

EXPLANATORY MEMORANDUM TO
THE ENERGY BILLS DISCOUNT SCHEME PASS-THROUGH REQUIREMENT
REGULATIONS 2023

2023 No. 463

AND

THE ENERGY BILLS DISCOUNT SCHEME PASS-THROUGH REQUIREMENT
(HEAT SUPPLIERS) REGULATIONS 2023

2023 No. 455

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 ensure that support is delivered to the intended beneficiaries of the Energy Bills Discount Scheme (“EBDS”). They require intermediaries, such as landlords, to pass on benefits received from the EBDS to end users, such as tenants.

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 element 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 1st 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 this instrument (that is, the jurisdictions which the instruments form part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and 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 Pass-through Requirement Regulations 2023 and the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) 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 EBDS, replacing the Energy Bill Relief Scheme (EBRS) which ended on the 31 March 2023. These instruments enable continued energy bill support to the non-domestic licensed and non-licensed gas and electricity supply markets and to non-domestic customers 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 Energy Bills Discount Scheme Pass-through Requirement Regulations 2023 and the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023 ensures that support, i.e. a scheme benefit, is passed from intermediaries, with the latter focusing on intermediaries that are heat suppliers, to end users for non-domestic licensed gas and electricity supply in GB and NI. The Energy Bills Discount Scheme (Heat Suppliers) Regulations 2023 modify the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) to provide a complaints process for heat network customers in relation to the requirement on heat suppliers to pass on benefits received from the EBRS for non-domestic customers in NI. The role of the General Consumer Council for Northern Ireland will be similar to its complaints handling for gas and electricity customers.
- 6.4 These instruments follow on from the previously laid Energy Bill Relief Scheme Pass-through Requirement Regulations 2022, Energy Bill Relief Scheme and Energy Price Guarantee Pass-through Requirement and Miscellaneous Amendments Regulations 2022 and Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers)

Regulations 2022. These made provision for intermediaries under the EBRS to pass on support to end users between 1 October 2022 and 31 March 2023.

- 6.5 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 to 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 (divided into two six month periods). Support under the EBDS will be provided for a year, 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 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.
- 7.3 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 the tenant in a tenant and landlord relationship, would also receive a scheme benefit from the EBDS.
- 7.4 Relevant intermediaries are any individual or organisation that is party to an electricity and/or gas contract and passes on the costs of the energy supplied under this contract to an end user of the energy supplied. This would also cover intermediaries supplying a product (or service) where contractually a component of the price relates directly to the use of energy. Intermediaries may include but are not limited to landlords, sublets, student accommodation managers, local authorities (for council housing), site owners (for park homes), marinas if using

shore power (for boat homes), electric vehicle charging operators and other residential building managers.

- 7.5 These regulations are important to ensure that it is the end users of energy benefit from the Scheme and to set out the expectations on intermediaries and processes they should follow to ensure that this happens. These regulations also provide the customer with a mechanism by which they can dispute what their intermediary has or has not done. Changes have been made to the regulations to allow the continuation of support under EBDS. These instruments ensure that the pass-through requirements on intermediaries are still applicable under the EBDS.
- 7.6 Heat suppliers are captured as relevant intermediaries under the EBDS, as they purchase energy through commercial contracts and then supply heating and hot water to domestic and non-domestic customers. The EBDS Pass-through Requirement (Heat Suppliers) Regulations require heat suppliers that benefit from the higher heat network EBDS discount to pass on that benefit to their customers in the form of lower heat prices.
- 7.7 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?

- 7.8 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. These 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 provide 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.
- 7.9 The EBRs Pass-through Requirement Regulations 2022 and EBRs Pass-through Requirement (Heat Suppliers) Regulations 2022 ensured that relevant intermediaries were legally obliged to pass on the scheme benefit they received to their end users in a just and reasonable way between 1 October 2022 and 31 March 2023. The legislation under the EBRs sets out in further detail who is captured under the definition of a relevant intermediary, what must be taken into account in determining and calculating a just and reasonable amount and the obligations on the intermediary to provide this information to the end user. The legislation also sets out the dispute mechanism available to the end user if they wish to dispute what the intermediary has or has not done.
- 7.10 The EBRs regulations set out that the discount should take into account (as appropriate) the end user's usage and amount paid for their energy consumption as well as whether the intermediary itself is consuming and paying for its own energy or for common services provided.
- 7.11 In Great Britain (GB), the Energy Ombudsman currently provides independent redress to around 12% of heat network customer through Heat Trust, a voluntary industry

code which requires registered heat networks to comply with customer standards. The EBRIS Pass-through Requirement (Heat Suppliers) Regulations expanded this role in GB to require heat suppliers to join this independent redress route for domestic and microbusiness heat network customers to enable customers to resolve disputes with their heat supplier in relation to EBRIS pass-through requirements. For customers in NI, where there is a dispute between a heat network customer and a heat supplier with regards to EBRIS pass-through requirements that cannot be resolved between the customer and supplier, domestic and microbusiness consumers can make a complaint to the General Consumer Council for Northern Ireland. The Consumer Council is the consumer advocacy body in the energy and water sectors in NI and offered this role for heat network consumers in relation to the EBRIS pass-through, under the EBRIS Pass-through Requirement (Heat Suppliers) Regulations 2022.

Why is it being changed?

- 7.12 The law is being changed so that pass-through requirements can be imposed on intermediaries that receive a benefit from the EBDS, as the EBRIS support ended on the 31 March 2023. These instruments ensure that the pass-through requirements on intermediaries are still applicable under the EBDS.

What will it now do?

- 7.13 These regulations will ensure that the pass-through requirement that is in place covers intermediaries that receive scheme benefit under the EBDS. The pass-through regulations mostly replicate their predecessors. The changes that have been made account for the changes between the EBRIS and the EBDS. This includes reflecting that the pass-through amount provided should be calculated in line with the end user's contract type. For example, under EBDS, ETII (Energy Trade Intensive Industries) and heat network domestic end users are entitled to more support. It also includes provisions to ensure that where, under the schemes, the Secretary of State redetermines the amount a supplier is entitled to, the pass-through amount reflects this redetermination. Given its existing experience in the market, we consider the Energy Ombudsman well-suited to continue providing independent redress to domestic and microbusiness heat network customers that are unable to resolve a complaint about the pass-through requirements with their heat supplier. These Regulations therefore extend the EBRIS provision requiring heat suppliers with networks benefitting from the EBDS to join the Energy Ombudsman's redress scheme. Similarly, these Regulations extend the Consumer Council for Northern Ireland's role in relation to Northern Ireland domestic and microbusiness heat network consumers with respect to EBDS pass-through requirement complaints.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does 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 In designing the EBDS scheme we considered stakeholder feedback about the EBRS.

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 intermediaries or end users.

12. Impact

12.1 For the EBDS Pass-through Requirement Regulations and EBDS Pass-through Requirement (Heat Suppliers) Regulations, the impact on business, charities or voluntary bodies is minimal, as the instruments do not change the energy price support to which they are entitled under each of the relevant schemes; rather the instruments ensure that support they receive as intermediaries is passed on to the end users. Intermediaries (including heat suppliers) will be required to provide information to end users which may involve minimal administrative costs for these bodies in ensuring fixed and variable charges, statements of accounts, rental charges and other forms of charging customers are adjusted to reflect the EBDS schemes. We consider that the benefits of customers receiving lower energy prices resulting from the EBDS pass-through will significantly outweigh these administrative costs to intermediaries. Under the EBDS Pass-through Requirement (Heat Suppliers) Regulations, there will be an impact on the Energy Ombudsman and General Consumer Council for Northern Ireland (which is a non-departmental public body) for taking on an additional role in taking on complaints raised under these regulations. We expect that the additional costs are likely to be low as they will have already incurred the bulk of their set up costs from their role in the EBRS pass-through. Their roles for EBDS represent a continuation of this work.

12.2 Under both sets of regulations, the impact on the public sector is deemed to be minimal, however we are aware that there may be some implications for more vulnerable customers who may be less able to raise issues with their intermediary regarding their discounts. To mitigate against this, we are developing guidance and a communications strategy to ensure that intermediaries are aware of their obligations, so pass on support in a just and reasonable manner. Some public sector bodies, such as local authorities, may be classed as intermediaries. Civil courts will be impacted if end users decide to claim pass-through of scheme benefits as civil debts from intermediaries. Under the EBDS Pass-through Requirement (Heat Suppliers) Regulations, the impact on the public sector will involve the costs of the Office for Product Safety and Standards (OPSS) processing additional notifications and

enforcing the regulatory requirements. We have discussed with the OPSS how it can take on this role in a cost-effective manner.

- 12.3 A full Impact Assessment 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 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. The EBDS Pass-through Requirement (Heat Suppliers) Regulations will also be monitored through surveys of affected businesses and the collection of data on its impact by the Energy Ombudsman.
- 14.2 As part of the department's evaluations of the energy affordability schemes, further research is being developed to assess the level of support passed on to heat network customers and others by intermediaries in receipt of EBDS. For domestic households, this will mainly be covered by research as part of the GB and NI domestic interim evaluations to understand the experiences of households and the effectiveness in ensuring that costs were passed through to these customers by intermediaries. In addition, as part of the evaluation of EBDS and other non-domestic schemes, research with organisations will be conducted to understand the effectiveness of the cost-pass through process, including the awareness and understanding by organisations and intermediaries and to assess the level of pass through by and to organisations.
- 14.3 These instruments do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State for Energy Consumers and Affordability for Climate has made the following statement:
- 14.4 "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 EBDS Pass-through Requirement 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 Arran Mornin at the Department for Energy Security and Net Zero Telephone: or email: arran.mornin@beis.gov.uk can be contacted with any queries regarding and EBDS Pass-through Requirement (Heat Suppliers) Regulations.
- 15.4 Ludo Tolu and Sam Massey, Joint Deputy Directors for Biomethane and Heat Networks, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Amanda Solloway, Parliamentary Under Secretary of State for Energy Consumers and Affordability can confirm that this Explanatory Memorandum meets the required standard.