STATUTORY INSTRUMENTS

2023 No. 453

ENERGY

The Energy Bills Discount Scheme Regulations 2023

Approved by both Houses of Parliament

Made - - - -	*24th April 2023*
Laid before Parliament	*25th April 2023*
Coming into force	*26th April 2023*

CONTENTS

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 9(1) to (4), 26(2) and 27(2) of, and Schedule 1 to, the Energy Prices Act 2022(**a**).

PART 1

Introductory

CHAPTER 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Energy Bills Discount Scheme Regulations 2023 and come into force on 26th April 2023.

(2) These Regulations extend to England and Wales and Scotland.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Energy Prices Act 2022;

(**a**) 2022 c. 44.

"base discount" means an amount in respect of a supply contract and a period calculated in accordance with regulation 28;

"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;

"base recovery amount" has the meaning given in regulation 32(2);

"benefit calculation period" means—

(a) a billing period, or,

(b) where a billing period begins in one scheme period and ends in another, so much of that billing period as falls with a single scheme period;

"billing period" means, in relation to a supply contract, a period of energy supply in respect of which, under the terms of the supply contract, the supplier is obliged or entitled to send to the customer an invoice or other statement of account;

"business day" means any day other than a Saturday, a Sunday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**b**) in any part of the United Kingdom;

"category" has the meaning given in regulation 11(1)(a);

"certified ETII operator" means a person in respect of whom an ETII certificate has been issued and not revoked;

"Chapter 3 default" has the meaning given in regulation 26(1);

"claim window" means a period in which a supplier may submit a discount recovery claim, set in accordance with regulation 44;

"contract parties" means, in relation to a supply contract, the supplier and customer which are parties to the supply contract;

"contracted wholesale price" means, in relation to a supply contract, that part of the supply price which represents the cost to the supplier at the wholesale price of energy supplied under the contract (whether or not it is separately identified in the contract);

"the court" means—

(a) the High Court, or

(b) in Scotland, the Court of Session;

"customer" means a person supplied or to be supplied by a supplier with electricity by way of GB non-domestic electricity supply(**c**) or gas by way of GB non-domestic gas supply(**d**);

"deemed contract" has the meaning given in the relevant standard conditions(**e**);

"default benefit amount" has the meaning given in regulation 26(2);

"defaulting person" has the meaning given in regulation 26(1);

"discount" has, in respect of a supply contract, the meaning given in regulation 29;

"discount recovery" means the recovery in accordance with Part 3 by a supplier from the Secretary of State of the amounts by which its charges under supply contracts have been reduced by the application of discounts under the electricity scheme or the gas scheme;

(**a**) 1998 c. 11.
(**b**) 1971 c. 80.
(**c**) Defined in the Energy Prices Act 2022, section 10(4).
(**d**) Defined in the Energy Prices Act 2022, section 10(8).
(**e**) Defined in the Energy Prices act 2022, section 10(5) in relation to GB non-domestic electricity supply and section 10(9) in relation to GB non-domestic gas supply.

"discount recovery claim" has the meaning given in regulation 32(3);

"discount recovery rules" means the rules made by the Secretary of State under regulation 43;

"discounted supply price" means, in relation to a supply contract, the supply price reduced by the discount;

"EBRS" means the Energy Bill Relief Scheme for Non-Domestic Customers in Great Britain;

"EBRS Regulations" means the Energy Bill Relief Scheme Regulations 2022(**a**);

"electricity scheme" has the meaning given in regulation 3(1)(a);

"electricity system" means a transmission system or distribution system (as defined in section 4(4) of the Electricity Act 1989(**b**));

"energy" means electricity supplied by way of GB non-domestic electricity supply or gas supplied by way of GB non-domestic gas supply;

"energy reconciliation" means—

(a) the determination, by the reading of a meter, of the quantity of energy supplied under a supply contract in the period since a prior reading of the meter, and a reconciliation by comparison with the quantity previously estimated as supplied in that period, or

(b) the resolution, in respect of any period, of any question or dispute about a meter or a reading of a meter, or otherwise about the quantity of energy supplied under a supply contract, and a reconciliation by comparison with the quantity previously determined as supplied in that period;

"ETII applicant" means a person in respect of whom an ETII application is made;

"ETII application" means an application for an ETII certificate;

"ETII certificate" means a certificate issued under regulation 16(1);

"ETII proportion" means, in respect of a customer or provider and any period, the proportion determined as such in accordance with regulation 22;

"ETII supply contract" has the meaning given in regulation 23(1)(a);

"excluded fixed price contract" means a fixed price contract for which the price-fix date is before 1st December 2021;

"first scheme period" means the period specified in regulation 6(1);

"fixed price contract" means a supply contract under which, at the time the contract is entered into, the contracted wholesale price is fixed for the term of the contract, including where it is fixed so that different prices apply, for example, at different times of day, or in different seasons in the term of the contract;

"flexible price contract" means a supply contract—

(a) under which the customer may elect from time to time to—

  (i) fix the contracted wholesale price for particular quantities of energy to be supplied during certain periods, and

  (ii) cancel any such fixing of the contracted wholesale price, or

(b) which provides another mechanism by which the contracted wholesale price will be determined for periods specified in or determined under the contract;

"gas scheme" has the meaning given in regulation 3(1)(b);

"general supply contract" means a supply contract that is not an ETII supply contract or a QHS supply contract;

"government supported price" has the meaning given in regulation 7(2)(a);

"grid-delivered" has the meaning given in regulation 52(1)(b);

(**a**) S.I. 2022/1100.

(**b**) 1989 c. 29. The definition of "distribute" and cognate terms in section 4(4) was inserted by section 28(3)(a) of the Energy Act 2004 (c. 20); the definition of "transmission system" was substituted by section 135(4) of the Energy Act 2004.

"GSP decrement" has the meaning given in regulation 7(2)(b);

"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 (and 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);

"ineligible quantity" has the meaning given in regulation 54(1);

"maximum discount" has the meaning given in regulation 7(2)(c);

"MD increment" has the meaning given in regulation 7(2)(d);

"meter" means a meter (and associated equipment) installed at or near to the customer's premises by means of which the quantity of energy supplied to the customer in a period may be determined;

"minimum supply price" has the meaning given in regulation 7(2)(e);

"opt-out notice" has the meaning given in regulation 4(3);

"p/kWh" means pence per kilowatt hour;

"pass-through regulations" means regulations made under section 19 of the Act in connection with energy price support (within the meaning of section 19(4) of the Act) under the scheme;

"period of supply" means, in respect of a supply contract, a period of a whole number of consecutive days, in which the supplier has supplied energy to the customer, in respect of which the supplier claims discount recovery;

"price-fix date" means the date when the contracted wholesale price applicable to a fixed price contract was fixed;

"provider" means a supplier or any other person who supplies or otherwise makes available energy, heating, hot water or electricity to another person;

"QHS applicant" means a person in respect of whom an QHS application is made;

"QHS application" means an application for a QHS certificate in respect of a heat network;

"QHS certificate" means a certificate issued under regulation 17(1);

"QHS proportion" means, in respect of a customer or provider and any period, the proportion determined as such in accordance with regulation 22;

"QHS supply contract" has the meaning given in regulation 23(1)(b);

"reconciliation run-off date" has the meaning given in regulation 39(5);

"recovery claim amount" has the meaning given in regulation 34(1);

"reference wholesale price" means, in relation to a supply contract and a period of supply, the wholesale price which is deemed for the purposes of the scheme to be the contracted wholesale price, as determined under regulation 9 or in accordance with regulation 10;

"scheme" has the meaning given in regulation 3;

"scheme end date" has the meaning given in regulation 39(6)(b);

"scheme introduction date" means the date on which these Regulations come into force;

"scheme period" means the first scheme period or the second scheme period;

"scheme start date" means 1st April 2023;

"second scheme period" means the period specified in regulation 6(2);

"supplier" means a licensed electricity supplier(**a**) or a licensed gas supplier(**b**);

(**a**) Defined in section 10(2) of the Energy Prices Act 2022.
(**b**) Defined in section 10(6) of the Energy Prices Act 2022.

"supply contract" means a contract between a supplier and a customer which provides for GB non-domestic electricity supply or GB non-domestic gas supply at any time during a scheme period, and includes—

(a) a deemed contract, and

(b) a supply contract that continues to apply to a customer, and under which the supplier continues to supply energy to that customer, after it has been terminated or has expired through the passage of time;

"supply contract recovery amount" has the meaning given in regulation 33(1);

"supply price" has the meaning given in regulation 8;

"supply quantity" means the quantity of energy supplied to a customer under a supply contract in any period of supply, excluding any ineligible quantity;

"valid" in relation to a discount recovery claim, has the meaning given in regulation 40(4), and "invalidity" is to be construed accordingly;

"variable price contract" means a supply contract under which the supplier may change the contracted wholesale price at any time by giving notice (as provided in the contract) to the customer;

"wholesale price" means a price at which electricity or gas is traded in the wholesale electricity or gas market.

(2) In these Regulations—

(a) references, in the context of a supply contract, to the supplier or the customer are to the supplier or customer which is party to the supply contract;

(b) references to quantities of energy are to quantities of electricity or gas expressed in kilowatt hours;

(c) references to energy supplied under a supply contract are to energy supplied during a scheme period;

(d) references to energy (or a quantity of energy) supplied under a supply contract are to energy supplied to the customer at its premises and measured as supplied by a meter or (where no meter is installed) estimated pursuant to a document designated for the purposes of section 173 of the Energy Act 2004(**a**) (appeals to the Competition and Markets Authority);

(e) references to the supply quantity under a supply contract in any period, at any time at which that quantity has not been determined by meter reading, are to the quantity of energy estimated by the supplier, in accordance with the supply contract, as supplied in that period;

(f) references to—

(i) the price of energy (or the price payable by the customer for energy) supplied under a supply contract are to the price expressed in p/kWh;

(ii) charges payable by the customer under a supply contract are to the charges expressed in pounds.

(3) In these Regulations—

(a) a "gas day" is the period starting at 5 a.m. on one day and ending at 5 a.m. on the next day;

(b) for the purposes of the gas scheme—

(i) a reference to a day is to a gas day;

(ii) a month begins at the start of the gas day which begins on the first day of the month and ends at the end of the gas day which starts on the last day of the month.

(**a**) 2004 c. 20; section 173 has been amended, but the amendments are not relevant. The power of designation was exercised in S.I. 2014/1293.

CHAPTER 2

Energy Bills Discount Scheme

Application

3.—(1) Unless these Regulations provide otherwise, they apply separately for the purposes of the following schemes which they establish—

(a) a scheme for reducing the amounts that would otherwise be charged for electricity supply by licensed electricity suppliers (the "electricity scheme"), and

(b) a scheme for reducing the amounts that would otherwise be charged for gas supply by licensed gas suppliers (the "gas scheme").

(2) The electricity scheme and the gas scheme are referred to collectively as the Energy Bills Discount Scheme for Non-Domestic Customers in Great Britain) (the "scheme").

Energy in scope of the scheme

4.—(1) These Regulations apply to all energy supplied under a supply contract in a scheme period, other than—

(a) any ineligible quantity;

(b) any quantity supplied under an excluded fixed price contract;

(c) any quantity supplied under a supply contract for which an opt-out notice has been given under paragraph (3), and has not been withdrawn.

(2) Where a person has been a supplier during a scheme period but has ceased to hold an electricity supply licence or gas supply licence, the Regulations continue to apply to that person (as if it were a supplier) for the purposes of reconciliation, as provided in regulation 39.

(3) A customer may, by giving notice to a supplier, elect that no discount is to apply in respect of energy supplied under a supply contract between them on and from the date specified in such notice (which may be before, on, or after the date when the notice is given) (an "opt-out notice").

(4) Where a customer has given an opt-out notice, it may give a further notice to the supplier, withdrawing the opt-out notice in respect of energy supplied under the supply contract on and from the date specified in the further notice (which may not be before the date when the notice is given).

Making of rules

5.—(1) Rules made under these Regulations—

(a) must be—

(i) made by the Secretary of State;

(ii) published as soon as is reasonably practicable after they are made;

(b) come into force when they are published or on such later date as they specify.

(2) Rules made under these Regulations may confer a discretion on the Secretary of State.

CHAPTER 3

Basic terms of the scheme

Scheme periods

6.—(1) The first scheme period is the period which begins with 1st April 2023 and ends with 30th September 2023.

(2) The second scheme period is the period which begins with 1st October 2023 and ends with 31st March 2024.

Government supported price and maximum discount

7.—(1) The Secretary of State must, no later than the scheme introduction date, determine and publish, in respect of each scheme period, the scheme parameters for the electricity scheme and for the gas scheme.

(2) The "scheme parameters" are—

(a) a price (the "government supported price", in p/kWh)—

(i) for general supply contracts and ETII supply contracts;

(ii) for QHS supply contracts;

(b) the amount (the "GSP decrement", in p/kWh) of a decrease in the government supported price, to be applied in relation to ETII supply contracts;

(c) an amount (the "maximum discount", in p/kWh) which is the maximum amount of any discount—

(i) for general supply contracts and ETII supply contracts;

(ii) for QHS supply contracts;

(d) the amount (the "MD increment", in p/kWh) of an increase in the maximum discount, to be applied in relation to ETII supply contracts;

(e) the amount (the "minimum supply price", in p/kWh) which is the minimum discounted supply price—

(i) for general supply contracts and ETII supply contracts;

(ii) for QHS supply contracts.

(3) The Secretary of State may, in respect of either scheme period, for the purposes of the electricity scheme or the gas scheme, revise any scheme parameter by publishing a notice that specifies—

(a) the revised scheme parameter;

(b) the date, which must not be earlier than the date of publication, with effect from which the revision is made ("revision date");

(c) whether the revision applies in respect of—

(i) variable price contracts, flexible price contracts or fixed price contracts, and

(ii) in the case of variable price contracts or flexible price contracts, to those contracts entered into before the revision date.

(4) A revised scheme parameter—

(a) applies in respect of supply contracts entered into on or after the revision date;

(b) does not apply in respect of fixed price contracts entered into before that date;

(c) applies, where so specified under paragraph (3)(c)(ii), in respect of variable price contracts or flexible price contracts entered into before that date;

(d) does not in any case apply in respect of energy supplied under a supply contract before that date.

PART 2

Discounted supply price

CHAPTER 1

Determination of prices

Supply price

8.—(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 to be paid in respect of different quantities of energy (whether supplied in different periods, or at different times of day or measured by different meters, or otherwise), the average of such prices—

(i) weighted by the quantities supplied to which each such price applies, or

(ii) where applicable, and to the extent that determining the average under sub-paragraph (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, as defined in section 30 of, and Schedule 6 to, the Finance Act 2000(**a**).

Reference wholesale price – fixed price and variable price contracts

9.—(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.

(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 a scheme period or for different reference wholesale prices to be determined for different periods within a scheme period;

(d) refer to published quotations of wholesale prices for electricity or gas traded in the wholesale markets at different times and for delivery at different times.

(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 more than one reference wholesale price to be determined, 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 in accordance with the methodology, and publish at times decided by the Secretary of State, the reference wholesale prices for variable price contracts and fixed price contracts.

(6) The Secretary of State may amend the methodology by publishing 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 on which the revision takes effect ("effective date"), which must not be earlier than the date on which the revised price was published;

(b) the revised wholesale reference price—

(i) applies in respect of variable price contracts entered into on or after the effective date;

(**a**) 2000 c.17, to which there are amendments not relevant to these Regulations.

(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

10.—(1) In relation to a flexible price contract, the reference wholesale price for any period in which energy is supplied (a "relevant period") is the volume-weighted average contracted wholesale price for the relevant period.

(2) The volume-weighted average contracted wholesale price for a relevant period 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 the relevant period.

(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.

(5) The Secretary of State may make rules about the determination (including as to what is, and what is not, to be taken into account in the determination) of volume-weighted average contracted wholesale prices in respect of flexible supply contracts in accordance with this regulation.

CHAPTER 2

Categorisation of supply contracts

Duty of supplier to categorise contracts

11.—(1) A supplier must, in respect of each of its supply contracts—

(a) determine whether it is a fixed price contract, a flexible price contract or a variable price contract (each being a "category" of supply contract);

(b) in the case of a fixed price contract—

(i) determine the price-fix date;

(ii) determine whether it is an excluded fixed price contract;

(c) in circumstances specified in rules made under paragraph (6), determine whether it is to be treated as comprising more than one supply contract, and if so on what basis.

(2) If a supplier determines that a supply contract is required by any provision of these Regulations or rules made under them to be treated as comprising more than one supply contract, paragraphs (1)(a) and (b) apply separately to each such contract.

(3) A supplier must give notice to the customer of the determinations made under paragraph (1).

(4) The determinations in respect of a supply contract under paragraph (1) must be made and notice under paragraph (3) given by the later of the scheme introduction date and the time at which the supply contract is entered into.

(5) A supplier must apply the methodology established and updated in accordance with regulation 12 in making the determinations under paragraph (1).

(6) The Secretary of State may make rules—

(a) 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;

(b) about the basis on which the price-fix date of a fixed price contract is to be determined;

(c) specifying circumstances in which a supply contract must be treated for the purposes of the scheme as comprising, as to different portions of the energy supplied under it, 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 referred to in paragraph (1)(a).

Methodology for contract categorisation

12. A supplier must—

(a) establish a methodology setting out the basis on which it will make the determinations under regulation 11(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 5;

(c) maintain, in respect of each supply contract, the data necessary to make the determinations under regulation 11(1) in accordance with the methodology;

(d) ensure that it has in place reliable systems and procedures to apply the methodology.

Treatment of supply contracts

13.—(1) A supply contract is to be treated for all purposes of the scheme as a fixed price contract, flexible price contract or variable price contract, according to the category that the supplier (or the Secretary of State, under regulation 69) has determined that it falls into.

(2) Paragraph (1) is subject to any rule made under regulation 11(6)(a) or (c).

(3) 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

14.—(1) Paragraph (2) applies where, as a result of a relevant amendment of a fixed price contract, the contracted wholesale price is fixed under the new contract for any period starting at or after the end of the original fixed term.

(2) 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) Paragraph (4) applies where, as a result of a relevant amendment of a fixed price contract, 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.

(4) 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.

(5) 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.

(6) In this regulation, in respect of a fixed price contract—

(a) "new contract" means the contract which results from the relevant amendment;

(b) "original contract" means the fixed price contract before the relevant amendment;

(c) "original fixed term" means the term for which the contracted wholesale price was fixed under the original contract;

(d) "relevant amendment" means 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.

CHAPTER 3

Energy and Trade Intensive Industries and Domestic Heat Consumers

Interpretation of this Chapter

15.—(1) In this Chapter—

"certified heat supplier" means a qualifying heat supplier in respect of whom a QHS certificate has been issued and not revoked;

"certification date" has the meaning given—

(a) in relation to an ETII certificate, in regulation 16(6);

(b) in relation to a QHS certificate, in regulation 17(6);

"Chapter 3 rules" means rules made by the Secretary of State under regulation 27;

"deemed supply contract" has the meaning given in regulation 23(2);

"domestic heat consumer" means a heat consumer whose consumption of heating or hot water is wholly or mainly for a domestic purpose;

"ETII activity" means an economic activity that falls within the category identified by a SIC code specified in Chapter 3 rules;

"ETII certification criteria" has the meaning given in regulation 16(1);

"ETII customer" means a customer for which the conditions in regulation 18(1) are satisfied;

"ETII energy" has the meaning given in regulation 18(1)(a);

"ETII qualifying activity" means an ETII activity in respect of which the condition in regulation 16(3) is satisfied;

"excepted ETII body" means—

(a) a relevant local authority;

(b) a body of a description specified in Chapter 3 rules;

"heat consumer" means a person who purchases, for their own end consumption, heating or hot water supplied through a heat network;

"higher-tier provider" means, in relation to a provider, another provider who directly supplies or makes available to the first provider energy, heating, hot water or electricity;

"immediate ETII provider" means, in relation to a certified ETII operator, a provider who directly supplies or makes available energy, heating, hot water or electricity to the certified ETII operator;

"lower-tier provider" means, in relation to a provider, another provider to whom the first provider directly supplies or makes available energy, heating, hot water or electricity;

"QHS customer" means a customer for which the conditions in regulation 19(1) are satisfied;

"QHS energy" has the meaning given in regulation 19(1)(a);

"qualifying heat consumer" means a heat consumer (whether or not a domestic heat consumer) supplied with heating or hot water through a qualifying heat network;

"qualifying heat network" means a heat network through which a qualifying heat supplier makes a qualifying heat supply for which the condition in regulation 17(3) is satisfied;

"qualifying heat supplier" means a person who makes and charges for a qualifying heat supply;

"qualifying heat supply" means the supply of heating or hot water through a heat network to heat consumers, where any of those heat consumers is a domestic heat consumer;

"relevant beneficiary" means, in relation to a provider (P1), each certified ETII operator or domestic heat customer to whom (as the case may be) energy is supplied or heating, hot water or electricity is made available—

(a) by P1, or

(b) by another provider (P2) using energy supplied or heating, hot water or electricity made available by P1 (whether directly to P2 or otherwise);

"relevant local authority" means—

(a) in England, a county council, district council, London borough council or parish council, the Common Council of the City of London, or the Council of the Isles of Scilly;

(b) in Wales, a county council, county borough council or community council;

(c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**a**);

"relevant supply contract" means a supply contract under which the customer is an ETII customer or a QHS customer;

"scheme benefit" means the benefit of energy price support under the scheme;

"SIC code" means a code, at the level 'class' defined by 4 digits, included in the UK Standard Industrial Classification of Economic Activities 2007(**b**);

"third party energy", in relation to an ETII applicant or a QHS applicant, means—

(a) gas that the applicant has not produced, or

(b) electricity that the applicant—

(i) has not produced, or

(**a**) Section 2 was amended by the Environment Act 1995 (c. 25), section 120(1) and Schedule 22, paragraph 232(1).
(**b**) (SIC 2997) published by the Office for National Statistics in December 2009 with ISBN number 978-0-230-21012-7.

(ii) has produced using gas that the applicant has not produced.

(2) In this Chapter, a provider (P) is a "main scheme provider" if, and to the extent that—

(a) P is a supplier, or

(b) the ETII energy or QHS energy that P—

(i) supplies or otherwise makes available (directly or indirectly) to others, or

(ii) uses to supply or otherwise make available (directly or indirectly) heating, hot water or electricity to others,

has been provided to any person by a supplier.

(3) In this Chapter, a reference—

(a) to scheme benefit being required to be passed on is to a provider being required to pass on that benefit, as an intermediary (within the meaning of section 19(1) of the Act), under any pass-through regulations;

(b) to a provider being notified by a higher-tier provider of scheme benefit is to the provider being so notified, by a higher-tier provider as such an intermediary, under pass-through regulations.

Energy and trade intensive industries: applications for certificates

16.—(1) Where the Secretary of State receives an ETII application, the Secretary of State must issue a certificate to the ETII applicant, stating that the conditions in paragraphs (2) to (4) (the "ETII certification criteria") are satisfied in respect of the ETII applicant, if—

(a) the ETII application is made in accordance with Chapter 3 rules, and

(b) the Secretary of State having considered the application, determines that those conditions are so satisfied.

(2) The first condition is that the ETII applicant carries on an ETII activity in the United Kingdom.

(3) The second condition is that the ETII applicant carries on that ETII activity using—

(a) third party energy, or

(b) heating, hot water or electricity that—

(i) another person makes available to the ETII applicant, and

(ii) is so made available by that person using energy supplied or otherwise made available to it by a person other than itself or the ETII applicant.

(4) The third condition is that—

(a) the ETII qualifying activities carried on by the ETII applicant are a substantial part of all activities that it carries on in the United Kingdom, or

(b) the conditions in paragraph (5) are satisfied in respect of the ETII applicant.

(5) The conditions are that—

(a) the ETII applicant is the customer under the supply contract under which the energy referred to in paragraph (3)(a) is supplied,

(b) the ETII applicant is an excepted ETII body,

(c) the ETII qualifying activities carried on by the ETII applicant are a substantial part of all activities carried on by it at the premises at which those ETII qualifying activities are carried on, and

(d) in accordance with rules made under regulation 11(6)(c) the supply contract is to be treated as comprising more than one supply contract, of which one is exclusively for supply of energy to those premises.

(6) An ETII certificate must state the certification date, which is—

(a) the scheme start date, where the ETII certification criteria were satisfied on or before that date;

(b) otherwise, the date with effect from which the ETII certification criteria were satisfied.

(7) If any of the ETII certification criteria ceases to be satisfied in respect of a certified ETII operator, the certified ETII operator must, as soon as reasonably practicable, give notice to that effect to its immediate ETII provider and the Secretary of State stating the date of such cessation.

(8) Where, in the absence of measures taken by a person that is a certified ETII operator, the consequence of it being a certified ETII operator would be that Article 10 of the Windsor Framework applies, that person must take those measures.

(9) The Secretary of State may revoke an ETII certificate issued to any person if the Secretary of State determines that—

(a) at the time of the Secretary of State's determination under paragraph (1)(b), any of the ETII certification criteria was not satisfied—

(i) in consequence of the determination being based on information that was materially incorrect or misleading, or

(ii) for any other reason,

(b) any of the ETII certification criteria is no longer satisfied in respect of that person, or

(c) that person has not complied with the duty in paragraph (8).

Qualifying heat suppliers: applications for certificates

17.—(1) Where the Secretary of State receives a QHS application, the Secretary of State must issue a QHS certificate in respect of the QHS applicant, stating that conditions in paragraphs (2) and (3) (the "QHS certification criteria") are satisfied in respect of the QHS applicant and a heat network, if—

(a) the QHS application is made in accordance with Chapter 3 rules, and

(b) the Secretary of State, having considered the application, determines that the QHS certification criteria are satisfied in respect of the QHS applicant and the heat network to which the application relates (the "relevant heat network").

(2) The first condition is that—

(a) the QHS applicant is a qualifying heat supplier, and

(b) the qualifying heat supply is made through the relevant heat network.

(3) The second condition is that the QHS applicant makes the qualifying heat supply using—

(a) third party energy, or

(b) heating or hot water that—

(i) another person makes available to the QHS applicant, and

(ii) is so made available by that person using energy supplied or otherwise made available to it by a person other than itself or the QHS applicant.

(4) A qualifying heat supplier that makes qualifying heat supply in respect of which the condition in paragraph (3) is satisfied must apply for a QHS certificate in respect of the relevant heat network.

(5) A qualifying heat supplier is not under the duty in paragraph (4) if and for so long as it is not aware, and could not reasonably be expected to be aware, that any heat consumer that it supplies through the relevant heat network is a domestic heat consumer.

(6) A QHS certificate must state the certification date, which is—

(a) the scheme start date, where the QHS certification criteria were satisfied on or before that date;

(b) otherwise, the date with effect from which the QHS certification criteria were satisfied.

(7) If either of the QHS certification criteria ceases to be satisfied in respect of a certified heat supplier and the relevant heat network, the certified heat supplier must, as soon as reasonably practicable, give notice to that effect to each higher-tier provider and the Secretary of State, stating the date of such cessation.

(8) The Secretary of State may revoke a QHS certificate issued to any person if the Secretary of State determines that—

(a) at the time of the Secretary of State's determination under paragraph (1)(b), either of the QHS certification criteria was not satisfied:

(i) in consequence of the determination being based on information that was materially incorrect or misleading, or

(ii) for any other reason;

(b) either of the QHS certification criteria is no longer satisfied in respect of that person and the relevant heat network.

(9) A QHS applicant that makes a QHS application in accordance with Chapter 3 rules is not required to submit a notification under regulation 3 of the Heat Network Metering and Billing Regulations 2014(**a**) before 25th July 2023.

ETII customers

18.—(1) The customer under a supply contract is an ETII customer if—

(a) energy supplied under the supply contract is—

(i) energy supplied or otherwise made available, or

(ii) energy used to make heating, hot water or electricity available,

to a certified ETII operator to carry on an ETII qualifying activity ("ETII energy"), and

(b) the supplier under the supply contract has received that certified ETII operator's ETII certificate in accordance with paragraph (2).

(2) For the purposes of paragraph (1), a supplier may receive an ETII certificate—

(a) if the customer under the supply contract is a certified ETII operator, from the Secretary of State or from the customer, or

(b) from a provider that is its customer.

(3) A certified ETII operator may send its ETII certificate to its immediate ETII provider.

(4) Subject to paragraph (5), if a provider that is not a supplier receives an ETII certificate from a certified ETII operator or a lower-tier provider, the provider must as soon as reasonably practicable send the ETII certificate—

(a) to each higher-tier provider, and

(b) if the provider is a customer, to the Secretary of State.

(5) If a provider that is not a supplier receives an ETII certificate and has no higher-tier provider, the provider must as soon as reasonably practicable give notice to the Secretary of State—

(a) identifying the ETII certificate, and

(b) stating that the provider—

(i) has received the certificate, and

(ii) is not a main scheme provider in relation to the certified ETII operator to which it relates.

(6) A supplier that has an ETII customer must give notice—

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

(a) unless it received the ETII certificate from the Secretary of State, to the Secretary of State, identifying the ETII customer as such;

(b) to the ETII customer, informing or confirming to it that it is an ETII customer.

QHS customers

19.—(1) The customer under a supply contract is a QHS customer if—

(a) energy supplied under the supply contract is—

(i) energy supplied or otherwise made available, or

(ii) energy used to make heating, hot water or electricity available

to a certified heat supplier to make a qualifying heat supply ("QHS energy"), and

(b) the supplier under the supply contract has received from its customer that certified heat supplier's QHS certificate.

(2) For the purposes of paragraph (1), a supplier may receive a QHS certificate—

(a) if the customer under the supply contract is a certified heat supplier, from the Secretary of State or from the customer, or

(b) from a provider that is its customer.

(3) Except as otherwise provided in rules, a certified heat supplier must send its QHS certificate to each higher-tier provider, as soon as reasonably practicable after receiving it.

(4) Subject to paragraph (5), if a provider that is not a supplier receives a QHS certificate from a certified heat supplier or a lower-tier provider, the provider must as soon as reasonably practicable send the QHS certificate—

(a) to each higher-tier provider, and

(b) if the provider is a customer, to the Secretary of State.

(5) If a provider that is not a supplier receives a QHS certificate and has no higher-tier provider, the provider must as soon as reasonably practicable give notice to the Secretary of State—

(a) identifying the QHS certificate, and

(b) stating that the provider—

(i) has received the certificate, and

(ii) is not a main scheme provider in relation to the certified heat supplier to which it relates.

(6) A supplier that has a QHS customer must give notice—

(a) unless it received the QHS certificate from the Secretary of State, to the Secretary of State, identifying the QHS customer as such;

(b) to the QHS customer, informing or confirming to it that it is a QHS customer.

Benefit Calculation Periods

20.—(1) This paragraph applies to a relevant supply contract if the billing periods are prescribed in the supply contract.

(2) Where paragraph (1) applies, the customer must, as soon as reasonably practicable after the scheme introduction date or, if later, the date the supply contract is entered into, notify each lower-tier provider of each benefit calculation period which starts or ends in a scheme period.

(3) Where paragraph (1) does not apply, the supplier must, as soon as reasonably practicable after it has decided on a billing period, notify the customer of the corresponding benefit calculation period.

(4) Each provider which is notified by a higher-tier provider of a benefit calculation period must, as soon as reasonably practicable, notify each lower-tier provider of that period.

Determination and redetermination of ETII and QHS proportions

21.—(1) Subject to paragraphs (2) and (3), a main scheme provider that is an immediate ETII provider or certified heat supplier must, as soon as reasonably practicable—

(a) for each benefit calculation period—

(i) after the end of the benefit calculation period, estimate,

(ii) after being notified by a higher-tier provider of the scheme benefit for that period, determine, and

(iii) after a benefit redetermination event occurs, redetermine,

the ETII proportion or (as the case may be) the QHS proportion for that period, and

(b) if it is not the supplier, notify to the higher-tier provider any ETII proportion or QHS proportion estimated, determined or redetermined by it under sub-paragraph (a).

(2) Where such a provider receives an ETII certificate, not having previously received any ETII certificate, then in relation to any benefit calculation period which ends after the certification date of such certificate, the provider must comply with paragraph (1)(a)(i) or (ii) as soon as reasonably practicable after receiving the ETII certificate.

(3) Where the immediate ETII provider is a supplier—

(a) paragraph (1)(a)(i) does not apply, and

(b) the supplier must comply with paragraph (1)(a)(ii) before first issuing an invoice of statement of account for the relevant billing period (and the reference in that paragraph to notification by a higher-tier provider does not apply).

(4) A main scheme provider (P) that is not an immediate ETII provider or certified heat supplier must, for each benefit calculation period, as soon as reasonably practicable after each lower-tier provider has given to P the corresponding notification under paragraph (1)(b)—

(a) estimate, determine or redetermine, and

(b) (except where P is the supplier) notify to the higher-tier provider,

the ETII proportion and the QHS proportion for that period.

(5) In estimating, determining or redetermining the ETII proportion or the QHS proportion for a benefit calculation period in accordance with paragraph (4), the provider must rely on the notifications given to it by lower-tier providers as to their ETII proportions or QHS proportions for that period.

(6) For the purposes of this regulation, there is a "benefit redetermination event" in relation to a main scheme provider and a benefit calculation period where, after the provider has determined or redetermined (under paragraph (1)(b) or (4)) and, where applicable, notified to a higher-level provider the ETII proportion or the QHS proportion for that benefit calculation period, any of the following occurs—

(a) the provider receives an ETII certificate or QHS certificate relating to a person (and heat network, in the case of a QHS certificate) who was not previously counted as a certified ETII operator, or certified heat supplier in relation to that heat network, in determining such ETII proportion or QHS proportion, and the certification date of such certificate is earlier than the end of the benefit calculation period;

(b) the provider is notified that the ETII certificate or QHS certificate has been revoked with effect from a date before the end of the benefit calculation period;

(c) the provider corrects an error in the determination of such ETII proportion or QHS proportion;

(d) the Secretary of State determines such ETII proportion or QHS proportion under regulation 69; or

(e) the provider is notified by a lower-tier provider of any redetermination of an ETII proportion or QHS proportion in respect of that benefit calculation period.

ETII and QHS proportions

22.—(1) The ETII proportion and the QHS proportion applying for any period in respect of a customer or main scheme provider are determined as follows—

(a) the ETII proportion in respect of a customer which is a certified ETII operator and is not a provider, is 1;

(b) the ETII proportion in respect of a main scheme provider (P), is a proportion of the base scheme benefit for that period calculated as—

$$(A + B) / C$$

(c) the QHS proportion in respect of a main scheme provider (P), is a proportion of the base scheme benefit for that period calculated as—

$$D / C$$

Where—

A, if P is a certified ETII operator, is that part of the base scheme benefit which is not required to be passed on by P to any person, and, if P is not a certified ETII operator, is zero;

B is that part of the base scheme benefit which is required to be passed on (by any immediate ETII provider, whether or not that is P) to certified ETII operators;

C is the base scheme benefit;

D is that part of the base scheme benefit which is required to be passed on (by any certified heat supplier, whether or not that is P) to qualifying heat consumers;

provided that if a qualifying heat consumer is also a certified ETII operator, the amount of base scheme benefit required to be passed on to it—

(i) is counted in determining D, and

(ii) is not counted in determining B.

(2) In this regulation "base scheme benefit" means, in respect of a main scheme provider (P), for any period, the scheme benefit, calculated as if the GSP decrement and the MD increment were zero, and as if the government supported price and maximum discount for QHS supply contracts were equal to the government supported price and maximum discount for general supply contracts, that would be provided for that period to P—

(a) where P is the customer, by way of discount under the supply contract;

(b) where P is not the customer, from a higher-tier provider required to pass on such benefit to P.

Separate supply contracts

23.—(1) A supplier must treat a relevant supply contract as comprising up to three contracts, as follows—

(a) a single supply contract in respect of all energy supplied or otherwise made available to, or used to make available heating, hot water or electricity to, certified ETII operators (an "ETII supply contract");

(b) a single supply contract in respect of all energy supplied or otherwise made available to, or used to make available heating or hot water to, certified heat suppliers (a "QHS supply contract");

(c) a single supply contract in respect of so much (if any) of the energy supplied as is not treated as supplied under the ETII supply contract or the QHS supply contract.

(2) Each supply contract within paragraph (1)(a), (b) or (c) is a "deemed supply contract" for the purposes of this Chapter.

(3) Where under rules made under regulation 11(6)(c) a supply contract is to be treated as comprising more than one supply contract—

(a) paragraph (1) applies separately in relation to each of those supply contracts;

(b) the question which one or more of those supply contracts is to be treated as a relevant supply contract is to be determined in accordance with those rules.

(4) Subject to paragraph (6), the supplier must treat the ETII proportion, applying in respect of the customer, of the supplied energy in any period as the energy supplied in that period under the ETII supply contract.

(5) Subject to paragraph (7), the supplier must treat the QHS proportion, applying in respect of the customer, of the supplied energy in any period as the energy supplied in that period under the QHS supply contract.

(6) Where in accordance with rules the supplier identifies a specified discrepancy in relation to an ETII customer, the supplier must—

(a) if and for so long as the discrepancy has not been resolved in accordance with the rules, treat as the energy supplied under the ETII supply contract a reduced proportion of the supplied energy;

(b) if and to the extent the discrepancy is resolved in accordance with the rules, treat as the energy supplied under the ETII supply contract a revised proportion of the supplied energy.

(7) Where in accordance with rules the supplier identifies a specified discrepancy in relation to a QHS customer, the supplier must—

(a) if and for so long as the discrepancy has not been resolved in accordance with the rules, treat as the energy supplied under the QHS supply contract a reduced proportion of the supplied energy;

(b) if and to the extent the discrepancy is resolved in accordance with the rules, treat as the energy supplied under the QHS supply contract a revised proportion of the supplied energy.

(8) In this regulation—

"discrepancy" means—

(a) in relation to an ETII customer, a discrepancy between—

(i) the information that a supplier holds in relation to the customer, and

(ii) information that the Secretary of State holds in relation to a certified ETII operator;

(b) in relation to a QHS customer, a discrepancy between—

(i) the information that a supplier holds in relation to the customer, and

(ii) information that the Secretary of State holds in relation to a certified heat supplier;

"reduced proportion" means a proportion, that is less than is provided in paragraph (4) or (5) (and may be zero), prescribed in or determined in accordance with the rules;

"revised proportion" means a proportion, that is not less than the reduced proportion and not greater than is provided in paragraph (4) or (5), prescribed in or determined in accordance with the rules;

"specified discrepancy" means a discrepancy of a kind that the Secretary of State—

(a) considers to provide reasonable grounds to doubt that the result of determining the energy supplied—

(i) under an ETII supply contract, on the basis in paragraph (4), or

(ii) under a QHS supply contract, on the basis in paragraph (5),

would be in accordance with the Regulations, and

(b) specifies in rules;

"supplied energy" means the energy supplied under a relevant supply contract in a period.

Supply redetermination event

24.—(1) For the purposes of this regulation there is a "supply redetermination event" in relation to a billing period under a supply contract where, after the supplier has issued an invoice or statement of account in respect of that billing period—

(a) the supplier is notified under regulation 21 by the customer of an ETII proportion or QHS proportion or a change in an ETII proportion or QHS proportion, for the corresponding benefit calculation period, which was not taken into account in determining the charges under that invoice of statement of account, or

(b) revised proportions apply in respect of energy supplied under the contract in accordance with regulation 23(6)(b) or (7)(b).

(2) Where a supply redetermination event occurs, the supplier must—

(a) if it is not already doing so, comply with regulation 23(1);

(b) determine or (on the basis of such event) redetermine the quantities of energy supplied in the billing period under each deemed supply contract;

(c) determine or redetermine the charges for energy supplied in the billing period under each deemed supply contract accordingly;

(d) credit or debit the customer for the charges so determined or redetermined (whether by a new or revised invoice or statement of account for the billing period or a credit or debit in the invoice or statement of account for a later billing period);

(e) provide to the customer a statement showing, in respect of each deemed supply contract, the amount of the charges for the billing period determined or redetermined under paragraph (c).

(3) The supplier must comply with paragraph (2)—

(a) if the supply redetermination event occurs on or after 1st April 2023 but before 1st July 2023, within the period of 30 days beginning with the date on which the supply redetermination event occurred (the "SRE date");

(b) in the case of any later supply redetermination event—

(i) if the condition in paragraph (4) is satisfied, within the period of 30 days beginning with the SRE date;

(ii) otherwise, within the period of 90 days beginning with the SRE date.

(4) The condition is that the change in ETII proportion or QHS proportion, or the revision in the charges, under any of the deemed supply contracts, meets a test specified in Chapter 3 rules.

Duties of providers

25.—(1) This regulation applies in respect of the duties that apply to—

(a) a qualifying heat supplier under regulation 17(4);

(b) a provider under regulations 18, 19, 20 and 21.

(2) Those duties are—

(a) owed to the Secretary of State and each relevant beneficiary, and

(b) enforceable in civil proceedings—

(i) for an injunction,

(ii) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988(**a**), or

(iii) for any other appropriate remedy or relief.

Chapter 3 default

26.—(1) For the purposes of these Regulations a person (the "defaulting person") is in default of this Chapter ("Chapter 3 default") if—

(a) an ETII certificate or QHS certificate issued to that person is revoked as a result of that person having made a materially incorrect or misleading statement in an ETII application or QHS application;

(b) that person fails to comply with regulation 16(7) or 17(7);

(c) that person is a certified ETII operator or a provider and makes an arrangement or takes any other step the purpose or main purpose of which is to increase the ETII proportion or QHS proportion applying to any person in respect of any benefit calculation period.

(2) Where a person is in Chapter 3 default, the "default benefit amount" in respect of the default is the amount by which the scheme benefit provided to any person in respect of all benefit calculation periods is greater than it would have been but for the Chapter 3 default.

(3) The Secretary of State may by notice to a defaulting person require the defaulting person to pay the default benefit amount to the Secretary of State.

(4) Where the Secretary of State requires a defaulting person to pay the default benefit amount, the Chapter 3 default is not a benefit redetermination event for the purposes of regulation 21(6) or a supply redetermination event for the purposes of regulation 24.

(5) Where an arrangement or step referred to in paragraph (1)(b) is made or taken by two or more persons—

(a) each of those persons is a defaulting person in relation to the Chapter 3 default;

(b) the Secretary of State may require payment of the default benefit amount by any one or (as to different parts thereof) more of those persons;

(c) in determining the default benefit amount, an amount of scheme benefit is not counted more than once by virtue of being passed on by one person to another.

(6) An amount payable to the Secretary of State by a defaulting person in respect of a default benefit amount is recoverable as a civil debt by the Secretary of State.

Chapter 3 rules

27.—(1) The Secretary of State must in rules specify SIC codes which identify categories of activities which the Secretary of State considers to be activities with high energy intensity and trade intensity.

(2) The Secretary of State must make rules about ETII applications and QHS applications.

(3) Rules made under paragraph (2) must in particular make provision about—

(a) the form, content and submission of ETII applications and QHS applications;

(b) any information, documents or other evidence required to be submitted with such applications;

(c) the handling of applications by the Secretary of State.

(4) Rules made under paragraph (2) may also make provision about—

(a) how it is to be determined, for the purposes of regulation 16(4)(a) or 16(5)(c) whether ETII qualifying activities are a substantial part of a person's activities;

(**a**) 1988 c. 36.

(b) the minimum period for which an ETII applicant must satisfy the ETII certification criteria before it may make an ETII application;

(c) the time by which an ETII application must be made in order for the ETII applicant to be eligible to be certified for the purposes of the scheme;

(d) the time by which a qualifying heat supplier must apply for a QHS certificate;

(e) whether an activity carried on by another person on behalf of an excepted ETII body is to be treated as carried on by that body for the purposes of regulation 16(5)(c).

(5) The Secretary of State may make rules about ETII certificates and QHS certificates.

(6) Rules made under paragraph (5) may in particular make provision about—

(a) the nature, form and content of a certificate;

(b) the sending and receiving of a certificate;

(c) the revocation of a certificate.

(7) The Secretary of State may make rules about—

(a) the notification of benefit calculation periods under regulation 20, and

(b) the estimation, determination and notification of ETII proportions and QHS proportions, under regulation 21.

(8) Rules made under paragraph (7) may in particular make provision about—

(a) the form and content of such notifications, and any information, documents or other evidence to be submitted with them;

(b) how such estimates and determinations are to be made;

(c) the timing of giving such notifications.

(9) The Secretary of State may make rules about the duty in regulation 16(8).

(10) The Secretary of State must make rules specifying applicable tests for the purposes of regulation 24(4) (supply redetermination event).

CHAPTER 4

Discounting supply price under supply contracts

Calculation of base discount

28.—(1) Subject to paragraph (3)—

(a) the "base discount" in respect of a supply contract for any period ("P") is calculated as follows—

$$(RWP - GSP)$$

(b) the "increased discount" in respect of an ETII supply contract for P is calculated as follows—

$$(RWP - (GSP - GSPD))$$

Where—

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

GSP is the government supported price applicable to that supply contract;

GSPD is the GSP decrement.

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

(3) Where regulation 58 applies, the base discount is reduced and (for an ETII supply contract) the increased discount is reduced in accordance with that regulation.

(4) Where paragraph (1) of regulation 49 applies, the reference wholesale price is determined under sub-paragraph (c) of that paragraph.

Calculation of discount

29.—(1) For the purposes of these Regulations, "the discount" means 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.

(2) In the case of a general supply contract or a QHS supply contract, the discount is calculated as follows—

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

Where—

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

MD is the maximum discount applicable to that supply contract;

SP is the supply price for the period;

MP is the minimum supply price applicable to that supply contract.

(3) In the case of an ETII supply contract the discount is calculated as follows—

$$0.3 (\max \{\min (BD, MD, (SP - MP)), 0\}) + 0.7 (\max \{\min (ID, IMD, (SP - RMP)), 0\})$$

Where—

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

MD is the maximum discount applicable to that supply contract);

SP is the supply price for the period;

MP is the minimum supply price applicable to that supply contract;

ID is the increased discount in respect of that supply contract for the period;

IMD is the maximum discount applicable to an ETII supply contract plus the MD increment;

RMP is the minimum supply price applicable to an ETII supply contract less the GSP decrement.

Duty of suppliers to provide the discount

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

(a) determine the base discount, increased discount (in the case of an ETII supply contract) and the discount for any period;

(b) reduce the supply price 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 its invoice or other statement of account, or in a separate communication given within the period of 15 days beginning on the date that it issued its invoice or other statement of account, in respect of that billing 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 start 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, and thereafter whenever required, to ensure that the amounts paid by the customer over each scheme period reflect charges at the discounted supply price for supply in the scheme period.

(6) Arrangements and requirements referred to in paragraph (5)(a) include (without limitation) arrangements or requirements for advance payment, payment by direct debit, payment by instalments, security or credit cover for payment.

Consequences of change in contract categorisation

31. Where the categorisation of a supply contract under regulation 11 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

(d) 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.

PART 3

Discount recovery

CHAPTER 1

Entitlements in respect of discount recovery

Entitlements in respect of discount recovery

32.—(1) A supplier is entitled to recover from the Secretary of State, as provided in this Part, the amount by which, in any period, its charges to customers under supply contracts are reduced by the application of discounts in accordance with Part 2 and Part 4.

(2) The amount (the "base recovery amount") which a supplier is entitled to recover from the Secretary of State in respect of energy supplied in any period under a supply contract is the quantity supplied multiplied by the discount.

(3) In order to obtain discount recovery a supplier must submit a claim in accordance with Chapter 4 (a "discount recovery claim").

(4) The Secretary of State is entitled to recover from a supplier any amount paid to the supplier under this Part that exceeds what the supplier is entitled to recover under this Part.

Determination of amounts subject to discount recovery

33.—(1) For each supply contract, the "supply contract recovery amount" is the amount that is payable to or by the supplier in respect of a discount recovery claim, and is calculated as the sum of—

(a) the base recovery amount, in respect of energy supplied in the period of supply specified in the claim, and

(b) each of the following, so far as it qualifies under paragraph (2)—

(i) any adjustment of a base recovery amount for an earlier period of supply arising as a result of energy reconciliation;

(ii) any adjustment of a base recovery amount for an earlier period of supply arising as a result of supply redetermination event;

(iii) any adjustment of a base recovery amount in respect of an earlier period of supply arising as a result of the correction of any error in the calculation of that amount in accordance with the discount recovery rules;

(iv) any adjustment of the base recovery amount in respect of an earlier period of supply arising as a result of failure to apply (or to apply correctly) any of regulations 49, 54 or 58 in the determination under sub-paragraph (a) of the base recovery amount for that earlier period of supply;

(v) any adjustment of the base recovery amount in respect of an earlier period of supply where the customer has given an opt-out notice effective from a date before the notice was given;

(vi) any adjustment in consequence of a determination of the Secretary of State under regulation 68 or 69 or a reconsidered decision of the Secretary of State under regulation 70.

(2) An amount in paragraph (1)(b) qualifies for inclusion in a discount recovery claim where it was not taken into account in the supply contract recovery amount under any prior discount recovery claim.

(3) In paragraph (1)(b), an amount which is—

(a) payable to the supplier, is counted as a positive amount;

(b) payable to the Secretary of State, is counted as a negative amount.

(4) The period of supply specified for any supply contract in a discount recovery claim—

(a) must be a period ending before the date on which the claim is submitted;

(b) must not include any day which falls in the period of supply specified for that supply contract in any earlier claim.

(5) A supplier may not claim discount recovery in respect of a supply contract unless it has complied with regulation 11(1) in relation to the contract.

(6) For any supply contract, where any of the amounts referred to in paragraph (1)(b) is an amount payable to the Secretary of State, the supplier must—

(a) submit a discount recovery claim in accordance with Chapter 4 in the first claim window which starts after such amount has been determined;

(b) include those amounts in the supply contract recovery amount in that discount recovery claim.

(7) The amount payable by the Secretary of State to a supplier in respect of a discount recovery claim may be adjusted in accordance with regulation 41(2).

(8) Amounts under paragraph (1)(b) continue to be determined and payable by or to a supplier after the scheme end date in accordance with regulation 39.

(9) Where a customer gives an opt-out notice in respect of a supply contract, this Part continues to apply in relation to the amounts referred to in paragraph (1)(b) for any period of supply under the supply contract before the day from which the opt-out notice was effective.

Payment of amounts in respect of discount recovery

34.—(1) The amount payable in respect of a supplier's discount recovery claim as a whole ("the recovery claim amount") is, subject to the application of regulation 41, the sum of—

(a) the supply contract recovery amounts payable in respect of each of its supply contracts, and

(b) any amount carried forward from the preceding discount recovery claim under paragraph (3)(b).

(2) The recovery claim amount is payable—

(a) to the supplier, or

(b) as the case may be, to the Secretary of State, subject to paragraph (3)(b),

no later than the 10th business day after the last day of the claim window in which the claim was submitted.

(3) If (in respect of a discount recovery claim) the recovery claim amount is negative—

(a) that amount is payable (disregarding its negative sign) by the supplier to the Secretary of State, but

(b) the Secretary of State may, by notice to the supplier, elect that such amount is to be carried forward and deducted in calculating the recovery claim amount under the next following discount recovery claim submitted by the supplier.

(4) Where any amount is owing and unpaid by a supplier to the Secretary of State under either the electricity scheme or the gas scheme, the Secretary of State may set that amount off against any amount which is payable to the supplier by the Secretary of State under either the electricity scheme or the gas scheme.

(5) Where any amount is owing and unpaid by a supplier to the Secretary of State under either the scheme or EBRS, the Secretary of State may set that amount off against any amount which is payable to the supplier by the Secretary of State under either EBRS or the scheme.

(6) If an amount payable by a supplier or the Secretary of State under this regulation is not paid by the due date, simple interest is payable on the unpaid amount, from the day following the due date until the day on which the amount is paid in full, at a rate calculated as base rate plus 2% per annum.

(7) An amount payment of which is withheld by the Secretary of State under regulation 37 is not an amount payable by the Secretary of State for the purposes of paragraph (5) unless and until the amount is released under regulation 38.

(8) An amount payable to a supplier or the Secretary of State under this regulation is recoverable as a civil debt by the person to which it is payable.

Assignment of rights in respect of payment

35. A supplier may not assign, transfer or otherwise deal with its right to receive payment of amounts in respect of discount recovery under this Part except with the consent of the Secretary of State.

Absolute right of Secretary of State to recover

36. The Secretary of State may at any time (including after the reconciliation cut-off date) require a supplier to pay any amount which has been paid to the supplier in excess of what the supplier is entitled to be paid under the scheme.

CHAPTER 2

Withholding of payments in respect of discount recovery

Rights of Secretary of State to withhold payment

37.—(1) The Secretary of State may withhold payment of all or part of the amount payable to a supplier in respect of a recovery claim amount in the following circumstances—

(a) if the Secretary of State has reasonable grounds to believe that paragraph (2) applies in relation to the supplier or a customer of the supplier;

(b) if the Secretary of State has reasonable grounds to believe that, as a result of the application of Part 4, any significant amounts are payable and unpaid or (if Part 4 were complied with) would become payable to the Secretary of State;

(c) if, in relation to any discount recovery claim—

(i) the supplier has failed to provide (as required under Chapter 4) supporting information, or

(ii) the Secretary of State has reasonable grounds to believe that the supporting information provided is incorrect,

and as a result the Secretary of State is unable to verify any of the amounts claimed;

(d) if paragraph (4) applies;

(e) if an event of insolvency has occurred in relation to the supplier and the Secretary of State considers that any amounts will in future become payable by the supplier to the Secretary of State under the scheme;

(f) if, not more than 30 days before the scheme end date, the Secretary of State considers it appropriate to establish a reserve in respect of the amounts that may become payable by the supplier after the scheme end date by the operation of regulation 39.

(2) This paragraph applies if, in connection with the scheme, a supplier or a customer has acted dishonestly, provided materially misleading information, or failed to take proper measures to prevent or report actual or anticipated fraud or corruption.

(3) Where paragraph (2) applies as a result of the acts or omissions of a customer, only that part of the recovery claim amount referable to that customer's supply contract may be withheld under paragraph (1)(a).

(4) This paragraph applies if—

(a) the Secretary of State considers that a supplier is failing to meet acceptable standards in the submission of discount recovery claims under the discount recovery rules,

(b) the Secretary of State has given notice to that effect to the supplier, giving reasons for the Secretary of State's view, and requiring the supplier to take measures to remedy such failings by a date specified in the notice, and

(c) the supplier does not, by that date, satisfy the Secretary of State that it has taken those measures.

(5) For the purposes of paragraph (1)(e), "event of insolvency" means any of the following in relation to a supplier—

(a) it is, or is deemed for the purposes of section 123(1) or (2) of the Insolvency Act 1986(**a**) to be, unable to pay its debts as they fall due;

(b) it admits its insolvency or its inability to pay its debts as they fall due;

(c) it suspends making payments on any of its debts or announces an intention to do so;

(d) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the rescheduling or restructuring of any of its indebtedness;

(e) a moratorium is declared in respect of any of its indebtedness;

(f) any step is taken with a view to a moratorium or a composition, compromise assignment or arrangement with any of its creditors, including but not limited to a voluntary arrangement, scheme of arrangement or a restructuring plan;

(g) a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution to appoint a liquidator or administrator, or to petition for or to file documents with a court or any registrar for its winding-up, administration or dissolution or any such resolution is passed;

(h) any person presents a petition, or files documents with a court or any registrar for its winding-up, administration or dissolution or seeking relief under any applicable bankruptcy, insolvency, company or similar law other than any such petition or filing which is frivolous or vexatious and is discharged, stayed or dismissed within 15 business days beginning on the date when the petition was presented or the filing made;

(i) any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;

(j) its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer in respect of it or any of its assets;

(k) any other analogous step or procedure is taken in any jurisdiction (whether England and Wales or elsewhere).

Release of amounts withheld

38.—(1) Paragraph (2) applies if—

(a) the Secretary of State withholds payment under regulation 37(1)(b), and

(b) the amounts (if any) payable to the Secretary of State as a result of the application of Part 4 are—

(i) agreed or determined by the supplier under any provision of Part 4, or

(ii) determined by the Secretary of State under regulation 69 or 70.

(2) Where this paragraph applies, the Secretary of State must release the amount withheld, or so much of it as exceeds any amount agreed or determined to be payable, within a reasonable time after the agreement or determination.

(3) If—

(a) the Secretary of State withholds payment under regulation 37(1)(c), and

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(**a**) 1986 c. 45; there are no relevant amendments to section 123.

(b) the supplier provides the supporting information or (as the case may be) correct supporting information,

the Secretary of State must, within a reasonable time, release the amount withheld or so much, if any, of it as is shown (by such supporting information) to be payable by the Secretary of State.

(4) If—

(a) the Secretary of State withholds payment under regulation 37(1)(d), and

(b) the supplier demonstrates to the satisfaction of the Secretary of State that the supplier has taken the measures referred to in regulation 37(4)(b),

the Secretary of State must, within a reasonable time, release the amount withheld, less any amount established not to be payable by the Secretary of State.

(5) If the Secretary of State withholds payment under regulation 37(1)(e)—

(a) simple interest at base rate runs on the amount withheld from the day following the day when such amount was otherwise due for payment to the supplier to the day on which it is paid;

(b) the Secretary of State must release the amount withheld, together with the accrued interest, or so much, if any, of it as exceeds the amounts finally determined as payable by the supplier, when those amounts are finally determined.

(6) If the Secretary of State withholds payment under regulation 37(1)(f)—

(a) simple interest at base rate runs on the amount withheld from the day following the day when such amount was otherwise due for payment to the supplier to the day on which it is paid;

(b) the Secretary of State must keep under review the amount withheld in comparison with the amounts which are payable in consequence of regulation 39 by the supplier or the Secretary of State;

(c) the Secretary of State may release a part of the amount withheld where, on the basis of the review under sub-paragraph (b), the Secretary of State considers the amount held in reserve exceeds what is appropriate;

(d) the Secretary of State must release the amount withheld, or so much of it as remains withheld, together with accrued interest, within the period of 5 business days beginning with the reconciliation run-off date.

CHAPTER 3

Reconciliation run-off

Reconciliation run-off

39.—(1) This regulation provides for reconciliation and adjustment to continue, after the scheme end date, in respect of claims for discount recovery in respect of periods of supply within either scheme period.

(2) The provisions of this Part continue to apply, on the basis set out in paragraph (3), with effect from the scheme end date until the reconciliation run-off date.

(3) No day after the scheme end date is counted in any period of supply in respect of any supply contract, and accordingly there is no base recovery amount in respect of any period after the scheme end date.

(4) Unless otherwise permitted by the Secretary of State, a supplier must submit a discount recovery claim in each claim window in the reconciliation run-off period.

(5) The Secretary of State must determine, in respect of each supplier or some or all suppliers collectively, the date after which it is not likely that any material amounts will be calculated under regulation 33(1)(b) (such date, in respect of a supplier, the "reconciliation run off date"), and give notice to the supplier or suppliers of that date.

(6) In this regulation—

(a) the "reconciliation run-off period" is the period beginning with the day after the scheme end date and ending with the reconciliation run-off date;

(b) the "scheme end date" is—

(i) in relation to a supplier who ceases to hold an electricity supply licence or gas supply licence, the date on which the supplier ceases to hold that licence;

(ii) in relation to any other supplier, the last day of the second scheme period.

CHAPTER 4

Procedure for discount recovery

Submission of a valid discount recovery claim

40.—(1) A supplier may apply for discount recovery by submitting a discount recovery claim to the Secretary of State, setting out—

(a) the date on which the claim is submitted;

(b) the supply contracts in respect of which discount recovery is claimed;

(c) for each such supply contract—

(i) the period of supply to which the claim relates, and

(ii) the supply contract recovery amount;

(d) any amount carried forward from the preceding discount recovery claim under regulation 34(3)(b);

(e) the details required under regulation 42 in respect of any supply contract;

(f) details of any opt-out notice which has been given or withdrawn by a customer since—

(i) the preceding discount recovery claim, or

(ii) in the case of the first such claim, the scheme introduction date,

(g) the recovery claim amount.

(2) A supplier may submit only one discount recovery claim, relating to all supply contracts for which it claims discount recovery, in any claim window.

(3) But paragraph (2) does not prevent the supplier from submitting a replacement discount recovery claim as provided in regulation 41(1) in any claim window.

(4) A valid discount recovery claim is one that meets—

(a) the requirements in this regulation, and

(b) the further requirements for a valid discount recovery claim set out in the discount recovery rules.

Invalid, erroneous or absent discount recovery claims

41.—(1) Where the Secretary of State considers that a claim submitted by a supplier is not a valid discount recovery claim the Secretary of State may—

(a) decline to make any payment in respect of it, or

(b) elect to pay part only of the amount claimed,

until the invalidity is corrected or the claim is replaced by a valid discount recovery claim.

(2) Where the Secretary of State considers that a discount recovery claim is valid but any amount set out in the claim is erroneously stated—

(a) the Secretary of State, after taking reasonable steps to resolve the matter with the supplier, may adjust the amount of the claim to reflect what the Secretary of State considers to be the correct amount;

(b) the amount payable under regulation 34 by or to the Secretary of State in respect of the discount recovery claim is the adjusted amount under sub-paragraph (a).

(3) If in a claim window a supplier does not submit a discount recovery claim, and the Secretary of State considers that, if a claim had been submitted on the last day of the claim window, the recovery claim amount, calculated disregarding any base recovery amount, would be an amount payable to the Secretary of State—

(a) the Secretary of State may give notice to the supplier setting out that recovery claim amount and details of how it was calculated;

(b) the notice is to be treated as a valid discount recovery claim for the purposes of this Chapter.

Reporting details of Part 4 arrangements

42.—(1) A supplier must include, in each discount recovery claim that it submits—

(a) each declaration received from a customer under regulation 48(1)(b) or 53(1)(b) or sent to or received from a customer under regulation 57(2) since the preceding discount recovery claim (or in the case of the first, since the scheme introduction date);

(b) details of any customer to which, since the preceding discount recovery claim (or in the case of the first, since the scheme introduction date), the supplier has given notice under regulation 48(2)(b) or regulation 53(2)(b), unless the customer has either sent a declaration (as referred to in sub-paragraph (a)) or confirmed to the supplier in writing that the Chapter under which the supplier gave that notice does not apply.

(2) A supplier must include, in each discount recovery claim that it submits, the following matters in respect of the period of supply to which the discount recovery claim relates, and any other period of supply for which such matters have not been included in a prior discount recovery claim—

(a) in relation to any supply contract in respect of which Chapter 1 or 2 of Part 4 applies, details of each declaration submitted by the customer, and each calculation or determination made by the supplier, under regulation 49(2) or 54(3);

(b) in relation to any supply contract in respect of which Chapter 3 of Part 4 applies, details of each notice given or received by the supplier under regulation 58(1)(b)(ii) and confirmation that the requirements in regulation 58(1)(c) are being complied with.

Discount recovery rules

43.—(1) The Secretary of State must make rules about discount recovery.

(2) Rules made under paragraph (1) may in particular make provision about—

(a) establishing arrangements for the making of payments to and by suppliers under this Part, including the notification of bank account details;

(b) the means by which and the form in which a supplier may submit a discount recovery claim, and any other requirements to be met in respect of the claim for it to be a valid discount recovery claim;

(c) the supporting information that a supplier must submit with a discount recovery claim;

(d) the review and validation of the discount recovery claim and initial verification of the supporting information;

(e) any adjustment of the amount of the claim under regulation 41(2);

(f) the payment of recovery claim amounts;

(g) the investigation of discount recovery claims and verification of supporting information after payment has been made;

(h) the correction of errors identified by such further investigation and verification.

(3) Subject to paragraph (4), rules made under paragraph (1) must specify the claim windows.

(4) The rules may provide, in respect of claim windows starting after the end of the second scheme period, that such windows, instead of being set out in the rules, are to be determined and published by the Secretary of State at intervals decided by the Secretary of State.

Claim windows

44.—(1) Regardless of whether claim windows are specified under regulation 43(3) or published under regulation 43(4)—

(a) the first claim window must start not more than 20 business days after the scheme introduction date;

(b) each claim window must have a duration of not less than 8 business days;

(c) the last claim window must start not less than 24 months after the second scheme period ends (but this is without prejudice to the determination by the Secretary of State of the reconciliation run-off date in respect of any supplier, and subject to paragraph (3));

(d) after the first claim window, at least one claim window must start in each month of a scheme period;

(e) after the second scheme period ends, each claim window must start not later than 6 months after the start of the previous claim window.

(2) The dates of claim windows determined under regulation 43(4) must be published at least 15 days in advance of each such claim window.

(3) Where claim windows are published under regulation 43(4), after the Secretary of State has determined and published the last reconciliation run-off date in respect of any supplier, the Secretary of State need not determine and publish any claim window that starts after that date.

Delegation of functions related to discount recovery

45.—(1) The Secretary of State may delegate to any person the performance of any of the Secretary of State's functions under the discount recovery rules.

(2) Where, in performing those functions, the delegate is required to make or receive any payment or give or receive any communication to or from suppliers, the Secretary of State must publish a notice of the delegation identifying the functions which the delegate is to perform.

(3) A notice under paragraph (2) may specify that paragraph (4) applies in relation to the delegate.

(4) Where this paragraph applies, subject to any limitations or conditions in the notice, and without prejudice to any provision of any contract between the delegate and any person, the delegate is not liable in damages for anything done or omitted to be done by it in the exercise or purported exercise of the functions delegated to it.

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

46.—(1) For the purposes of this Chapter—

"arrangement benefit" has the meaning given in regulation 49(1)(a);

"balancing services" means a customer varying its consumption of energy in order to provide a service—

(a) to a person holding a transmission licence, in connection with the balancing of flows of electricity onto and off a transmission system, or

(b) to a gas transporter, in connection with the balancing of flows of gas into and out of a pipe-line system;

"Chapter 1 arrangement" means an arrangement of the kind described in regulation 47(1)(b);

"contract financial exposure" has the meaning given in regulation 47(1)(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;

"effective financial exposure" has the meaning given in regulation 47(1)(b);

the "initial declaration date" in respect of a supply contract is—

(a) the scheme introduction date, if on that date the customer has made a Chapter 1 arrangement and is party to the supply contract;

(b) in any other case, the date on which the customer—

(i) enters into the supply contract, having already made a Chapter 1 arrangement, or

(ii) makes a Chapter 1 arrangement, being already a party to the supply contract;

"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 second scheme period.

(2) In paragraph (1)(b)—

"gas transporter" and "pipe-line system" have the meanings given to them in section 5(10) of the Gas Act 1986(**a**);

"transmission licence" has the meaning given in section 6(1)(b) of the Electricity Act 1989(**b**);

"transmission system" has the meaning given to it in section 4(4) of that Act 1989(**c**).

Application of this Chapter

47.—(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 April 2023 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 a 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;

(**a**) 1986 c. 44. The definition of "pipe-line system" was inserted by the Energy Act 2004, section 149 (1) and (3).
(**b**) 1989 c. 29. The definition of "transmission licence" was substituted by the Energy Act 2004, section 136(1).
(**c**) The definition of "transmission system" was substituted by section 135(4) of the Energy Act 2004.

(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

48.—(1) A customer must, as soon as practicable and in any event within the period of 21 days beginning with 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 in accordance with paragraph (3)—

(a) determine whether either of the circumstances in regulation 47(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).

(3) A supplier must comply with paragraph (2)—

(a) when it enters into a supply contract, or

(b) in the case of a supply contract entered into before the scheme introduction date, within the period of 45 days beginning with the scheme introduction date.

Adjustment of discount

49.—(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 calculated as—

$$\{CFE - EFE\}$$

Where—

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 9 or in accordance with regulation 10) 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 48(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 the period of 14 days beginning with 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 under regulation 28 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—

(a) an estimate of the arrangement benefit 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 made when those steps are completed.

Rules in relation to this Chapter

50.—(1) The Secretary of State may make rules about Chapter 1 arrangements.

(2) Rules made under paragraph (1) may in particular make provision about—

(a) the kinds of arrangements which fall, or factors which indicate whether arrangements fall, within regulation 47(1)(b);

(b) the basis on which contract financial exposure or effective financial exposure is to be determined;

(c) the basis on which arrangement benefit is to be allocated between supply contracts under regulation 49(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

51. For the purposes of this Chapter—

(a) "Chapter 2 arrangement" means an arrangement of the kind described in regulation 52(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—

(i) the scheme introduction date, if on that date the customer has made a Chapter 2 arrangement and is party to the supply contract;

(ii) in any other case, the 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 second 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

52.—(1) Subject to paragraph (2), 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 April 2023 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

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 sub-paragraphs (a) or (b).

Customer declaration where this Chapter applies

53.—(1) A customer must, as soon as practicable and in any event within the period of 21 days beginning with 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 in accordance with paragraph (3)—

(a) determine whether either of the circumstances in regulation 52(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).

(3) A supplier must comply with paragraph (2)—

(a) when it enters into a supply contract, or

(b) in the case of a supply contract entered into before the scheme introduction date, within the period of 45 days beginning with the scheme introduction date.

Determination of ineligible quantity

54.—(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) In paragraph (1)(b) the corresponding proportion is the proportion of all of the electricity stored and not used or lost in storage that corresponds to the amount of grid-delivered electricity.

(3) 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 53(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 the period of 14 days beginning with 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.

(4) 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 (3) are completed, and

(b) a subsequent reconciliation will be performed when those steps are completed.

Rules in relation to this Chapter

55.—(1) The Secretary of State may make rules about Chapter 2 arrangements.

(2) Rules made under paragraph (1) may in particular make provision 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 52(1)(b);

(b) the circumstances in which, by virtue of regulation 52(2), this Chapter does not apply;

(c) the method by which it is to be determined what part of the quantity of electricity or gas supplied is an ineligible quantity;

(d) the basis on which a corresponding proportion (as referred to in regulation 54(2)) 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

56. In this Chapter—

"abusive arrangement" means an arrangement of the kind described in regulation 57(1);

"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.

Application of this Chapter and declaration of abusive arrangement

57.—(1) This Chapter applies in respect of a supply contract if either or both of the customer or the supplier 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 send to the other contract party a declaration to that effect.

(3) The declaration must be sent as soon as practicable and in any event within the period of 21 days beginning with—

(a) the date on which the abusive arrangement is made, or

(b) if the abusive arrangement was made before the scheme introduction date, the scheme introduction date.

Reduction of discount

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

(a) the base discount and (in the case of an ETII supply contract) the increased 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 party specified in paragraph (2) must promptly and as frequently as is required to give effect to this regulation—

(i) determine the reduction in the discount required under sub-paragraph (a);

(ii) give notice of that reduction to the other contract party;

(c) the supplier must—

(i) reduce the base discount and (in the case of an ETII supply contract) the increased discount by the amount determined under sub-paragraph (a);

(ii) determine or redetermine its charges for energy supplied accordingly.

(2) The party is—

(a) the supplier, if it is party to the abusive arrangement;

(b) otherwise, the customer.

Rules in relation to this Chapter

59. 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.

PART 5

Further provisions

CHAPTER 1

Duties of suppliers in connection with the scheme

Increases in charges and other changes in relation to supply contracts

60.—(1) A supplier must not, in respect of energy supplied under a supply contract, unreasonably—

(a) increase the rates at which it charges any amounts payable by the customer under the supply contract,

(b) expose a customer to any additional risk, or

(c) change any of the following so they are less favourable to the customer—

(i) the terms of the supply contract;

(ii) the terms on which the supplier offers to enter into supply contracts;

(iii) the process by which prices or charges payable under supply contracts are set;

(iv) the way in which the supplier exercises its rights under its supply contracts.

(2) For the purposes of determining whether a supplier has behaved unreasonably in doing any of the things referred to in paragraph (1)(a) to (c)—

(a) a supplier's conduct is, in particular, unreasonable if, and to the extent that, the conduct, or the supplier's ability to retain the customer as a customer while engaging in it, is facilitated by the existence or operation of the scheme;

(b) it is, in particular, reasonable for a supplier to increase its charges—

(i) to its customers collectively, by an amount that in aggregate does not exceed the efficiently incurred costs of complying with these Regulations;

(ii) to any customer, by an amount that does not exceed its fair and reasonable share of such efficiently incurred costs.

CHAPTER 2

Deemed terms of supply contracts

Deemed terms of supply contracts

61.—(1) Subject to paragraphs (3) and (4), terms to the following effect are implied into a supply contract—

(a) that in respect of energy supplied under the contract during a scheme period, the supply price is reduced by the discount as required under Part 2 and Part 4;

(b) that where the application of the Regulations changes the discount or a quantity of energy to which the discount applies, the rights and obligations of the supplier and customer in respect of payment for energy supplied are determined, or as necessary redetermined, so as to reflect such change in discount or quantity;

(c) that no term of the contract, and no act or omission on the part of the customer, is to be construed as entitling the supplier to require the customer—

(i) to pay a greater amount than the supplier would have been entitled to require it to pay if acting in accordance with the Regulations, or

(ii) to be otherwise subject to terms that it would not have been lawful under the Regulations for the supplier to have included in a supply contract,

in respect of any energy supplied by the supplier in a scheme period;

(d) that nothing done by the supplier or the customer in order to comply with these Regulations or rules made under them, or in following guidance issued by the Secretary of State in relation to the scheme, is a breach of any provision of the contract;

(e) that the coming into force of the Act, the making of these Regulations or rules under them, and the issuing of guidance by the Secretary of State in relation to the scheme, do not constitute—

(i) a change in the law for the purposes of any provision (however expressed) of the contract which permits the supplier to increase its prices or charges or take any other action in consequence of a change in the law;

(ii) an event or circumstance which under any provision of the contract (however expressed) excuses the supplier or the customer from performance of its obligations, or from liability for failure to perform its obligations, under the contract.

(2) In paragraph (1)(b), the reference to—

(a) the application of the Regulations includes the making or revision of any determination or other decision under the Regulations;

(b) changes include a change applying in respect of energy already supplied to the customer;

(c) rights and obligations include rights and obligations for adjustment of charges already made or paid.

(3) Paragraph (1) does not apply to an excluded fixed price contract or a supply contract for which an opt-out notice has been given under regulation 4(3), and has not been withdrawn under regulation 4(4).

(4) None of the terms listed in paragraph (1) is to be construed as preventing a supplier from increasing its charges to a customer in order to recover the costs of complying with Parts 2 and 3 if and to the extent it is permitted to do so under the terms of—

(a) its supply contract,

(b) its electricity supply licence or gas supply licence, and

(c) regulation 60(2)(b).

CHAPTER 3

Reporting, information requests and audit

Regular reporting by suppliers

62.—(1) The Secretary of State may by notice require suppliers to provide to the Secretary of State at specified intervals a report about the operation of the scheme as respects the supplier and its customers.

(2) The notice must specify—

(a) the matters which are to be included in the report;

(b) the dates when the report is to be provided.

(3) The Secretary of State may by further notice modify, revoke or replace a notice given under paragraph (1).

(4) A supplier must provide reports as required by the notice.

Information requests

63.—(1) Where the Secretary of State considers it necessary or expedient to do so for any of the purposes set out in regulation 65, the Secretary of State may give notice to any supplier, customer, provider or certified ETII operator requiring it, by a time specified in the notice—

(a) to produce to the Secretary of State or a person nominated by the Secretary of State any document specified, or of a description specified, in the notice that is held by that supplier or customer, or

(b) to provide to the Secretary of State or a person nominated by the Secretary of State, such information as may be specified or described in the notice.

(2) A person that receives a notice under paragraph (1) must respond to it, within the period specified in the notice, by producing the document or providing in writing the information as required by the notice.

(3) A person's duty under paragraph (2) is owed to the Secretary of State, and enforceable in civil proceedings—

(a) for an injunction,

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or

(c) for any other appropriate remedy or relief.

(4) No person is to be compelled under this regulation to produce any document which they could not be compelled to produce in civil proceedings in the court or to provide any information which they could not be compelled to give in evidence in any such proceedings.

Audit

64.—(1) Where the Secretary of State considers it appropriate to do so for the purposes set out in regulation 65(a), (b) or (d), the Secretary of State may by notice to a supplier require that an audit of the books, records, systems, processes and methodologies of the supplier is performed by a suitably qualified person appointed by the Secretary of State.

(2) Where the Secretary of State requires an audit to be performed under paragraph (1)—

(a) the supplier must procure for the person appointed by the Secretary of State access to its personnel, books, records, systems, processes and methodologies sufficient for performance of the audit;

(b) the audit must be performed so far as practicable without causing disruption to the supplier in carrying on its business;

(c) the costs of the person appointed by the Secretary of State are to be borne by the Secretary of State.

Purposes for which powers under this Chapter may be exercised

65. The purposes are—

(a) ascertaining whether any provision of the Regulations is being or has been complied with;

(b) ascertaining whether pursuant to any provision of Part 3 or Part 4, any significant amount—

(i) is payable to, or

(ii) upon that provision being complied with, would become payable to, or would not be payable by,

the Secretary of State;

(c) ascertaining whether any person is in Chapter 3 default, and if so the default benefit amount;

(d) otherwise ensuring the proper accounting for, tracing or control of public money in discount recovery;

(e) obtaining information in connection with any review, including a review under section 9(5) of the Act, by the Secretary of State of the operation and effects of the scheme;

(f) otherwise obtaining information in connection with the exercise of any of the functions of the Secretary of State in or under these Regulations.

Application of data protection legislation

66.—(1) Nothing in these Regulations authorises or requires a disclosure of information if the disclosure would contravene the data protection legislation, as defined in section 3 of the Data Protection Act 2018(**a**).

(2) In determining whether a disclosure would contravene that legislation, the powers conferred and duties imposed by these Regulations are to be taken into account.

CHAPTER 4

Certain determinations made under the Regulations

Interpretation of this Chapter

67.—(1) In this Chapter—

"affected person" in relation to a regulation 22 matter means—

(a) the provider who determines that matter, and

(b) the certified ETII operator or (if it is not that provider) certified heat supplier, as the case may be;

"applicant" in relation to a review request, means the person making the request;

"Part 2 or Part 4 matter" means any matter other than a regulation 22 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;

"Part 3 decision" means a decision by the Secretary of State—

(a) under regulation 37, to withhold payment to a supplier of any amount in respect of a recovery claim amount;

(b) under regulation 38, as to the release of an amount withheld under regulation 37;

(c) under regulation 39, as to the reconciliation cut-off date in relation to any supplier;

(d) under regulation 41(1), to decline to make payment (in whole or part) in respect of a discount recovery claim on the grounds of invalidity;

(e) under regulation 41(2), to adjust the amount of a discount recovery claim;

(f) under regulation 41(3), to give a notice that is to be treated as a discount recovery claim;

"other party" in relation to a review request under regulation 70(1), means the contract party which is not the applicant;

"reconsidered decision" has the meaning given in regulation 70(6)(e)(i);

"regulation 22 matter" means the ETII proportion or QHS proportion to be determined by a provider in respect of a benefit calculation period under regulation 22;

"relevant decision" in relation to a review request, means the determination or decision in respect of which the request is made;

"review request" means a request made to the Secretary of State under regulation 70(1), (2), (3) or (4).

(2) In this Chapter, reference to a "determination" includes a redetermination.

(3) For the purposes of this Chapter a referral under regulation 68 or a review request does not meet the applicable threshold if—

(a) it is vexatious or frivolous,

(b) the financial consequences—

(**a**) 2018 c. 12; relevant provisions of section 3 were amended by S.I. 2019/419.

(i) for the applicant or (where applicable) the other party of a determination under regulation 68(3)(c), or

(ii) for the applicant or (where applicable) the other party or any affected person of a reconsidered decision,

would not be material, or

(c) the referral or review request is not made within a period which is reasonable in all the circumstances after—

(i) the customer was notified or otherwise informed of the supplier's determination referred to in regulation 68(1)(a), or

(ii) the relevant decision was made.

Referrals in respect of disagreement between contract parties

68.—(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 the reasons for its disagreement;

(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 must, 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 remains effective, and the relevant matter is 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) subject to paragraph (4), the Secretary of State must determine the matter and give notice of the determination to the contract parties;

(d) 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.

(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

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

(a) a determination by the supplier of, or declaration by the customer in respect of, any Part 2 or Part 4 matter, is not in conformity with the Regulations or is otherwise incorrect;

(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, or

(c) a determination by a provider of a regulation 22 matter is not in conformity with regulation 22 or the requirements of the applicable pass-through regulations.

(2) Where this regulation applies the Secretary of State may determine—

(a) the Part 2 or Part 4 matter in question by giving notice of such determination to the contract parties, or

(b) the regulation 22 matter in question by giving notice of such determination to each affected person.

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

(a) give notice to the contract parties or (as the case may be) each affected person—

(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 or (as the case may be) any affected person to make representations in respect of the proposal by a time specified in the notice;

(b) consider any representations made by either contract party or (as the case may be) any affected person 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, or (as the case may be) the provider, must comply with that determination.

Review of decisions of the Secretary of State

70.—(1) A supplier or a customer may request the Secretary of State to review a determination made by the Secretary of State under regulation 68 or 69 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) An ETII applicant or QHS applicant may request the Secretary of State to review a decision—

(a) not to issue to it an ETII certificate or (as the case may be) a QHS certificate;

(b) to revoke an ETII certificate or (as the case may be) a QHS certificate issued to it.

(4) An affected person may request the Secretary of State to review a determination made by the Secretary of State under regulation 69 in respect of a regulation 22 matter.

(5) 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.

(6) Except as provided in paragraph (5), 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 make representations in respect of the determination;

(b) where the request relates to the determination of a regulation 22 matter, give each other affected person a reasonable opportunity to make representations in respect of the determination;

(c) consider any representations so made;

(d) reconsider the relevant decision;

(e) give notice to the applicant and (where applicable) the other party or each affected person of—

(i) the outcome of the reconsideration (the "reconsidered decision"), and

(ii) the reasons for the reconsidered decision.

(7) The reconsidered decision is final and binding on the applicant and (where applicable) the other party or (as the case may be) each other affected person, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(8) The Regulations apply, in relation to the supply contract, on the basis of the reconsidered decision and each affected person must comply with it.

Rules in relation to this Chapter

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

(a) a supplier or customer to make a referral under regulation 68;

(b) the Secretary of State to determine a matter referred under regulation 68;

(c) the Secretary of State to determine a matter under regulation 69;

(d) a supplier or customer to request a review under regulation 70(1);

(e) a supplier to request a review under regulation 70(2);

(f) an ETII applicant or QHS applicant to request a review under regulation 70(3);

(g) an affected person to request a review under regulation 70(4);

(h) the Secretary of State to reconsider a relevant decision under regulation 70.

(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 67(3)(b).

CHAPTER 5

Enforcement

Supplier obligations enforceable as relevant requirements

72.—(1) The obligations of suppliers under the following provisions are enforceable by GEMA as if they were relevant requirements on a regulated person for the purposes of section 25 of the Electricity Act 1989(**a**) or section 28 of the Gas Act 1986(**b**)—

(a) Part 2;

(b) Part 4;

(c) Chapter 1 and Chapter 3 of this Part, but not regulation 63.

(2) Paragraph (1) applies in respect of a person which has been a supplier during a scheme period but has ceased to hold an electricity supply licence or gas supply licence.

(3) For the purposes of considering whether a supplier has contravened any obligation enforceable under paragraph (1), GEMA may not call into question—

(a) a determination of the Secretary of State under regulation 68 or 69;

(b) a reconsidered decision of the Secretary of State under regulation 70.

(4) Where it appears to the Secretary of State that a supplier may be contravening, or may have contravened, any of the requirements referred to in paragraph (1) the Secretary of State may inform GEMA.

Requirement to apply for a QHS certificate

73.—(1) A qualifying heat supplier is subject to civil enforcement action—

(**a**) 1989 c. 29. The definitions of "regulated person" and "relevant requirement" in section 25(8) were amended by S.I. 2011/2704, S.I. 2019/530, S.I. 2020/96 and S.I. 2020/2016.

(**b**) 1986 c. 44. The definitions of "regulated person" and "relevant requirement" in section 28(8) were amended by the Gas Act 1995, section 10(1) and S.I. 2011/2704.

(a) of the kind, described in Schedule 4 to the Heat Network (Metering and Billing) Regulations 2014(**a**);

(b) in the circumstances described in that Schedule.

(2) For the purposes of paragraph (1), that Schedule applies with the modifications set out in Schedule 1.

Civil penalties for customers

74.—(1) A customer is liable to the civil penalty referred to in paragraph (4) where the customer fails to make a relevant declaration by the required time.

(2) But the customer is not liable to that civil penalty, if the customer demonstrates to the satisfaction of the Secretary of State that it had a reasonable excuse for failing to make the relevant declaration by the required time or (in the case of paragraphs (4)(b) and (c)) within the specified period after the required time.

(3) For the purposes of paragraph (2) it is not a reasonable excuse that a supplier did not inform the customer of a determination under regulation 48(2)(b) or 53(2)(b), or send a declaration under regulation 57(2).

(4) For the purposes of paragraph (1) the civil penalty is—

(a) £1,000 for failure to make a relevant declaration by the required time;

(b) an additional £1,000 for failure to make a relevant declaration within the period of 28 days beginning with the required time;

(c) an additional civil penalty equal to 10% of the default amount, for failure to make a relevant declaration within a further 30 days after that 28 days.

(5) A customer is liable to the civil penalty referred to in paragraph (7) where the information in a relevant declaration made by the customer is defective.

(6) But the customer is not liable to that civil penalty if the customer demonstrates to the satisfaction of the Secretary of State that it took reasonable care to ensure that the information in the relevant declaration was not defective.

(7) For the purposes of paragraph (5) the civil penalty is 10% of the default amount.

(8) If the Secretary of State considers that a customer is liable to the civil penalty referred to in paragraph (4) or (7) the Secretary of State must impose the civil penalty on the person by giving a notice to the customer.

(9) The penalty notice must set out—

(a) the grounds for liability;

(b) the amount of the penalty;

(c) the date by which the penalty must be paid (the "due date"), which must not be less than 28 days after the day on which the notice is given;

(d) how payment may be made;

(e) information about rights of appeal.

(10) The customer to whom a penalty notice is given must pay the civil penalty set out in the notice on or before the due date.

(11) A civil penalty imposed by a penalty notice is recoverable by the Secretary of State as a civil debt.

(12) A customer may appeal to the court against the imposition of a civil penalty.

(13) An appeal under paragraph (12) must be brought within the period of 28 days beginning with the date on which the penalty notice was given that imposed the civil penalty appealed against.

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

(14) On an appeal under paragraph (12), the court may—

(a) allow the appeal and cancel the penalty,

(b) if it determines that the Secretary of State has erred in calculating the default amount, allow the appeal and vary the amount of the penalty, or

(c) dismiss the appeal.

(15) An appeal under paragraph (12)—

(a) suspends the effect of paragraphs (10) and (11) in respect of the penalty to which it relates until it is determined,

(b) is to be a re-hearing of the Secretary of State's decision to impose a penalty, and

(c) may be determined having regard to matters of which the Secretary of State was unaware.

(16) In this regulation—

"default amount" means the amount by which the charges for energy supplied to the customer in the specified period are increased as a result of the application of Part 4 following the making of the relevant declaration or the correction of the defective declaration;

"defective" in relation to a declaration means that the declaration is false, materially misleading or incomplete;

"penalty notice" means a notice given under paragraph (8);

"relevant declaration" means a declaration required to be made by a customer—

(a) under Part 4;

(b) under rules made under regulation 11(6)(c), if those rules—

(i) entitle the customer to elect the treatment of a supply contract that is referred to in that regulation, and

(ii) require the declaration to be made by a customer that makes that election;

"required time" means the time by which, under the relevant provision of Part 4, a customer was required to make a relevant declaration;

the "specified period" is the period which—

(a) begins at the required time or (as the case may be) when a defective declaration is made, and

(b) ends at the time when the declaration was made or (as the case may be) a declaration which is not defective was made, or (if earlier) the end of the second scheme period.

Civil penalties for defaulting persons

75.—(1) A defaulting person is liable to the civil penalty referred to in paragraph (3) in respect of the Chapter 3 default.

(2) But the defaulting person is not liable to that civil penalty if, in the case of a Chapter 3 default within regulation 26(1)(a), the defaulting person demonstrates to the satisfaction of the Secretary of State that it took reasonable care to ensure that no statement in its ETII application or QHS application was materially incorrect or misleading.

(3) The civil penalty is the greater of—

(a) £2,000, and

(b) 50% of the default benefit amount.

(4) If the Secretary of State considers that a defaulting person is liable to the civil penalty referred to in paragraph (3) the Secretary of State must impose the civil penalty on the person by giving a notice to the person.

(5) The penalty notice must set out—

(a) the grounds for liability;

(b) the amount of the penalty;

(c) the date by which the penalty must be paid (the "due date"), which must not be less than 28 days after the day on which the notice is given;

(d) how payment may be made;

(e) information about rights of appeal.

(6) The defaulting person to whom a penalty notice is given must pay the civil penalty set out in the notice on or before the due date.

(7) A civil penalty imposed by a penalty notice is recoverable by the Secretary of State as a civil debt.

(8) A defaulting person may appeal to the court against the imposition of a civil penalty.

(9) An appeal under paragraph (8) must be brought within the period of 28 days beginning with the date on which the penalty notice was given that imposed the civil penalty appealed against.

(10) On an appeal under paragraph (8), the court may—

(a) allow the appeal and cancel the penalty,

(b) if it determines that the Secretary of State has erred in calculating the default benefit amount, allow the appeal and vary the amount of the penalty, or

(c) dismiss the appeal.

(11) An appeal under paragraph (8)—

(a) suspends the effect of paragraphs (6) and (7) in respect of the penalty to which it relates until it is determined,

(b) is to be a re-hearing of the Secretary of State's decision to impose a penalty, and

(c) may be determined having regard to matters of which the Secretary of State was unaware.

(12) In this regulation "penalty notice" means a notice given under paragraph (4).

CHAPTER 6

Notices, EBRS actions, amendment of EBRS Regulations

Notices

76.—(1) Any notice or other communication to be given by the Secretary of State, a supplier or a customer under these Regulations must be given in writing.

(2) Any notice to be given by the Secretary of State under the Regulations (unless it is to be given to a particular supplier or customer) may be given by the Secretary of State publishing the notice in such manner as the Secretary of State considers appropriate.

EBRS actions

77. Any decision, communication or other action made, given or taken, before the scheme start date, for the purposes of EBRS, by the Secretary of State, a supplier or a customer, under any of the provisions of the EBRS Regulations set out in the first column of the table in the Schedule shall be treated as if it had been made, given or taken for the purposes of the scheme under the corresponding provision of these Regulations set out in the second column.

Amendment of EBRS Regulations

78. In regulation 34 of the EBRS Regulations, for paragraphs (2) and (3) substitute—

"(2) In respect of the period after 14th April 2023—

(a) the discount recovery rules may provide—

(i) for the dates of claim windows to be determined and published by the Secretary of State at intervals determined by the Secretary of State, and

(ii) that after the Secretary of State has given notice under regulation 29(5) of the last reconciliation run-off date in respect of any supplier, the Secretary of State need not determine and publish the dates of any claim window that starts after that date;

(b) in determining the dates of claim windows under paragraph (a)(i), the Secretary of State may allow up to 6 months to elapse between the dates on which successive claims windows start;

(c) the requirement in paragraph (1)(b) does not apply, but each claim window must be a period of at least 8 business days.

(3) The dates of claim windows determined in accordance with a rule made under paragraph (2)(a)(i) must be published at least 15 days in advance of the end of each such claim window."

Amanda Solloway
Parliamentary under Secretary of State
Department for Energy Security and Net Zero

24th April 2023

SCHEDULE 1

Regulation 73

Modification of Schedule 4 of the Heat Network (Metering and Billing) Regulations 2014 for the purposes of regulation 73(1)

1. In paragraph 1, omit the words ", an enforcement undertaking".

2. After paragraph 1, insert—

"**Interpretation**

(1A) In this Schedule—

"authorised person" means the Secretary of State or, in relation to a Scottish heat network, the Scottish Ministers;

"EBDS Regulations" means the Energy Bills Discount Scheme Regulations 2023;

"intermediary's agent" means a person who has acted or is acting as agent for a qualifying heat supplier in connection with its application for a QHS certificate under regulation 17(4) of the EBDS Regulations, or who appears to an authorised person to have acted or to be acting in that capacity;

"QHS certificate" has the meaning given in the EBDS Regulations;

"qualifying heat supplier" has the meaning given in the EBDS Regulations.

PART 1A

Power to request information

Application of Part

1B. This Part applies where an authorised person has reasonable grounds to suspect that a person is—

(a) an intermediary within the meaning of section 19(1) of the Energy Prices Act 2022; or

(b) in connection with the power to require the production of information in paragraph 1C only, an intermediary's agent.

Power to require the production of information

1C. Before imposing a compliance notice on a person for failing to comply with the duty of a qualifying heat supplier to apply for a QHS certificate under regulation 17(4) of the EBDS Regulations, the authorised person may give notice to the person mentioned in paragraph 1B requiring that person to provide the authorised person with the information specified in the notice.

Procedure for notice under paragraph 1C

1D.—(1) A notice under paragraph 1C must be in writing and must specify that the information is required—

(a) if the notice was served in reliance upon paragraph 1B(a), to determine if the person is a qualifying heat supplier, or

(b) if the notice was served in reliance upon paragraph 1B(b), to determine the identity of the qualifying heat supplier for whom that person is an intermediary's agent.

(2) The notice may specify—

(a) the time within which and the manner in which the person to whom it is given must comply with it; and

(b) the form in which information must be provided.

(3) The notice may require—

(a) the creation of documents, or documents of a description, specified in the notice, and

(b) the provision of those documents to the authorised person.

(4) A requirement to provide information or create a document is a requirement to do so in a legible form.

(5) A notice under paragraph 1C does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce—

(a) in proceedings in the High Court on the grounds of legal professional privilege, or

(b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(6) In sub-paragraph (5)(b), "communications" means—

(a) communications between a professional legal adviser and the adviser's client, or

(b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

Enforcement of requirement in paragraph 1C

1E. A person who does not comply with the requirement to provide the authorised person with the information specified in a notice under paragraph 1C is subject to civil enforcement action under this Schedule."

3. In paragraph 2—

(a) for sub-paragraph (1) substitute—

"(1) This paragraph applies where an authorised person has reasonable grounds to believe that a person has failed to comply with the duty under regulation 17(4) of the EBDS Regulations.";

(b) in sub-paragraph (2), for "offence does not continue or recur" substitute "intermediary complies with that duty";

(c) omit sub-paragraph (3).

4. Omit paragraphs 8 to 13.

5. In paragraph 14—

(a) for sub-paragraph (1) substitute—

"(1) The authorised person may serve a notice imposing a monetary penalty ("a non-compliance penalty") on a person who does not comply with—

(a) a notice under paragraph 1C, or

(b) the duty under regulation 17(4) of the EBDS Regulations."

(b) in sub-paragraph (2) omit the words "or enforcement undertaking";

(c) in sub-paragraph (2), for the words from "be a percentage" to the end substitute "not exceed £5,000 in respect of each non-compliance identified in a compliance notice and not exceed £5,000 in respect of failure to comply with a notice given under paragraph 1C";

(d) omit sub-paragraphs (3) and (5);

(e) after sub-paragraph (7), insert—

"(8) A non-compliance penalty is recoverable by the authorised person as a civil debt."

6. In paragraph 17 omit sub-paragraph (5).

7. The requirement in paragraph 18 (consultation on guidance) does not apply to any guidance that an authorised person intends to publish under paragraph 17 about the use of civil sanctions in connection with these Regulations.

8. In paragraph 19—

(a) in sub-paragraph 1(a) omit "; and";

(b) omit sub-paragraph (1)(b).

SCHEDULE 2

Regulation 77

Actions under EBRS which are treated as done under the scheme

Provision of EBRS Regulations	*Provision of these Regulations*	*Person by whom decision, communication or action made, given or taken*	*Description of decision, communication or action (by reference to provisions of the EBRS Regulations, where relevant)*
4(4)	4(4)	A customer	Giving opt-out notice
4(5)	4(5)	A customer	Giving notice withdrawing opt-out notice
11(4)(a)	10(4)(a)	A supplier	Establishing methodology for determining reference wholesale price for flexible supply contracts
14(1)(a)	11(1)(c)	A supplier	Determination to treat a supply contract as comprising more than one supply contract
14(1)(b)	11(1)(a)	A supplier	Determination whether a supply contract is a fixed price contract, flexible price contract or variable price contract
14(1)(c)	11(1)(b)	A supplier	Determination in relation to a fixed price contract of price fix date, and whether it is an excluded fixed price contract
14(2)	11(3)	A supplier	Giving notice of determinations under regulation 14(1)
16(a)	12(a)	A supplier	Establishing a methodology for determinations under regulation 14

38(1)(b)	48(1)(b)	A customer	Sending a declaration that Chapter 1 of Part 4 applies to a supply contract
38(2)	48(2)	A supplier	Determining and giving notice of whether either circumstance in regulation 37(1)(a) applies
43(1)(b)	53(1)(b)	A customer	Sending a declaration that Chapter 2 of Part 4 applies to a supply contract
43(2)	53(2)	A supplier	Determining and giving notice of whether either circumstance in regulation 42(1)(a) applies
47(2)	57(2)	A customer or a supplier	Sending a declaration that Chapter 3 of Part 4 applies to a supply contract
63(3)(b)	68(3)(b)	Secretary of State	Determination of a Part 2 or Part 4 matter referred to the Secretary of State
64(2)	69(2)	Secretary of State	Determination of a Part 2 or Part 4 matter
65(4)(c)	70(6)(e)	Secretary of State	Reconsidered decision

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in Great Britain, establish the Energy Bills Discount Scheme for Non-Domestic Customers in Great Britain ("EBDS"). EBDS is a scheme for reducing the costs, to non-domestic customers, of being supplied with electricity or gas ("energy") by a supplier that holds a supply licence under the Electricity Act 1989(**a**) or Gas Act 1986(**b**).

The Regulations require suppliers to reduce, in accordance with Part 2 of the Regulations, the prices that they charge customers for energy during two "scheme periods" (the first running from 1st April 2023 to 30th September 2023 and the second from 1st October 2023 to 31st March 2024). Suppliers are entitled to recover the amount of these reductions from the Secretary of State.

Part 1 (introductory) defines key terms and parameters of EBDS. With certain exceptions, EBDS applies in respect of all contracts for the supply of electricity and gas by licensed suppliers to non-domestic customers during the scheme periods. However, the detail of its application to any given contract (including how discounts are calculated) depends on how prices are set under it, and, in some cases, on the use that is made of the energy supplied under it.

Part 2 (discounted supply price) sets out how the discounts that are to be applied by suppliers are to be calculated, based on wholesale energy prices. Chapter 1 of Part 2 sets out how the figures to be used in calculating discounts are derived (regulations 9 and 10). Chapter 2 of Part 2 describes how suppliers must assign each contract to the correct category based on how prices are set under it. Chapter 3 of Part 2 sets out the procedures for identifying where the energy supplied under a contract is used in certain ways, either by persons carrying out particular economic activities, or in heat networks that meet certain criteria. Where this is the case, the customers under the contracts concerned are known as "ETII" and "QHS" customers respectively. Chapter 4 of Part 2 describes how suppliers must calculate discounts for the different categories of contract and customer, reduce their charges to customers accordingly, and provide them with related information.

Part 3 (discount recovery) deals with the process by which each supplier is entitled to be paid by the Secretary of State an amount equal to the charges it has foregone in applying discounts under Part 2. In specified circumstances, the amount that a supplier receives in response to its claim for payment of an amount in respect of discounts is adjusted. Where such adjustments result in a negative sum, the customer must pay that sum (as a positive amount) to the Secretary of State. Amounts claimed by suppliers may be withheld in certain cases, for example where a supplier has acted dishonestly or failed to take proper measures to prevent fraud.

Part 4 (adjustment of discount or supply quantity in certain cases) makes provision to prevent suppliers or customers from deriving greater benefit from EBDS than is intended in certain scenarios. The Regulations provide for the benefits that customers and suppliers receive from the scheme to be reduced to take account of their entry into specified kinds of arrangements.

Part 5 (further provisions) deals with a number of different matters. Regulation 60 prohibits unreasonable increases in suppliers' charges and other changes adverse to the customer. Regulation 61 implies terms relating to the scheme into non-domestic supply contracts. Regulations 62 to 64 impose information and reporting obligations. Regulations 67 to 71 make provision about the resolution of disputes arising from the operation of the scheme. Regulation 72 provides that specified obligations of suppliers under the regulations are enforceable by the Gas and Electricity Markets Authority. Regulations 73 to 75 make further provision for enforcement of certain provisions, including by way of civil penalties. Regulation 77 provides that things done under certain provisions of the Energy Bill Relief Scheme Regulations 2022 are to be treated as if done under corresponding provisions of the Regulations. Regulation 78 makes an amendment to regulation 34 of the Energy Bill Relief Scheme Regulations 2022(**c**).

(**a**) 1989 c. 29.
(**b**) 1986 c. 44.
(**c**) S.I. 2022/1100.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Energy Security and Net Zero at 1 Victoria Street, London, SW1H 0ET and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of His Majesty's Stationery Office and King's Printer of Acts of Parliament.