
STATUTORY INSTRUMENTS

2023 No. 454

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

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 subparagraph (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⁽¹⁾.

Reference wholesale price – fixed price, variable price and DAI price contracts

9.—(1) The Secretary of State must establish and publish a methodology for determining reference wholesale prices applicable to fixed price contracts, variable price contracts and DAI price contracts.

- (2) The methodology may—
- (a) make different provision in respect of fixed price contracts, variable price contracts and DAI 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 or a DAI 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—
- (a) subject to paragraph (b), 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;
 - (b) in relation to a DAI price contract, the methodology may provide for different reference wholesale prices to apply in different periods.
- (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, fixed price contracts and DAI 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;
 - (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, a variable price contract or a DAI 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 from time to time 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, a flexible price contract or a DAI 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, variable price contract or DAI price contract, according to the category that the supplier (or the Secretary of State, under regulation 74) 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 district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972(2);

“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(3);

“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—

(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;

(2) 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)).

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

- (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(4) 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.

QHS customers

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

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

- (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).

CHAPTER 4

Discounting supply price under supply contracts

Calculation of base discount

28. 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, variable price contracts and DAI 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.