
STATUTORY INSTRUMENTS

2023 No. 454

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

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, 58 or 63 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 73 or 74 or a reconsidered decision of the Secretary of State under regulation 75.

(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 103(1)e or 103(2) of the Insolvency Northern Ireland Order 1989(1) 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 Northern Ireland, Scotland, 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 74 or 75.

(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
- (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), 53(1)(b) or 62(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), regulation 53(2)(b) or regulation 62(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, 2 or 4 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), 54(3) or 63(2);
- (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.