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STATUTORY INSTRUMENTS

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**2023 No. 454**

**The Energy Bills Discount Scheme  
(Northern Ireland) Regulations 2023**

**PART 2**

**Discounted supply price**

**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 district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972(1);

“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(2);

“third party energy”, in relation to an ETII applicant or QHS applicant, means—

- (a) gas that the applicant has not produced, or
- (b) electricity that the applicant—
  - (i) has not produced, or
  - (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—

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(1) 1972, c. 9. The Act was amended by the Local Government (Boundaries) Act (Northern Ireland) 2008 (c. 7), sections 3(1), 5(3); S.R. 2013 No. 238, articles 2, 3(1), 4(1), 5(1) (with articles 3(2), 4(2), 5(2)-(4) (as amended (31.3.2015) by S.R. 2015 No. 210, article 2)).

(2) (SIC 2007) published by the Office for National Statistics in December 2009 with ISBN number 978-0-230-21012-7.

- (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 may 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,
  - (b) the Secretary of State, having considered the application, determines that those conditions are so satisfied, and
  - (c) the Secretary of State is satisfied that the consequences of the applicant holding an ETII certificate would be in accordance with Article 10 of the Windsor Framework.
- (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) The Secretary of State may revoke an ETII certificate issued to any person if—
  - (a) the Secretary of State determines that—
    - (i) at the time of the Secretary of State’s determination under paragraph (1)(b), any of the ETII certification criteria was not satisfied—
      - (aa) in consequence of the determination being based on information that was materially incorrect or misleading, or
      - (bb) for any other reason,
    - (ii) any of the ETII certification criteria is no longer satisfied in respect of that person, or
  - (b) the Secretary of State is no longer satisfied that the consequences of a person holding an ETII certificate are in accordance with Article 10 of the Windsor Framework.

**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<sup>(3)</sup> 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) 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.

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(3) [S.I. 2014/3120](#), amended by [S.I. 2015/855](#) and [2020/1221](#).

## **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)(a)—

- (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 74;

- (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 or 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, or
    - (ii) 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)—

- (a) must in particular make provision about—
  - (i) the form, content and submission of ETII applications and QHS applications;

- (ii) the handling of applications by the Secretary of State;
- (b) must specify the form and content of ETII applications and QHS applications;
- (c) may specify—
  - (i) the basis on which the Secretary of State will be satisfied that the consequences of a person holding an ETII certificate would be or are in accordance with Article 10 of the Windsor Framework;
  - (ii) any information, documents or other evidence that ETII applicants and QHS applicants must submit with their applications or subsequently, including any information that ETII applicants must provide to allow the Secretary of State to be satisfied on the basis specified in rules under paragraph (i).
- (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;
  - (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 must make rules specifying applicable tests for the purposes of regulation 24(4) (supply redetermination event).