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STATUTORY INSTRUMENTS

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**2023 No. 455**

**The Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023**

**Enforcement of requirement to be a member of redress scheme**

**10.**—(1) An intermediary within the meaning of regulation 9 who does not comply with the requirement to be a member of the redress scheme in regulation 9(2)(d), is subject to civil enforcement action of the kind described in Schedule 4 to the Metering and Billing Regulations (save to the extent that civil enforcement action has or is being taken against the intermediary in connection with non-compliance with the requirement to become a member of the redress scheme referred to in regulation 9(1)(d) of the Energy Bills Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022).

(2) For the purpose of paragraph (1), that Schedule applies to intermediaries subject to the modifications set out in paragraphs (3) to (8).

(3) In paragraph 1—

- (a) omit the words “, an enforcement undertaking”;
- (b) insert at the end—

**“Interpretation**

**1A.** In this Schedule—

“authorised person” means the Secretary of State or in relation to a Scottish heat network the Scottish Ministers;

“EBDS Regulations” means the Energy Bills Discount Scheme Regulations 2023;

“intermediary” means—

- (a) a heat supplier; or
- (b) a person who otherwise supplies and charges for the supply of heating or hot water to its end users through a heat network, where that person has been provided with a scheme benefit in accordance with regulation 3(2)(a) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023;

“intermediary’s agent” means a person who has acted or is acting as agent for a qualifying heat supplier in connection with its application for a QHS certificate under regulation 17(4) of the EBDS Regulations, or who appears to an authorised person to have acted or to be acting in that capacity;

“QHS certificate” has the meaning given in the EBDS Regulations;

“qualifying heat supplier” has the meaning given in the EBDS Regulations.

## PART 1A

### Power to request information

#### Application of Part

**1B.** This Part applies where an authorised person has reasonable grounds to suspect that a person is—

- (a) an intermediary; or
- (b) in connection with the power to require the production of information in paragraph 1C only, an intermediary’s agent.

#### Power to require the production of information

**1C.** Before imposing a compliance notice on a person for failing to comply with the requirement in regulation 9(2)(d) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023, the authorised person may give notice to the person mentioned in paragraph 1B requiring that person to provide the authorised person with the information specified in the notice.

#### Procedure for notice under paragraph 1C

**1D.—(1)** A notice under paragraph 1C must be in writing and must specify that the information is required—

- (a) if the notice was served in reliance upon paragraph 1B(a), to determine if the person is an intermediary; or
- (b) if the notice was served in reliance upon paragraph 1B(b), to determine the identity of the qualifying heat supplier for whom that person is an intermediary’s agent.

(2) The notice may specify—

- (a) the time within which and the manner in which the person to whom it is given must comply with it; and
- (b) the form in which information must be provided.

(3) The notice may require—

- (a) the creation of documents, or documents of a description, specified in the notice; and
- (b) the provision of those documents to the authorised person.

(4) A requirement to provide information or create a document is a requirement to do so in a legible form.

(5) A notice under paragraph 1C does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce—

- (a) in proceedings in the High Court on the grounds of legal professional privilege; or
- (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(6) In sub-paragraph (5)(b), “communications” means—

- (a) communications between a professional legal adviser and the adviser's client; or
- (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

#### **Enforcement of requirement in paragraph 1C**

**1E.**—(1) A person who does not comply with the requirement to provide the authorised person with the information specified in a notice under paragraph 1C is subject to civil enforcement action under this Schedule.”

- (4) In paragraph 2—
  - (a) for sub-paragraph (1) substitute—

“(1) This paragraph applies where an authorised person has reasonable grounds to believe that a person has failed to comply with—

    - (a) a notice under paragraph 1C; or
    - (b) the requirement in regulation 9(2)(d) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023;”.
  - (b) in subparagraph (2) for “offence does not continue or recur” substitute “the person complies with that duty”;
  - (c) omit sub-paragraph (3).
- (5) Omit paragraphs 8 to 13.
- (6) In paragraph 14—
  - (a) for sub-paragraph (1) substitute—

“(1) The authorised person may serve a notice imposing a monetary penalty (“a non-compliance penalty”) on a person who does not comply with—

    - (a) a notice under paragraph 1C; or
    - (b) the requirement to be a member of the redress scheme referred to in regulation 9(1)(d) of the Energy Bills Discount Scheme Pass-through Requirement (Heat Suppliers) Regulations 2023.”;
  - (b) in sub-paragraph (2) omit the words “or enforcement undertaking”;
  - (c) in sub-paragraph (2), for the words from “be a percentage” to the end substitute “not exceed £5,000 in respect of each non-compliance identified in a compliance notice and not exceed £5,000 in respect of failure to comply with a notice given under paragraph 1C”;
  - (d) omit sub-paragraphs (3) and (5);
  - (e) after sub-paragraph (7), insert—

“(8) A non-compliance penalty is recoverable by the authorised person as a civil debt.”
- (7) In paragraph 17 omit sub-paragraph (5).
- (8) In paragraph 19—
  - (a) in sub-paragraph 1(a) omit “; and”;
  - (b) omit sub-paragraph (1)(b).