

**2022 No. 1124**

**ENERGY, NORTHERN IRELAND**

**The Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022**

*Approved by both Houses of Parliament*

*Made - - - -at 12.16 p.m. on 3rd November 2022*

*Laid before Parliament at 13.30 p.m. on 4th November 2022*

*Coming into force - - - - 5th November 2022*

The Secretary of State, in exercise of the powers conferred by sections 19 and 26(2) of the Energy Prices Act 2022(a), makes the following Regulations.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022.

(2) These Regulations come into force on the day after the day on which these Regulations are laid before Parliament.

(3) These Regulations extend to Northern Ireland.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Energy Prices Act 2022;

“effect a pass-through” means pass on to an end user an amount calculated under regulation 6;

“end user”, in relation to an intermediary, means a person who purchases heating or hot water for their own end consumption from the intermediary;

“heat network” means a network that, by distributing a liquid or a gas, enables the transfer of thermal energy for the purpose of supplying heating or hot water to a building or persons in that building;

“intermediary” means a person who supplies and charges for the supply of heating or hot water to an end user through a heat network using energy(b) in respect of which the person has been provided a scheme benefit;

“kWh” means kilowatt hours;

“Metering and Billing Regulations” means the Heat Network (Metering and Billing) Regulations 2014(c);

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(a) 2022 c. 44.

(b) See section 28(4) of the Act for the meaning of this term.

(c) S.I. 2014/3120, amended by S.I. 2015/855 and 2020/1221.

“NI EBRS Regulations” means the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022<sup>(a)</sup>;

“pass-through amount” is an amount calculated under regulation 6;

“pass-through requirement” is the requirement set out in regulation 5;

“scheme benefit”, in relation to the Energy Bill Relief Scheme for Non-Domestic Customers in Northern Ireland established by regulation 3 of the NI EBRS Regulations, has the meaning given in regulation 3 of these Regulations.

(2) A network is not excluded from being a heat network only by reason of its being designed to rely wholly or in part on heat pumps particular to the buildings or premises served by the network.

(3) References to a scheme benefit being provided to an intermediary are to be construed in accordance with regulation 3(2) and (3).

(4) An end user can also be an intermediary in respect of a scheme benefit provided to that end user and vice versa.

### **Energy price support provided by the Energy Bill Relief Scheme for Non-Domestic Customers in Northern Ireland**

**3.**—(1) In these Regulations, “scheme benefit” means—

(a) the discount applied to the supply price under a supply contract between an energy supplier and an intermediary in any billing period under regulation 19 of the NI EBRS Regulations, expressed as an amount in pounds sterling or in pounds sterling per kWh of energy; or

(b) where the intermediary is a QFDC, required reductions applied to a qualifying amount payable by the QFDC in respect of its qualifying supply in any billing period under regulation 58 of the NI EBRS Regulations, expressed as an amount in pounds sterling or in pounds sterling per kWh of energy.

(2) A scheme benefit is provided to an intermediary—

(a) when the energy supplier informs the intermediary under regulation 19(1)(d) of the NI EBRS Regulations of the discount that has been applied to the supply price under the supply contract;

(b) where the intermediary is a QFDC, when the energy supplier informs the QFDC under regulation 58(1)(c) of the NI EBRS Regulations of the amount of the required reductions or the basis on which they can be determined; or

(c) where the intermediary is also an end user, when a pass-through amount is provided to it by virtue of these Regulations.

(3) A scheme benefit that has been provided to an intermediary is not treated as having been provided to the extent that the intermediary has notified the energy supplier that the discount or any required reductions have been applied in error and the intermediary is taking reasonable steps to correct the error in accordance with requirements by or under the NI EBRS Regulations.

(4) In this regulation—

“energy supplier” means a licensed electricity supplier<sup>(b)</sup> or a licensed gas supplier<sup>(c)</sup>; and

“QFDC” means a qualifying financially disadvantaged customer within the meaning of Part 5 of the NI EBRS Regulations.

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

**4.**—(1) Within 30 days beginning with the day on which an intermediary is provided with a scheme benefit (or within 30 days beginning with the day on which these Regulations come into

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(a) S.I. 2022/1106.

(b) See section 10(2) of the Act for the meaning of this term.

(c) See section 10(6) of the Act for the meaning of this term.

force, whichever is the later), the intermediary must notify each of its end users in writing that it has been provided with a scheme benefit.

- (2) The notice must specify—
- (a) the amount of the scheme benefit;
  - (b) the period in respect of which the scheme benefit has been provided;
  - (c) details of the pass-through requirement;
  - (d) the amount calculated under regulation 6 which will be passed on to the end user (“pass-through amount”);
  - (e) how the pass-through amount has been calculated;
  - (f) the basis on which the intermediary has determined the pass-through amount is just and reasonable;
  - (g) when and how the intermediary will effect the pass-through;
  - (h) details of how the end user may resolve any dispute with the intermediary about how the intermediary has complied with the pass-through requirement, including how the intermediary has calculated the pass-through amount;
  - (i) that the end user may make a complaint to the General Consumer Council for Northern Ireland on any of the following grounds—
    - (i) the intermediary has not notified the end user in writing that the intermediary has been provided with a scheme benefit;
    - (ii) the intermediary has not notified the end user in writing of when and how it will effect the pass-through;
    - (iii) the intermediary has not effected the pass-through within the timeframe specified in regulation 5;
    - (iv) the intermediary has not otherwise complied with the pass-through requirement;
  - (j) that if the pass-through amount to which an end user is entitled by virtue of these Regulations is not provided to the end user, it is entitled to recover it from the intermediary as a civil debt pursuant to regulation 8.
- (3) An intermediary has complied with the notification requirements in this regulation if and to the extent it has taken reasonable steps to notify an end user but is unable to do so.

### **Pass-through requirement**

**5.—**(1) An intermediary must ensure that, as soon as reasonably practicable after it has been provided with a scheme benefit, it provides to each of its end users a pass-through amount in respect of the scheme benefit (“pass-through requirement”).

(2) An intermediary must comply with the pass-through requirement no later than the day on which the intermediary issues the next bill to the end user.

(3) An intermediary must comply with the requirements for bills and billing information under regulation 7 when it issues the next bill to an end user.

(4) Without prejudice to paragraph (1), a pass-through can be effected by one or more of the following methods—

- (a) application of a credit in the next bill provided to the end user;
- (b) a payment in cash or by any other means, including a bank transfer;
- (c) adjusting the fixed and variable charges in the next bill provided to the end user;
- (d) adjusting the amount of money taken pursuant to a direct debit or the amount of a standing order;
- (e) set off against an amount or part of an amount which was owed by the end user to the intermediary at the time the scheme benefit was provided to the intermediary.

(5) If the contract between the intermediary and the end user expires or is terminated before the intermediary has effected a pass-through, the intermediary must effect a pass-through to reflect the end user's entitlement (or remaining entitlement) under these Regulations as soon as reasonably practicable following such expiry or termination.

(6) An intermediary has complied with the pass-through requirement if and to the extent it has taken reasonable steps to effect the pass-through but is unable to do so.

(7) An intermediary has not complied with the pass-through requirement if—

- (a) in its capacity as customer under the NI EBRs Regulations, it serves an opt-out notice on a supplier pursuant to regulation 4(4) of the NI EBRs Regulations; or
- (b) it fails to take all such reasonable steps as may be necessary to secure that it is provided with the scheme benefit to which it is entitled.

(8) Where an end user is also an intermediary in respect of a scheme benefit provided to that end user, that end user must comply with the pass-through requirement.

(9) In this regulation, “next bill” means the first bill issued after the end of the period of 30 days beginning with the day on which these Regulations come into force.

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

**6.—**(1) The amount which an intermediary must pass on to an end user under the pass-through requirement is an amount in pounds sterling or in pounds sterling per kWh of energy which comprises all of the scheme benefit, or if less than the amount of scheme benefit, a just and reasonable amount calculated in accordance with this regulation (“pass-through amount”).

(2) If the pass-through amount is less than the amount of scheme benefit, the intermediary must provide evidence to the end user showing what factors it took into account in determining that the pass-through amount was just and reasonable.

(3) In determining what is a just and reasonable pass-through amount, the intermediary may take account of—

- (a) the amount the intermediary paid for the energy in respect of which the scheme benefit was provided (“the input energy”);
- (b) other costs incurred by the intermediary in supplying heating or hot water to its end users in the period for which the scheme benefit was provided (“relevant period”); and
- (c) any loss incurred where, as a result of a relevant change in the price of energy<sup>(a)</sup>, the total amount charged to end users for the supply of heating and hot water in the relevant period is less than the amount paid for the total quantity of input energy.

(4) Subject to paragraph (3), a pass-through amount is just and reasonable where—

- (a) at the time the intermediary was provided with the scheme benefit, the intermediary was charging the end user either—
  - (i) based on the proportion of the total quantity of input energy which the end user's usage represented; or
  - (ii) based on the proportion of the total amount paid by the intermediary for energy in a period which the amount paid by the end user for the supply of heating and hot water in that period represented; and
- (b) the intermediary calculates the pass-through amount for the end user on this basis.

(5) If paragraph (4) does not apply, the intermediary in determining what is a just and reasonable pass-through amount—

- (a) must apply the best available information to allocate the scheme benefit amongst end users; and

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(a) See section 28(2) of the Act for the meaning of this term.

- (b) may take into account the basis on which the intermediary was allocating charges amongst end users at the time the intermediary was provided with the scheme benefit.
- (6) The pass-through amount for a person who is an end user for part of a relevant period must be calculated only for that part of the relevant period for which they were an end user.
- (7) In calculating a pass-through amount—
  - (a) an intermediary is not required to pass on to its end users an aggregate amount that exceeds the amount of scheme benefit provided to the intermediary;
  - (b) an intermediary which is also an end user must not retain more of the scheme benefit for itself—
    - (i) than is proportionate to its own end user’s usage; or
    - (ii) than the proportion of the amount the intermediary paid for the total quantity of input energy that the intermediary itself bears (where it is not practicable to assess the quantity of its own end user’s usage);
  - (c) an intermediary may include the quantity of heating or hot water supplied to common areas in a building as part of its own end user’s usage if the intermediary was not charging end users for this as part of the arrangements in place at the time the intermediary was provided with the scheme benefit.
- (8) In this regulation, “end user’s usage” means the total quantity of input energy in kWh used in a relevant period to supply heating and hot water to an end user in that period.

**Provision of billing information to end users**

- 7.—(1) This regulation applies to—
  - (a) any bill issued to an end user for the supply of heating or hot water in respect of a period for which the intermediary has been provided a scheme benefit; and
  - (b) any billing information (as defined in regulation 2 of the Metering and Billing Regulations) provided with that bill.
- (2) The requirements in regulation 9 of the Metering and Billing Regulations apply in respect of the bill and billing information, subject to the following modifications.
- (3) That regulation is to be read as if—
  - (a) a reference to a final customer is a reference to an end user;
  - (b) a reference to a heat supplier is a reference to an intermediary;
  - (c) paragraph (1) requires bills to be issued to every end user, whether or not meters or heat cost allocators are installed;
  - (d) where meters or heat cost allocators are not installed, subparagraphs (a) and (b) of paragraph (1) are omitted;
  - (e) paragraphs (2) and (3) are omitted;
  - (f) where meters or heat cost allocators are not installed, paragraph (4) provides that a bill may be based on an estimate of consumption;
  - (g) in paragraph (7)—
    - (i) after subparagraph (b) there is inserted—
      - “(ba) provide clear information about how the pass-through amount has been calculated, how the intermediary has determined that the pass-through amount is just and reasonable, and must state the final reduction amount;”;
    - (ii) after subparagraph (c) there is inserted—
      - “(ca) the information contained in the bill must include the amount the intermediary paid for the energy in respect of which the scheme benefit was provided and the amount charged to the end user.”.

(4) For the purposes of this regulation, Schedule 2 to the Metering and Billing Regulations applies, but is to be read as if paragraph 6 is omitted.

### **Enforcement of pass-through requirement**

**8.**—(1) Where an intermediary fails to comply with the pass-through requirement, the end user may—

- (a) recover the pass-through amount from the intermediary as a civil debt; and
- (b) claim interest to be paid by the intermediary on such amount at a rate of 2% per cent per annum over the Bank of England base rate from the date 60 days after the date on which the scheme benefit to which the pass-through requirement relates was provided to the intermediary.

(2) For the purposes of this regulation, the “Bank of England base rate” means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998(a) (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

### **Investigation of complaints by the General Consumer Council for Northern Ireland**

**9.**—(1) For the purpose of section 19(10)(d) of the Act, Articles 22 and 24 of the Energy (Northern Ireland) Order 2003(b) apply in relation to a domestic end user or microbusiness end user in Northern Ireland as they apply in relation to a customer of, or user of electricity or gas supplied by, an authorised supplier, subject to the following modifications.

(2) Article 22 is modified as follows—

- (a) for paragraph (1) substitute—

“(1) This Article applies to a complaint by a domestic end user or microbusiness end user (“complainant”) against an intermediary on one or more of the grounds set out in regulation 4(2)(i) of the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022(c).”;

- (b) omit paragraphs (3) and (4);
- (c) in paragraph (5), omit subparagraphs (b) and (c);
- (d) omit paragraphs (7) to (9);
- (e) for paragraph (10) substitute—

“(10) In this Article—

- (a) “domestic end user”, in relation to an intermediary, means a person who purchases heating or hot water for their own end consumption for domestic purposes from the intermediary;
- (b) “intermediary” has the meaning given in regulation 2(1) of the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022;
- (c) “microbusiness end user” means an end user as defined in regulation 2(1) of the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022 which employs fewer than 10 employees and has an annual turnover or balance sheet no greater than £2 million;

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(a) 1998 c. 11.

(b) S.I. 2003/419 (N.I. 6).

(c) S.I. 2022/1124.

- (e) “pass-through requirement” has the meaning given in regulation 2(1) of the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022.”.

(3) Article 24 is modified as follows—

- (a) for paragraph (1) substitute—

“(1) The General Consumer Council for Northern Ireland (“the Council”) may direct an intermediary to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions under Article 22.

(1A) The information may include information about any of the matters specified in regulation 4(2)(a) to (g) of the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022(a).”;

- (b) in paragraph (3), for “Authority or licence holder” substitute “intermediary”;

- (c) for paragraph (4) substitute—

“(4) In this Article, “intermediary” has the same meaning as in Article 22.”.

*Graham Stuart*

Minister of State for Climate

At 12.16 p.m. on 3rd November 2022      Department for Business, Energy and Industrial Strategy

## **EXPLANATORY NOTE**

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

These Regulations make provision for the pass-through requirement in relation to the Energy Bill Relief Scheme for Non-Domestic Customers in Northern Ireland (NI EBRS). The pass-through requirement is imposed on a person who supplies and charges for the supply of heating or hot water to an end user through a heat network using energy(b) in respect of which the person has been provided a scheme benefit (“intermediary”). It requires the intermediary to pass on the benefits of the NI EBRS to its end users.

Regulation 3 makes provision about energy price support provided by the NI EBRS. This is defined as a “scheme benefit”.

Regulation 4 requires an intermediary who has been provided with a scheme benefit to notify each of its end users in writing that it has been provided with the benefit.

Regulation 5 imposes a requirement on intermediaries to secure that a scheme benefit provided to an intermediary is passed on to its end users as soon as reasonably practicable after it has been provided with the scheme benefit. If not all of the scheme benefit is being passed on to the end users, intermediaries are required to pass on a just and reasonable amount of the benefit to each of its end users.

Regulation 6 defines “pass-through amount” and provides for methods of calculating the amount and determining what is a just and reasonable pass-through amount.

Regulation 7 requires intermediaries to provide billing information to end users.

Regulation 8 provides for the end user to recover unpaid pass-through amounts from the intermediary as a civil debt.

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(a) S.I. 2022/1124.

(b) See section 28(4) of the Act for the meaning of this term.

Regulation 9 provides for investigation of complaints by the General Consumer Council for Northern Ireland.

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

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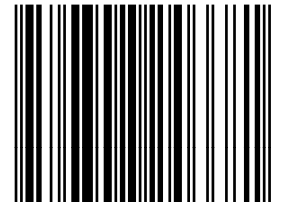
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