
STATUTORY INSTRUMENTS

2022 No. 1106

**The Energy Bill Relief Scheme
(Northern Ireland) Regulations 2022**

PART 4

Adjustment of discount or supply quantity in certain cases

CHAPTER 1

Arrangements in respect of customer's financial exposure to wholesale price

Interpretation of this Chapter

36. For the purposes of this Chapter—

- (a) “arrangement benefit” has the meaning given in regulation 39(1)(a);
- (b) “balancing services” means a customer varying its consumption of energy in order to provide a service—
 - (i) to a person holding a transmission licence, in connection with the balancing of flows of electricity onto and off a transmission system; or
 - (ii) to a gas transporter, in connection with the balancing of flows of gas into and out of a pipe-line system;
- (c) in paragraph (b)—
 - (i) “gas transporter” and “pipe-line system” have the meanings given to them in the Gas (Northern Ireland) Order 1996(1);
 - (ii) “transmission licence” and “transmission system” have the meanings given to them in the Electricity (Northern Ireland) Order 1992(2);
- (d) “Chapter 1 arrangement” means an arrangement of the kind described in regulation 37(1)(b) and (2);
- (e) “contract financial exposure” has the meaning given in regulation 37(1)(b);
- (f) a “declaration period” is the period between the initial declaration date and the first periodic declaration date, or between a later periodic declaration date and the next periodic declaration date;
- (g) “effective financial exposure” has the meaning given in regulation 37(1)(b);
- (h) the “initial declaration date” in respect of a supply contract is the later of—
 - (i) the scheme introduction date, if on that date the customer has made a Chapter 1 arrangement and is party to the supply contract, and
 - (ii) such later date on which the customer—

(1) 1996 No. 275 (N.I. 2), Part I, s2(2).

(2) 1992 No. 231 (N.I. 1).

- (aa) enters into the supply contract, having already made a Chapter 1 arrangement, or
- (bb) makes a Chapter 1 arrangement, being already a party to the supply contract;
- (i) “periodic declaration dates” are dates chosen by the supplier, falling at intervals of not more than 31 days, of which the first must be not more than 31 days after the initial declaration date and the last must be the last day of the scheme period.

Application of this Chapter

37.—(1) This Chapter applies in respect of a supply contract where—

- (a) it may reasonably be expected that—
 - (i) the quantity of energy supplied to the customer at the premises to which the supply contract relates in the 12 month period starting on 1st October 2022 will exceed 0.5 gigawatt hours, or
 - (ii) the maximum rate at which energy is supplied under the contract at any time will exceed 0.5 megawatts, and
- (b) the customer has made arrangements, otherwise than in a supply contract, by virtue of which the customer’s overall financial exposure to the wholesale price of energy supplied to it in any period within the scheme period (the “effective financial exposure”) differs from its financial exposure in that period to the contracted wholesale price under the supply contract (the “contract financial exposure”).

(2) The ways in which a customer may make an arrangement of the kind described in paragraph (1)(b) include entering into—

- (a) financial instruments in respect of the wholesale price of energy;
- (b) arrangements under which the customer obtains a benefit from the provision of balancing services;
- (c) in connection with the electricity scheme, arrangements under which the customer obtains a benefit by exporting electricity to an electricity system.

Customer declaration where this Chapter applies

38.—(1) A customer must, as soon as practicable and in any event within 21 days after the initial declaration date—

- (a) determine whether this Chapter applies in respect of a supply contract to which it is party;
- (b) if it so determines, send to the supplier a declaration that to that effect.

(2) A supplier must, when it enters into a supply contract, or for a supply contract which it has entered into before the scheme introduction date, within 45 days after the scheme introduction date—

- (a) determine whether either of the circumstances in regulation 37(1)(a) applies;
- (b) if so, give the customer notice of that determination, drawing this Chapter to the attention of the customer, unless the customer has already sent a declaration under paragraph (1)(b).

Adjustment of discount

39.—(1) In respect of any period and supply contract in respect of which Chapter 1 arrangements apply—

- (a) subject to paragraph (d), the “arrangement benefit” is the amount determined as—

{CFE – EFE}

Where for that period—

CFE is the contract financial exposure;

EFE is the effective financial exposure;

- (b) the “unit arrangement benefit” (expressed in p/kWh) is the arrangement benefit (expressed in pence) divided by the supply quantity in respect of that period;
- (c) the reference wholesale price applicable to the supply contract in that period is determined as—

{RWP’ – UAB}

Where—

RWP’ is the price that would otherwise be determined (under regulation 10 or in accordance with regulation 11) as the reference wholesale price;

UAB is the unit arrangement benefit;

- (d) in relation to a variable price contract, if the term {CFE – EFE} in paragraph (a) is negative, the arrangement benefit in respect of that period is zero.
- (2) Where this Chapter applies in respect of a supply contract—
- (a) the supplier must, as soon as practicable after receiving the customer’s declaration under regulation 38(1)(b), give notice to the customer of each periodic declaration date and the declaration period for each such date;
 - (b) the customer must, as soon as practicable and in any event within 14 days after each periodic declaration date, determine and send to the supplier a declaration of the amount of the arrangement benefit in respect of the relevant declaration period, unless the arrangement benefit is less than £100 per day of the declaration period;
 - (c) the supplier must, on the basis of the arrangement benefit declared in each such declaration—
 - (i) calculate the unit arrangement benefit for the declaration period;
 - (ii) calculate the reference wholesale price under paragraph (1)(c);
 - (iii) calculate the base discount rate under regulations 18 and 19 on the basis of that wholesale reference price;
 - (iv) determine or redetermine its charges for energy supplied in the declaration period on the basis of that discount.

(3) Where this Chapter applies and the customer is party to more than one supply contract, the effect of the Chapter 1 arrangements is to be determined in respect of the supply contracts collectively and the arrangement benefit is to be allocated between the supply contracts on an appropriate basis.

(4) The contract parties may agree a basis on which an estimate of the arrangement benefit will be used in determining charges for a billing period before (and with a subsequent reconciliation when) the steps in paragraph (2) are completed.

Rules in relation to this Chapter

40. The Secretary of State may make rules about—

- (a) the kinds of arrangements which fall or do not fall, or factors which indicate whether arrangements fall or do not fall, within regulation 37(1)(b);
- (b) the basis on which arrangement benefit in respect of any period is to be determined;
- (c) the basis on which arrangement benefit is to be allocated between supply contracts under regulation 39(3);
- (d) the form and content of any declaration to be made by the customer.

CHAPTER 2

Arrangements for customer to deliver electricity to the grid

Interpretation of this Chapter

41. For the purposes of this Chapter—

- (a) “Chapter 2 arrangement” means an arrangement of the kind described in regulation 42(1)(b);
- (b) a “declaration period” is the period between the initial declaration date and the first periodic declaration date, or between a later periodic declaration date and the next periodic declaration date;
- (c) the “initial declaration date” in respect of a supply contract is the later of—
 - (i) the scheme introduction date, if on that date the customer has made a Chapter 2 arrangement and is party to the supply contract, and
 - (ii) such later date on which the customer—
 - (aa) enters into the supply contract, having already made a Chapter 2 arrangement, or
 - (bb) makes a Chapter 2 arrangement, being already a party to the supply contract;
- (d) “periodic declaration dates” are dates chosen by the supplier, falling at intervals of not more than one month, of which the first must be not more than 31 days after the initial declaration date and the last must be the last day of the scheme period;
- (e) references to the storage of electricity include the use of electricity to create potential energy which is used at a different time to generate electricity.

Application of this Chapter

42.—(1) This Chapter applies in respect of a supply contract, subject to paragraph 2, where—

- (a) it may reasonably be expected that—
 - (i) the quantity of energy supplied to the customer at the premises to which the supply contract relates in the 12 month period starting on 1st October 2022 will exceed 0.5 gigawatt hours, or
 - (ii) the maximum rate at which energy is supplied under the contract at any time will exceed 0.5 megawatts, and
- (b) the customer has made arrangements under which—
 - (i) gas supplied to the customer under the supply contract may be used for the purpose of generating electricity (whether or not in conjunction with the production of heat), or
 - (ii) electricity supplied to the customer under the supply contract may be stored by or for the customer, and

in either case, some or all of the electricity generated or stored, may be delivered to an electricity system (such electricity being “grid-delivered”).

- (2) This Chapter does not apply where—
- (a) the capacity of the facility in which electricity supplied to the customer under the supply contract and generated or stored as described in paragraph (1)(b) is not material;
 - (b) the quantities in which that electricity is or may be delivered to an electricity system are not material;
 - (c) the application of this Chapter would be disproportionate, having regard to the complexity of determining ineligible quantities and to the capacity or quantities referred to in subparagraphs (a) or (b).

Customer declaration where this Chapter applies.

43.—(1) A customer must, as soon as practicable and in any event within 21 days after the initial declaration date—

- (a) determine whether this Chapter applies in respect of a supply contract to which it is party;
- (b) if it so determines, send to the supplier a declaration to that effect.

(2) A supplier must, when it enters into a supply contract, or for a supply contract which it has entered into before the scheme introduction date, within 45 days after the scheme introduction date—

- (a) determine whether either of the circumstances in regulation 42(1)(a) applies, and
- (b) if so, give the customer notice of that determination, drawing this Chapter to the attention of the customer, unless the customer has already sent a declaration under paragraph (1)(b).

Determination of ineligible quantity

44.—(1) Where this Chapter applies in respect of a supply contract, that part of—

- (a) the quantity of gas supplied in any period which was used to generate grid-delivered electricity; or
- (b) the quantity of electricity supplied in any period which, having been stored, was grid-delivered (together with a corresponding proportion of the electricity used or lost in storage),

is an “ineligible quantity” for the purposes of the scheme.

(2) Where this Chapter applies in respect of a supply contract—

- (a) the supplier must as soon as practicable after receiving the customer’s declaration under regulation 43(1)(b) give notice to the customer of each periodic declaration date and the declaration period for each such date;
- (b) the customer must, as soon as practicable and in any event within 14 days after each periodic declaration date, determine and send to the supplier a declaration of the quantity of electricity supplied in the relevant declaration period which is an ineligible quantity;
- (c) the supplier must, on the basis of the ineligible quantity declared in each such declaration—
 - (i) determine the amount of the supply quantity for the declaration period to which the discounted supply price is to apply;
 - (ii) determine or redetermine its charges for energy supplied in the declaration period accordingly.

(3) The contract parties may agree a basis on which—

- (a) an estimate of the ineligible quantity will be used in determining charges for a billing period before the steps in paragraph (2) are completed; and
- (b) a subsequent reconciliation will be performed when those steps are completed.

Rules in relation to this Chapter

- 45.** The Secretary of State may make rules about—
- (a) the kinds of arrangements which fall or do not fall, or factors which indicate whether arrangements fall or do not fall, within regulation 42(1)(b);
 - (b) the circumstances in which, by virtue of regulation 42(2), this Chapter does not apply;
 - (c) the basis on which it is to be determined what part of the quantity of gas or electricity supplied is an ineligible quantity;
 - (d) the basis on which a proportion (corresponding to the grid-delivered quantity) of electricity used or lost in storage is to be determined;
 - (e) the form and content of a declaration to be made by the customer.

CHAPTER 3**Abuse of scheme****Interpretation of this Chapter**

- 46.** In this Chapter—
- (a) “abusive arrangement” means an arrangement of the kind described in regulation 47(1);
 - (b) “benefit of the scheme” means the amount by which the charges to a customer for energy supplied under a supply contract are reduced under the scheme;
 - (c) the “declaration date”, in relation to an abusive arrangement, is—
 - (i) the date on which the abusive arrangement is made, or
 - (ii) if the abusive arrangement was made before the scheme introduction date, the scheme introduction date;
 - (d) in relation to an abusive arrangement, “relevant party” means—
 - (i) the supplier, if it is party to the abusive arrangement;
 - (ii) otherwise, the customer.

Application of this Chapter and declaration of abusive arrangement

47.—(1) This Chapter applies in respect of a supply contract if either the customer or the supplier or each of them is party to an arrangement the purpose or main purpose of which is to achieve an increase in the benefit of the scheme (an “abusive arrangement”).

(2) Where this Chapter applies in relation to a supply contract, each contract party which is party to the abusive arrangement must, as soon as practicable and in any event within 21 days after the declaration date, send to the other contract party a declaration to that effect.

Reduction of discount

48. If in relation to a supply contract either the customer or the supplier is party to an abusive arrangement—

- (a) the base discount is to be reduced by such amount as will ensure that the benefit of the scheme is not increased by that arrangement;
- (b) the relevant party must promptly and as frequently as is required to give effect to this regulation—
 - (i) determine the reduction in the discount required under paragraph (a);
 - (ii) give notice of that reduction to the other contract party;

- (c) the supplier must—
 - (i) reduce the base discount by the amount determined under paragraph (a);
 - (ii) determine or redetermine its charges for energy supplied accordingly.

Rules in relation to this Chapter

- 49.** The Secretary of State may make rules about—
- (a) the kinds of arrangements which are or are not, or factors which indicate whether arrangements are or are not, abusive arrangements;
 - (b) the determination of the amount by which the benefit of the scheme is increased by an abusive arrangement;
 - (c) how the discount is to be reduced to ensure such increase is not achieved.

CHAPTER 4

Arrangements for customer to make available energy (etc) to end users outside Northern Ireland

Interpretation of this Chapter

- 50.** For the purposes of this Chapter—
- (a) a “declaration period” is the period between the initial declaration date and the first periodic declaration date, or between a later periodic declaration date and the next periodic declaration date;
 - (b) the “initial declaration date” in respect of a supply contract is the later of—
 - (i) the scheme introduction date, and
 - (ii) the date on which the relevant arrangements are put in place;
 - (c) “periodic declaration dates” are dates chosen by the supplier, falling at intervals of not more than one month, of which the first shall be not more than 31 days after the initial declaration date and the last shall be the last day of the scheme period; and
 - (d) “relevant arrangement” has the meaning given in regulation 51(3).

Application of this Chapter

- 51.—**(1) This Chapter applies in respect of a supply contract, subject to paragraph (2), where —
- (a) it may reasonably be expected that—
 - (i) the quantity of energy supplied to the customer at the premises to which the supply contract relates in the 12-month period starting on 1st October 2022 will exceed 0.5 gigawatt hours, or
 - (ii) the maximum rate at which energy is supplied under the contract at any time will exceed 0.5 megawatts, and
 - (b) arrangements are in place under which—
 - (i) energy supplied to the customer under the supply contract may be made available to an end-user at premises located outside Northern Ireland, or
 - (ii) heating, cooling, hot water or electricity may be made available, using energy supplied under the supply contract, to an end user at premises located outside Northern Ireland.
- (2) This chapter does not apply where—
- (a) the quantities in which or rates at which—

- (i) energy (as provided in paragraph (1)(b)(i)), and
 - (ii) heating, cooling, hot water or electricity (as provided in paragraph (1)(b)(ii))
- may be made available to end users outside Northern Ireland are not material; and
- (b) the application of this Chapter would be disproportionate, having regard to the complexity of determining non-qualifying quantities and to the quantities and rates referred to in subparagraph (a).
- (3) Any arrangement of the kind described in paragraph (1)(b) is a “relevant arrangement” for the purposes of this Chapter.

Customer declaration where this Chapter applies

52.—(1) A customer must, as soon as practicable and in any event within 21 days after the initial declaration date—

- (a) determine whether this Chapter applies in respect of a supply contract to which it is party;
- (b) if it so determines, send to the supplier a declaration to that effect.

(2) A supplier must, when it enters into a supply contract or for a supply contract which it has entered into before the scheme introduction date, within 45 days after the scheme introduction date—

- (a) determine whether either of the circumstances in regulation 51(1)(a) applies, and
- (b) if so, give the customer notice of that determination, drawing this Chapter to the attention of the customer, unless the customer has already sent a declaration under paragraph (1)(b).

Determination of non-qualifying quantity

53.—(1) Where this Chapter applies in respect of a supply contract, that part of the quantity of electricity or gas supplied (in any period)—

- (a) which was made available to end-users at premises located outside Northern Ireland, or
- (b) which was used to make available heating, cooling, hot water or electricity to end users at premises located outside Northern Ireland,

is a “non-qualifying quantity” for the purposes of the scheme.

(2) Where this Chapter applies in respect of a supply contract—

- (a) the supplier must as soon as practicable after receiving the customer’s declaration under regulation 52(2)(b) give notice to the customer of each periodic declaration date and (for each such date) the declaration period;
- (b) the customer must, as soon as practicable and in any event within 14 days after each periodic declaration date, determine and send to the supplier a declaration of the quantity of electricity or gas supplied in the relevant declaration period which is a non-qualifying quantity;
- (c) the supplier must on the basis of the non-qualifying quantity declared in each such declaration—
 - (i) determine the amount of the supply quantity for the declaration period to which the discounted supply price is to apply;
 - (ii) determine or redetermine its charges for energy supplied in the declaration period accordingly.

(3) The contract parties may agree a basis on which an estimate of the non-qualifying quantity will be used in determining charges for a billing period before (and with a subsequent reconciliation when) the steps in paragraph (2) are completed.

Rules in relation to this Chapter

- 54.** The Secretary of State may make rules about—
- (a) the basis on which it is to be determined what part of the quantity of gas or electricity supplied is a non-qualifying quantity;
 - (b) the circumstances in which, by virtue of regulation 51(2), this Chapter does not apply;
 - (c) the form and content of a declaration to be made by the customer.