
STATUTORY INSTRUMENTS

2023 No. 454

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

PART 3

Discount recovery

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).

Commencement Information

II Reg. 37 in force at 26.4.2023, see [reg. 1\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Energy Bills Discount Scheme (Northern Ireland) Regulations 2023, Section 37.