

EXPLANATORY MEMORANDUM TO
THE ENERGY BILLS DISCOUNT SCHEME REGULATIONS 2023

2023 No. 453

AND

THE ENERGY BILLS DISCOUNT SCHEME (NORTHERN IRELAND)
REGULATIONS 2023

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1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of these instruments is to provide for the Energy Bills Discount Scheme for Great Britain (GB) and the Energy Bills Discount Scheme for Northern Ireland (NI (collectively “the Schemes”). The Schemes will provide discounts on the electricity and gas bills for eligible non-domestic customers, including businesses, charities, and public bodies such as schools and hospitals. Discounts will be applied to energy usage between 1 April 2023 and 31 March 2024.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 The instruments come into force two days after making. The Department considers this reasonable and that those affected by the instruments coming into force do not require further time to adapt to the change.
- 3.2 Energy users who will receive the baseline energy support of the scheme do not need to adapt to scheme coming into force as the discount will be applied automatically and they are not required to take any action. While persons eligible for the additional support for Energy Trade Intensive Industries (ETIIs) and heat networks will need to make applications, this does not mean they will need time to respond to the instruments coming into force. Eligible organisations will be able to apply for the higher level of support from the scheme introduction date. The support will be backdated to 1 April 2023, if they are eligible for the higher level of support.
- 3.3 The instruments do impose new duties on energy suppliers. However, the department has engaged regularly with suppliers and provided advanced notice of what they will be required to do in consequence of the instruments coming into force. The Department therefore regards the coming into force date as reasonable, particularly in view of the imperative to provide support to non-domestic customers as soon as possible.

4. Extent and Territorial Application

- 4.1 The territorial extent of the Energy Bills Discount Scheme Regulations 2023 (that is, the jurisdictions which the instrument form part of the law of) is England and Wales and Scotland.
- 4.2 The territorial application of the Energy Bills Discount Scheme Regulations 2023 (that is, where the instrument produces a practical effect) is England and Wales and Scotland.
- 4.3 The territorial extent of the Energy Bills Discount Scheme (Northern Ireland) Regulations 2023 (that is, the jurisdictions which the instrument form part of the law of) is Northern Ireland.
- 4.4 The territorial application of the Energy Bills Discount Scheme (Northern Ireland) Regulations 2023 (that is, where the instrument produces a practical effect) is Northern Ireland.

5. European Convention on Human Rights

- 5.1 Amanda Solloway, the Parliamentary Under Secretary of State for Energy Consumers and Affordability has made the following statement regarding Human Rights:
“In my view the provisions of the Energy Bills Discount Scheme Regulations 2023 and the Energy Bills Discount Scheme (Northern Ireland) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These instruments form part of the package of five SIs relating to the Energy Bills Discount Scheme (EBDS), replacing the Energy Bill Relief Scheme (EBRS) which ended on the 31 March 2023. The five instruments enable continued energy bill support to the non-domestic licensed and non-licensed gas and electricity supply markets and to non-domestic consumers in Great Britain (GB) and Northern Ireland (NI) between 1 April 2023 to 31 March 2024.
- 6.2 These instruments ensure that support (a scheme benefit) is passed from suppliers to their customers for non-domestic licensed gas and electricity supply in GB and NI. The Energy Bills Discount Scheme (Non- Standard Cases) Regulations 2023 makes provision for the operation and delivery of the Non-Standard Cases Scheme, which provides support for (some) non-domestic customers of license-exempt supply of gas and electricity. The Energy Bills Discount Scheme Pass-through Requirement Regulations 2023 and the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023 ensure that support (i.e a scheme benefit) is passed from intermediaries to end users for non-domestic licensed gas and electricity supply in GB and NI."
- 6.3 The Schemes are made under sections 9 and 11 of the Energy Prices Act, which allow the Secretary of State to make provision for and in connection with reducing the amount that would otherwise be charged for non-domestic electricity and gas supply, and for making payments to suppliers in respect of those reductions. Paragraphs 5 and 6 of Schedule 6 to the Act provide that those powers are time limited, in that they may only provide for the reduction in charges for energy supply for a total of two years (from 1 October 2022). Audit and compliance functions may continue beyond this date to ensure that public funds have been used appropriately. Instruments made under

the Act may only apply charges for energy consumed during a period of six months or less (up to four such consecutive periods in total). The EBDS takes us up to the end of the third of the four successive periods. Support under EBDS will be provided for a year (divided into two six month periods), reflecting the limits in the Act.

7. Policy background

What is being done and why?

- 7.1 The Act addresses the negative social, economic and other impacts of the current unprecedentedly high energy prices and facilitates the delivery of the EBRS and future iterations in GB and NI. The EBRS was launched on 1 October 2022 as a temporary six-month measure to support non-domestic customers through the winter of 2022/2023. It provided a price reduction (a scheme benefit) to eligible non-domestic customers (including businesses, the voluntary sector such as charities, and the public sector such as schools and hospitals). This relief (a discount for licensed suppliers' customers, a grant for customers of unlicensed suppliers) was linked to the wholesale element of a non-domestic customer's gas and electricity bill.
- 7.2 The EBRS Review considered direct cash grants and loan schemes alongside a discount scheme but concluded that the alternatives were not viable. A discount of energy costs means support is proportionate to energy consumption and eliminates the risk of over-compensation and reduces the risk of fraud and error. It is also easier to administer for companies as Government will require less information to process support.
- 7.3 The EBDS strikes a balance between supporting businesses between 1 April 2023 and 31 March 2024 and limiting taxpayers' exposure to volatile energy markets. The EBDS will provide all eligible businesses and other non-domestic energy customers with a discount on high gas and electricity bills with its baseline scheme. It will also provide businesses in sectors with particularly high levels of energy use and trade intensity and domestic end users on heat networks with a higher level of support. The baseline and ETII parts of the scheme were forecast by the OBR at Budget 2023 to be worth £0.5bn, with further support for Qualifying Heat Suppliers estimated at £0.4bn.
- 7.4 Under the baseline EBDS scheme, the government will provide a discount on gas and electricity unit prices. Eligible non-domestic customers will receive a per-unit discount to their energy bills during the 12-month period from 01 April 2023 to 31 March 2024, subject to a maximum discount and a minimum supply price. The relative discount will be applied if wholesale prices are above a certain price threshold. Section 19 of the Energy Prices Act also enabled the Secretary of State to impose pass-through requirements on persons to whom energy price support was provided by regulations, or "intermediaries". This ensured that end users who received and paid for their energy consumption by an intermediary, for example a tenant and landlord relationship, would also receive a scheme benefit from the EBDS.
- 7.5 Wholesale prices are now below previous levels, although they remain higher than before the invasion of Ukraine and some customers will be locked into higher contract prices through 2023/24. The EBDS was announced on 9 January 2023 following a HM Treasury-led review of the EBRS. Changes have been made to the regulations to allow the continuation of support under EBDS.

- 7.6 There is high public interest in the EBDS, particularly the scale of the reduction in support as compared with EBRs, the eligibility criteria for the various elements of the scheme and the pass-through requirements on intermediaries.

What did any law do before the changes to be made by this instrument?

- 7.7 The Energy Bill Relief Scheme Regulations 2022 and the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 provides for the EBRs, which provided support between 1 October 2022 and 31 March 2023. Those regulations established who was eligible for that scheme and set out detailed requirements for suppliers to calculate and distribute scheme benefit ('a discount') to eligible non-domestic customers. They also set out rules that applied to different types of non-domestic customers and energy supply and provided powers for the Secretary of State to intervene as needed. These instruments also provided further detail on supplier reporting, auditing of suppliers and ensuring that obligations on licensed suppliers can be enforced. Government acted to protect British businesses from the spiralling costs of energy by implementing various energy support schemes.

- 7.8 Discussions took place with, regulators Ofgem and UREGNI (NI Utility Regulator) and other relevant bodies including UKSBS (UK Shared Business Services), Xoserve, Elexon, and Northern Ireland Executive. These bodies were responsible for the effective implementation and operation of the scheme in both GB and NI, such as for the purposes of administering payments to non-domestic suppliers on behalf of the Secretary of State, and for the purposes of audit, monitoring and compliance.

Why is it being changed?

- 7.9 The law is being changed so that we can implement new regulations to replace the EBRs between 1 April 2023 and 30 March 2024 and ensure that suppliers can still pass the benefit on to their non-domestic customers.

What will it now do?

- 7.10 The EBDS strikes a balance between supporting businesses over the next 12 months and limiting taxpayers' exposure to volatile energy markets, the support has been calculated to not cost more than £5.5 billion based on estimated volumes.
- 7.11 The scheme is made up of three different components:
- 7.12 The first component is the baseline discount that will provide some support with energy bills for eligible non-domestic customers in GB and NI, this support will be applied automatically.
- 7.13 The second component is the Energy and Trade Intensive Industries (ETII) discount that will provide a higher level of support to businesses and organisations in eligible sectors. Customers will need to [register to get this support](#). Businesses in sectors with particularly high levels of energy use and trade intensity will receive a higher level of support as they are less able to pass these higher costs on to customers due to international competition. We have taken a consistent approach to identifying the most energy and trade intensive sectors; all sectors that meet agreed thresholds for energy and trade intensity will be eligible for ETII support. These thresholds have been set at sectors falling above the 80th percentile for energy intensity, meaning the sector is in the top 20% for energy intensity, and 60th percentile for trade intensity meaning sector is in the top 40% for trade intensity. Any sectors deemed eligible for

the existing department's Energy Intensive Industries compensation and exemption schemes are also included.

- 7.14 The third component is the Heat Network discount that will provide a higher level of support to heat suppliers with domestic end customers - eligible heat suppliers will need to apply to get this support. Heat network end users on domestic networks would benefit from the Energy Price Guarantee (EPG). This measure ensures that those who fall under the EBDS due to heat network operators having commercial energy contracts do not face disproportionately higher energy bills than customers in equivalent households who benefit from the EPG.

8. European Union Withdrawal and Future Relationship

- 8.1 These instruments do not relate to withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act 2018. The GB Scheme does not engage Article 10 of the Windsor Framework (and provision is made to ensure that is the case). The ETII element of the Scheme as it applies in Northern Ireland engages Article 10 of the Windsor Framework (where the organisations participating in the Scheme trade in goods). Approval from the EU Commission was therefore sought under the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia. That Framework is due to remain in place until 31 December 2023. The Northern Ireland Regulations (under which ETII operators are certified for the purposes of the Scheme) makes provision to ensure that support is only provided if in accordance with Article 10 of the Windsor Framework.

9. Consolidation

- 9.1 No consolidation is necessary for this instrument.

10. Consultation outcome

- 10.1 As part of the EBRs review, we consulted widely across all sectors of the economy and with trade bodies. We also issued a business energy questionnaire to understand the amount of energy business used and how much their bills were as part of their overall outgoings. We will continue to review these instruments as necessary following their implementation based on stakeholder feedback.

11. Guidance

- 11.1 The Department for Energy Security and Net Zero is developing guidance in relation to the operation of these instruments. The guidance will be published shortly after the instruments are made and will be available here: <https://www.gov.uk/guidance/energy-bills-discount-scheme>. This explains these instruments in further detail for key stakeholders, including individuals and organisations who may be suppliers, intermediaries or end users.
- 11.2 Separate rules for GB and NI will be published shortly after the instruments are made and will be available alongside the guidance. These will cover eligibility and treatment of certificates, divisions of flexible price contracts into more than one contract, treatment of Combined Heat and Power, details on the Scheme Portal, discount recovery claims. The department will publish further updates to the guidance / rules as necessary.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is positive. Eligible non-domestic customers, including businesses and organisations in the voluntary and public sector, will receive a reduction on the wholesale element of their gas and electricity bills. For reference, we estimate that there are currently over 500,000 fixed contracts/meters being supported under the EBRs whose contracted prices exceed the price threshold for the Baseline support element of EBDS. There will be a small cost to some businesses (ETIIs, heat suppliers and energy suppliers) of administering the scheme. We consider that the benefits of customers receiving lower energy prices resulting from the EBDS will significantly outweigh these administrative costs to intermediaries. For example, it will offer increased certainty for investment and employment decisions and thus avoid firm closures and redundancies. More detail on the benefits is provided in the accompanying Impact Assessment document.
- 12.2 The impact on the public sector is positive. Eligible public sector organisations, such as hospitals and schools, will receive a reduction on the wholesale element of the price of their gas and electricity.
- 12.3 A full Impact Assessment for the Energy Bills Discount Scheme is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to provide guidance to relevant intermediaries, including small businesses, to help them understand and implement the requirements under these instruments. Small businesses who are eligible for Energy and Trade Intensive Industry (ETII) support are required to register with the department. The energy provider will apply discounts to the small business. For Non-Standard Cases, the approach taken is that the energy provider will be invited to apply to the scheme on their behalf. In exceptional circumstances where the energy provider has failed to make an application, the customer may apply directly to the department as outlined in the Scheme Terms. All businesses are treated in the same way irrespective of size to reduce the administrative burden on small businesses

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the department will continue to monitor these instruments following their implementation, including any feedback from stakeholders, and will review as necessary. All claims made by energy providers for payments under the Scheme will be subject to compliance checks and ongoing monitoring. The nature of these will be set out in accompanying rules and guidance. Powers in the instruments in Part 5, Chapter 3 will support the undertaking of robust monitoring and review. In particular, the instruments provide for the Secretary of State to collect information for the purpose of conducting a review of the scheme. This may encompass information requests to assess the operation and effects of the Schemes.
- 14.2 These instruments do not include a statutory review clause and in line with the requirements of the Small Business, Enterprise and Employment Act 2015. Amanda

Solloway, the Parliamentary Under Secretary of State for Energy Consumers and Affordability, has made the following statement:

“It is not appropriate in the circumstances to make provision for a review, given that support under the schemes will be provided for 12 months and the need for companies to have certainty during that period.”

15. Contact

- 15.1 Purba Naidu at the Department for Energy Security and Net Zero Telephone: +447741688906 or email: Purba.Naidu2@beis.gov.uk can be contacted with any queries regarding the Energy Bill Discount Scheme and Energy Bill Discount Scheme (Northern Ireland) Regulations.
- 15.2 Daniel Harrison, Deputy Director for Energy Affordability, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Amanda Solloway, Parliamentary Under Secretary of State for Energy Consumers and Affordability can confirm that this Explanatory Memorandum meets the required standard.