decline to make payment (in whole or part) in respect of a discount recovery claim on the grounds of invalidity;
  - (v) under regulation 31(2), to adjust the amount of a discount recovery claim;
  - (vi) under regulation 31(3), to give a notice that is to be treated as a discount recovery claim;
- (e) “other party” in relation to a review request under regulation 65(1), means the contract party which is not the applicant;
- (f) “reconsidered decision” has the meaning given in regulation 65(4)(c)(i);
- (g) “relevant decision” in relation to a review request, means the determination or decision in respect of which the request is made;
- (h) a “review request” is a request made to the Secretary of State under regulation 65(1) or (2).

(2) For the purposes of this Chapter a referral under regulation 63 or a review request does not meet the applicable threshold if—

- (a) it is vexatious or frivolous,
- (b) the financial consequences for the applicant or (where applicable) the other party of a determination under regulation 63(3) or a reconsidered decision would not be material, or

- (c) the referral or review request is not made within a period which (in all the circumstances) is reasonable after—
  - (i) the customer was notified or otherwise informed of the supplier’s determination referred to in regulation 63(1)(a), or
  - (ii) (as the case may be) the relevant decision was made.

**Referrals in respect of disagreement between contract parties**

**63.**—(1) Where, in relation to a supply contract, the customer disagrees with a determination made by the supplier in respect of a Part 2 or Part 4 matter—

- (a) the customer may, within a reasonable time after the supplier gave notice to or otherwise informed the customer of the determination, give notice to the supplier setting out what it disagrees with and explaining why it does;
- (b) following such notice the customer and the supplier must endeavour to resolve the disagreement, but this does not require or entitle the supplier to make any determination which is not consistent with these Regulations.

(2) If the disagreement is resolved, the supplier shall, if such resolution so requires, redetermine the matter in question and give a revised notice to or otherwise inform the customer of such redetermination accordingly.

(3) If the disagreement is not resolved within a reasonable time after the notice was given—

- (a) the supplier’s determination shall remain effective, and the relevant matter shall be determined on the basis of what is said in the notice, pending any determination pursuant to a reference under sub-paragraph (b);
- (b) the supplier or the customer may refer the matter for determination by the Secretary of State;
- (c) the Regulations shall apply in relation to the supply contract on the basis of the determination made by the Secretary of State and the contract parties shall comply with that determination.

(4) The Secretary of State may decline to determine a matter referred under this regulation where the Secretary of State considers that the referral does not meet the applicable threshold, by giving notice to that effect to the contract parties setting out the reasons for so considering.

**Power of the Secretary of State to make determinations**

**64.**—(1) This regulation applies if the Secretary of State considers that, in relation to a supply contract—

- (a) a determination by the supplier of any Part 2 or Part 4 matter, or a declaration by the customer in respect of a Part 4 matter, is not in conformity with the Regulations or is otherwise incorrect, or
- (b) a determination by the supplier or declaration by the customer which should have been made in respect of a Part 2 or Part 4 matter has not been made.

(2) Where this regulation applies the Secretary of State may determine the Part 2 or Part 4 matter in question by giving notice of such determination to the contract parties.

(3) Before making a determination under this regulation the Secretary of State must—

- (a) give notice to the contract parties—
  - (i) setting out the matter in question;

- (ii) setting out the reasons for which the Secretary of State proposes to make a determination;
- (iii) setting out the determination which the Secretary of State proposes to make;
- (iv) inviting the contract parties to make representations in respect of the proposal by a time specified in the notice;

(b) consider any representations made and not withdrawn by either contract party by that time.

(4) The Regulations apply, in relation to the supply contract, on the basis of the determination made by the Secretary of State and the contract parties must comply with that determination.

### **Review of decisions of the Secretary of State**

**65.**—(1) A supplier or a customer may request the Secretary of State to review a determination made by the Secretary of State under regulation 63 or 64 in respect of a Part 2 or Part 4 matter.

(2) A supplier may request the Secretary of State to review a Part 3 decision.

(3) The Secretary of State may decline to review a relevant decision where the Secretary of State considers that the request does not meet the applicable threshold, by giving notice to that effect to the applicant setting out the Secretary of State’s reasons for so considering.

(4) Except as provided in paragraph (3), upon receiving a review request, the Secretary of State must—

- (a) where the request relates to the determination of a Part 2 or Part 4 matter, give the other party a reasonable opportunity to submit its views on the determination;
- (b) reconsider the relevant decision;
- (c) give notice to the applicant and (where applicable) the other party of—
  - (i) the outcome of the reconsideration (the “reconsidered decision”), and
  - (ii) the reasons for the reconsidered decision.

(5) The reconsidered decision is final and binding on the applicant and (where applicable) the other party, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

### **Rules in relation to this Chapter**

**66.**—(1) The Secretary of State must, no later than 14 days after the scheme introduction date, make rules setting out procedures for—

- (a) a supplier or customer to make a referral under regulation 63;
- (b) the Secretary of State to determine a matter referred under regulation 63;
- (c) the Secretary of State to determine a matter under regulation 64;
- (d) a supplier or customer to request a review under regulation 65(1);
- (e) a supplier to request a review under regulation 65(2);
- (f) the Secretary of State to reconsider a relevant decision under regulation 65.

(2) The rules may specify—

- (a) time periods within which any step to be taken in respect of a referral or review request must be taken;
- (b) thresholds of materiality for the purposes of regulation 62(2)(b).