

**2023 No. 43**

**ELECTRICITY**

**The Energy Act 2004 (Assistance for Areas with High Distribution Costs) (Amendment) Order 2023**

<i>Made</i> - - - -	<i>15th January 2023</i>
<i>Laid before Parliament</i>	<i>17th January 2023</i>
<i>Coming into force</i> - -	<i>1st April 2023</i>

The Secretary of State makes this Order in exercise of the powers conferred by sections 184(1) and (4) and 192(4) of the Energy Act 2004(a).

In accordance with section 184(7) of that Act the Secretary of State has consulted such persons as the Secretary of State considered appropriate.

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Energy Act 2004 (Assistance for Areas with High Distribution Costs) (Amendment) Order 2023 and comes into force on 1st April 2023.

(2) This Order extends to England and Wales and Scotland.

**Amendment of the Energy Act 2004 (Assistance for Areas with High Distribution Costs) Order 2005**

2.—(1) The Energy Act 2004 (Assistance for Areas with High Distribution Costs) Order 2005(b) is amended as follows.

(2) Omit article 4 (implementation of scheme).

(3) Omit article 9 (amendment of scheme)(c).

**Modifications to licences granted to authorised suppliers**

3. Schedule 1 to this Order (which modifies the standard conditions of the licences of authorised suppliers) has effect.

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(a) 2004 c. 20. Section 192(4) was amended by section 62(16) of the Scotland Act 2016 (c. 11) and by paragraph 60(6) of Schedule 6 to the Wales Act 2017 (c. 4). For the meaning of “modification” in section 184(4) of the Energy Act 2004, see section 196(1) of that Act.

(b) S.I. 2005/528, amended by S.I. 2020/146.

(c) Article 9 was inserted by S.I. 2020/146.

**Modifications to licences granted to authorised transmitters**

4. Schedule 2 to this Order (which modifies the standard conditions of the licences of authorised transmitters) has effect.

15th January 2023

*Graham Stuart*  
Minister of State for Energy and Climate  
Department for Business, Energy and Industrial Strategy

# SCHEDULES

## SCHEDULE 1

Article 3

Modifications to licences granted to authorised suppliers

1. Condition 15 (assistance for areas with high distribution costs scheme: payments to System Operator)(a) of the standard conditions of the licences of authorised suppliers is modified as follows.

2. In paragraph 15.3 (licensee’s duty to pay), omit “, and from the Shetland pence per kWh tariff”.

3. In paragraph 15.9 (definitions), omit the definition of “Shetland pence per kWh tariff”.

## SCHEDULE 2

Article 4

Modifications to licences granted to authorised transmitters

1.—(1) Condition C20 (assistance for areas with high distribution costs scheme: restriction on revenue)(b) of the standard conditions of the licences of authorised transmitters is modified as follows.

(2) For paragraph 1, substitute—

“1. The licensee must use its best endeavours to ensure that, in each relevant year, the revenue derived by the licensee from the assistance for areas with high distribution costs scheme activity does not exceed the assistance for areas with high distribution costs scheme amount for that relevant year as calculated in accordance with the following formula:

$$HBM_t = A_t + SA_t + (HBOC_t - HBK_t)$$

where—

$HBM_t$  represents the assistance for areas with high distribution costs scheme amount in relation to the relevant year  $t$ .

$A_t$  represents the assistance amount in relation to the relevant year  $t$ .

$SA_t$  represents the Shetland assistance amount in relation to the relevant year  $t$ .

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(a) Condition 15 replaced Condition 30B, which was inserted into the standard conditions of licences of authorised suppliers by S.I. 2005/528. Condition 30B was omitted by Modification 177 of the “Modification of the Standard Conditions of the Electricity Supply Licence under Section 11A of the Electricity Act 1989” made by the Gas and Electricity Markets Authority with effect on and from 1 August 2007 (the 2007 Modification), and Condition 15 was inserted by Modification 360 of the 2007 Modification. The 2007 Modification is available at: <https://www.ofgem.gov.uk/publications/13307-notice-modification-standard-condition-electricity-supply-licence-under-section-11a-electricity-act-1989>. Condition 15 was modified by S.I. 2020/146. There are other modifications to Condition 15 not relevant to this instrument.

(b) Condition C20 was inserted into the standard conditions of licences of authorised transmitters by S.I. 2005/528. It was modified by the “Modification of the Standard Conditions of Electricity Transmission Licences Granted or Treated as Granted under section 6(1)(b) of the Electricity Act 1989” made by the Gas and Electricity Markets Authority with effect from 27th September 2005 (“the 2005 modification”) and by S.I. 2020/146. The 2005 modification is available at: <https://www.ofgem.gov.uk/publications/modification-slc-c20-electricity-transmission-licences-under-section-11a1-electricity-act-1989>.

$HBOC_t$  represents the administration allowance in relation to the relevant year  $t$ .

$HBK_t$  represents the correction amount in relation to the relevant year  $t$ .”.

(3) In paragraph 2—

- (a) in the words before the formula, for the words from “for the first relevant year” to “and for each subsequent relevant year” substitute “for each relevant year”;
- (b) in the formula, for “ $RPI_t$ ” substitute “ $CPIH_t$ ”;
- (c) in the definitions of the terms used in the formula—
  - (i) omit the definition of “ $RPI_t$ ”;
  - (ii) after the definition of “ $A_{t-1}$ ” insert—

““ $CPIH_t$  means the percentage change (whether of a positive or a negative value) in the arithmetic average of the CPIH figures published or determined with respect to each of the six months May to October (both inclusive) in relation to the relevant year  $t-1$  and that are published or determined with respect to the same months in relation to the relevant year  $t-2$ .”.

(4) In paragraph 2A(a)—

- (a) in the words before the formula, for the words from “for the relevant year” to “and for each subsequent relevant year” substitute “for each relevant year”;
- (b) in the formula, for “ $RPI_t$ ” substitute “ $CPIH_t$ ”;
- (c) in the definitions of the terms used in the formula, for “ $RPI_t$ ” substitute “ $CPIH_t$ ”.

(5) In paragraph 3—

- (a) in the words before the formula, for the words from “for the first relevant year” to “and for each subsequent relevant year,” substitute “for each relevant year”;
- (b) in the formula, for “ $RPI_t$ ” substitute “ $CPIH_t$ ”;
- (c) in the definitions of the terms used in the formula—
  - (i) omit the definition of “ $RPI_t$ ”;
  - (ii) after the definition of “ $HBOC_{t-1}$ ”, insert—

“ $CPIH_t$  has the meaning given in paragraph 2.”.

(6) In paragraph 4—

- (a) in the words before the formula, for the words from “for the first relevant year” to “and for all subsequent relevant years” substitute “for each relevant year the correction amount”;
- (b) for the definition of “ $HBC_{t-1}$ ” substitute—

““ $HBC_{t-1}$  means the total income from payments received from authorised suppliers during the relevant year  $t-1$  pursuant to standard condition C21, excluding any interest on late payments.”.

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(a) Paragraph 2A was inserted by S.I. 2020/146.

(7) After paragraph 4 insert—

“**4A** For the purposes of paragraphs 2 to 4, where the relevant year t-1 is the year beginning on 1 April 2022, the following amounts in relation to that year are the amounts calculated in accordance with this condition as in force immediately before 1 April 2023—

- (a) the assistance amount;
- (b) the Shetland assistance amount;
- (c) the administration allowance;
- (d) the assistance for areas with high distribution costs scheme amount.”.

(8) In paragraph 5—

- (a) in the definition of “administration allowance”, omit “specified in or”;
- (b) in the definition of “assistance amount”, omit “specified in or”;
- (c) in the definition of “correction amount”, omit “specified in or”;
- (d) at the appropriate place insert—

““CPIH” means the consumer prices index including owner occupiers’ housing costs (all items) published by the Office for National Statistics.”;

- (e) in the definition of “Shetland assistance amount”—
  - (i) omit “beginning on or after 1 April 2021”;
  - (ii) omit “specified in or”.

**2.—(1)** Condition C21 (assistance for areas with high distribution costs scheme: payments from authorised suppliers)(**a**) of the standard conditions of the licences of authorised transmitters is modified as follows.

- (2) In paragraph 2, after “within Great Britain” insert “by authorised suppliers”.
- (3) In paragraph 2A(**b**)—
  - (a) omit “beginning on or after 1 April 2021”;
  - (b) after “within Great Britain” insert “by authorised suppliers”.
- (4) In paragraph 3, after “to the units of electricity” omit “actually”.
- (5) For paragraph 3A(**c**) substitute—

“**3A.** For each relevant year, for the purpose of information, each invoice issued to an authorised supplier pursuant to paragraph 3 must specify the amount determined by applying the Shetland p/kWh tariff to the units of electricity supplied by that authorised supplier during each period in relation to the relevant year t specified in the table in paragraph 3.”.

- (6) In paragraph 5A(**d**), omit “beginning on or after 1 April 2021,”.
- (7) In paragraph 6, omit “including the first relevant year”.
- (8) In paragraph 9—
  - (a) in the definition of “administration allowance”, omit “specified in or”;

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(a) Condition C21 was inserted into the standard conditions of authorised transmitters by S.I. 2005/528 and amended by S.I. 2020/146.

(b) Paragraph 2A was inserted by S.I. 2020/146.

(c) Paragraph 3A was inserted by S.I. 2020/146.

(d) Paragraph 5A was inserted by S.I. 2020/146.

- (b) in the definition of “correction amount”, omit “specified in or”;
- (c) in the definition of “Shetland assistance amount”, omit “beginning on or after 1 April 2021 made”;
- (d) for the definition of “units of electricity supplied” substitute—

““units of electricity supplied” means the amount of electricity, expressed in kWh, supplied to premises(a) (cognate expressions being construed accordingly); and, for the avoidance of doubt, in calculating that amount any export of electricity from those premises is to be disregarded.”.

**3.—(1)** Condition C22 (assistance for areas with high distribution costs scheme: payments to a relevant distributor)(b) of the standard conditions of the licences of authorised transmitters is modified as follows.

(2) In the table in paragraph 1, in the heading to the second column, for “paid” substitute “payable”.

(3) In paragraph 1A(c), omit “beginning on or after 1 April 2021”.

(4) In paragraph 2, at the end omit the definition of “Shetland assistance amount”.

(5) In paragraph 3—

(a) in the definition of “assistance amount”—

(i) for “paid” substitute “payable”;

(ii) omit “specified in or”;

(b) at the end insert—

“Shetland assistance amount means the amount payable by the licensee to a relevant distributor in relation to any relevant year pursuant to this condition, as calculated in accordance with paragraph 2A of standard condition C20.”.

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(a) For the definition of premises, see section 184(13) of the Energy Act 2004.

(b) Condition 22 was inserted into the standard conditions of licences of authorised transmitters by S.I. 2005/528 and amended by S.I. 2020/146.

(c) Paragraph 1A was inserted by S.I. 2020/146.

## **EXPLANATORY NOTE**

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

The Energy Act 2004 (Assistance for Areas with High Distribution Costs) Order 2005 (“the 2005 Order”) (S.I. 2005/528) established the Hydro Benefit Replacement Scheme (“HBRS”) for Great Britain. The HBRS is a scheme for offsetting the costs of distributing electricity in a specified area of northern Scotland and is implemented by way of modifications to the conditions of the licences of authorised suppliers, authorised transmitters (in effect, only the operator of the electricity transmission system for Great Britain) and authorised distributors in the specified area (in effect, only the one electricity distributor operating in the specified area).

This Order makes a number of modifications to the licence conditions of authorised suppliers (article 3 and Schedule 1) and authorised transmitters (article 4 and Schedule 2) with respect to the HBRS. It also amends overarching text in the 2005 Order regarding the implementation of the HBRS (article 2).

An impact assessment has not been produced for this instrument because no significant, impact on business, civil society organisation or the public sector is foreseen.

The licences modified by this Order may be inspected at the Registry of the Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London E14 4PU.

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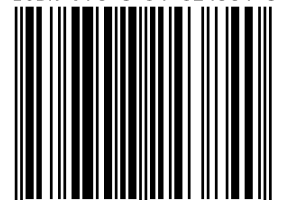
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