
STATUTORY INSTRUMENTS

2023 No. 9

The Energy Bill Relief Scheme (Non-Standard Cases) Regulations 2023

PART 3

Pass-through Requirement

Interpretation of this Part

6. In this Part—

“end user” means an end user as defined in section 19(3) of the Act other than an excluded end user;

“excluded end user” means a person to whom a relevant intermediary located in Northern Ireland supplies or makes available energy⁽¹⁾, heating and/or hot water at premises located outside England, Wales, Scotland or Northern Ireland;

“excluded person” means a person engaged in either or both of the provision of accommodation within the meaning of standard industrial classification divisions 55.1, 55.2, 55.3 (except relevant accommodation providers) and 55.9 (except persons providing student residences, school dormitories, workers hostels and rooming and boarding houses) and the provision of energy, heating and/or hot water to such accommodation;

“heating and/or hot water” means heating and/or hot water provided through a heat network;

“heat network” means a network that, by distributing a liquid or a gas, enables the transfer of thermal energy for the purpose of supplying heating or hot water to a building or persons in that building;

“pass-through” means the act of a relevant intermediary of passing through all or part of a scheme benefit to an end user;

“pass-through amount” means an amount, being all or part of a scheme benefit, which is passed through to an end user by a relevant intermediary pursuant to these Regulations;

“period” in relation to—

(a) a scheme benefit falling under paragraph (a) of the definition of that term in this regulation, means the period in respect of which that scheme benefit was provided to the relevant intermediary, and

(b) a pass-through amount, means the period in connection with which such pass-through was effected;

“relevant accommodation providers” means—

(a) in England, Wales or Scotland, persons providing mobile homes on protected sites as defined in the Mobile Homes Act 1983⁽²⁾, or

⁽¹⁾ Defined in s. 28(4) of the Energy Prices Act 2022.

⁽²⁾ 1983 c. 34. Section 5 was amended by sections 318 and 321(1) of, and Schedule 16 to the Housing and Regeneration Act 2008 (c. 17).

- (b) in Northern Ireland, persons providing caravans on protected sites defined in the Caravans Act (Northern Ireland) 2011⁽³⁾.

“relevant intermediary” means a relevant person (other than an excluded person) to whom a scheme benefit is provided in circumstances in which there is at least one end user other than the relevant intermediary. In regulation 7, “relevant intermediary” includes a person who will have entitlement to have a scheme benefit provided to it but to whom it has not yet been so provided;

“scheme benefit” means energy price support⁽⁴⁾ in the form of—

- (a) financial assistance provided to a relevant intermediary (as a non-standard customer) under a scheme agreement where the amount of the scheme benefit is the amount notified to that relevant intermediary in accordance with the terms of that agreement, or
- (b) where the end user is also a relevant intermediary, a pass-through made by virtue of these Regulations where the amount of the scheme benefit is the pass-through amount provided to the end user concerned (as intermediary),

and the amount of the scheme benefit may be an amount in pounds sterling or in pounds sterling per kWh (as appropriate) of energy, heating and/or hot water and a scheme benefit may have been provided in respect of a period before these Regulations came into force;

“usage” means the quantity of—

- (a) energy in respect of which a scheme benefit has been provided, or
- (b) heating and/or hot water produced using energy in respect of which a scheme benefit has been provided,

made available by a relevant intermediary to an end user.

Pass-through requirement

7.—(1) A relevant intermediary must not—

- (a) do anything which results in a reasonable likelihood that it will not receive a scheme benefit to which it may otherwise be expected to be entitled either as a non-standard customer or pursuant to the operation of these Regulations;
- (b) provide a pass-through amount to an excluded end user.

(2) A relevant intermediary must ensure that as soon as reasonably practicable after a scheme benefit has been provided to it in respect of a period, it provides to each of its end users in respect of that period a just and reasonable pass-through amount in respect of the scheme benefit provided to that relevant intermediary.

(3) If and to the extent that the relevant intermediary does not pass through the whole of the scheme benefit provided to it in respect of a period to its end users, it is for the relevant intermediary to demonstrate to end users that the pass-through it has effected in respect of the period concerned is just and reasonable, and in so doing it is entitled to take into account the extent to which its charges to end users reflect the increased cost of energy, heating and/or hot water as a result of the energy crisis.

(4) The pass-through amount must be calculated in accordance with the rules set out in regulation 8.

(5) Unless the circumstances in paragraph (7) apply, a scheme benefit is provided to a relevant intermediary—

- (a) when it is notified that a scheme benefit has been provided to it in accordance with terms incorporated or otherwise included in a scheme agreement, or

⁽³⁾ 2011 c. 12 (N.I.).

⁽⁴⁾ “energy price support” is defined in s.19(4) of the Act.

- (b) if the relevant intermediary is also an end user, when a pass-through amount is provided to it by virtue of these Regulations.
- (6) A scheme benefit is deemed to have been provided to a relevant intermediary when such relevant intermediary is notified that it has been identified as an end user for the purpose of these Regulations but the pass-through amount set out in such notification is zero.
- (7) A scheme benefit is not treated as having been provided to a relevant intermediary for the purposes of these Regulations to the extent that the relevant intermediary has notified the person that provided the scheme benefit that it has been provided in error and the relevant intermediary is taking reasonable steps to return such scheme benefit to that person in accordance with the requirements of its scheme agreement (as appropriate).
- (8) An end user can also be a relevant intermediary in respect of a scheme benefit provided to that end user and vice versa.
- (9) Where a person is an end user, and that person is also a relevant intermediary in respect of some or all of the same energy, heating and/or hot water, that person must comply with these Regulations.
- (10) To give full effect to the pass-through requirement a relevant intermediary must take all such reasonable steps as may be necessary to secure that it is provided with the scheme benefit to which it is entitled so that it may effect a pass through to its end users.
- (11) If a scheme benefit has been provided to a relevant intermediary in respect of energy, heating and/or hot water supplied or made available to an excluded end user, the relevant intermediary must notify the person that provided the scheme benefit of this and such scheme benefit is not treated as having been provided to the relevant intermediary for the purposes of these Regulations.

Calculation of pass-through amount

- 8.—(1)** Subject to regulation 8(3), the requirement for a relevant intermediary to provide to end users a pass-through amount that is just and reasonable is treated as having been met in any case where—
- (a) the relevant intermediary makes energy, heating and/or hot water available through equipment where—
 - (i) tariffs per unit of energy, heating and/or hot water used are automatically charged by the equipment, and
 - (ii) the energy, heating or hot water is paid for by end users at the time that the energy, heating and/or hot water is made available, and
 - (b) the relevant intermediary effects a pass-through by adjusting its tariffs charged by the equipment to reflect the scheme benefit provided to the relevant intermediary under its scheme agreement as soon as reasonably practicable after the scheme benefit is provided to the relevant intermediary in accordance with regulation 7(5).
- (2) Subject to regulation 8(3), where the relevant intermediary was charging end users at the point at which the scheme benefit was provided to it either—
- (a) according to the proportion which each end user’s usage represents of the aggregate quantity of energy, heating and/or hot water supplied or made available to the relevant intermediary which led to provision of the scheme benefit, or
 - (b) according to the proportion each end user pays of the total amount paid by the relevant intermediary in relation to the aggregate energy, heating and/or hot water supplied or made available to the relevant intermediary which led to the provision of the scheme benefit,

a pass-through amount is just and reasonable for the purposes of regulation 7(2) if the relevant intermediary applies the same approach, as the case may be, to calculate the pass-through amount for each end user on this basis.

(3) If neither paragraph (1) nor paragraph (2) applies, in considering what is just and reasonable the relevant intermediary must apply the best available information to allocate the scheme benefit amongst end users and in doing so may take into account the basis on which the relevant intermediary was allocating charges amongst end users at the point at which the scheme benefit was provided to it.

(4) When calculating the pass-through amount in accordance with this regulation, a relevant intermediary must take into account circumstances in which a person is an end user for part of a period, such that the pass-through to that end user relates only to that part of the relevant period in which they were an end user.

(5) A relevant intermediary is not required to pass-through to end users amounts in excess of the scheme benefit provided to it (as adjusted to take account of its own end user usage, where relevant).

(6) When calculating pass-through amounts, a relevant intermediary which is also an end user in respect of a scheme benefit provided to it must not retain more of the scheme benefit for itself than is proportionate to its own usage (or, if it is not practicable to assess the volume of its usage, the proportion of overall energy, heating and/or hot water charges borne by the relevant intermediary and its end users that the relevant intermediary itself bears).

(7) A relevant intermediary is entitled to include energy, heating and/or hot water used to provide common services to end users as part of its own usage for the purposes of the calculation in paragraphs (2) or (3) to the extent that the cost of such energy, heating and/or hot water is or will not be borne by its end users as part of the arrangements in place when the scheme benefit was provided to the relevant intermediary in accordance with regulation 7(5).

Provision of information to end users

9.—(1) Within the period of 30 days beginning with the day on which the scheme benefit was provided to it in accordance with regulation 7(5) or was deemed to have been provided to it in accordance with regulation 7(6), the relevant intermediary must take reasonable steps to notify its end users in writing (where possible using the means of communication it customarily uses to communicate with its end users)—

- (a) that the relevant intermediary has either—
 - (i) had a scheme benefit provided to it and has identified the end user as a person entitled to a just and reasonable proportion of such benefit by virtue of the application of these Regulations, or
 - (ii) been notified that it has been identified as an end user for the purpose of these Regulations but the pass-through amount set out in such notification is zero (and in such circumstances the relevant intermediary must also provide to its end users the details in sub-paragraphs (b) and (c) provided to it in the notice from its relevant intermediary and the information set out in sub-paragraphs (f) and (g)),
- (b) the amount of scheme benefit provided to the relevant intermediary and that the scheme benefit has been passed through by virtue of these Regulations,
- (c) the amount or proportion of scheme benefit provided to the relevant intermediary (if any) which it intends to pass-through to the end user concerned together with supporting details demonstrating why the relevant intermediary considers such pass-through amount to be just and reasonable,
- (d) to the extent applicable, when and how the relevant intermediary will provide the pass-through amount to the end user,

- (e) to the extent applicable, of any steps it is taking to correct an error in the way in which the relevant intermediary has previously passed-through a scheme benefit to an end user,
 - (f) how the end user may appeal to the relevant intermediary about the matters set out in the notice, and
 - (g) that if the pass-through amount to which it is entitled by virtue of these Regulations is not provided to the end user, it is entitled to recover it from the relevant intermediary as a civil debt pursuant to regulation 11(1).
- (2) Where the relevant intermediary makes energy, heating and/or hot water available through equipment which automatically charges a tariff per unit of energy, heating and/or hot water used, paid by end users at the time the energy, heating and/or hot water is made available—
- (a) paragraph (1) does not apply, and
 - (b) the relevant intermediary must, as soon as reasonably practicable after the scheme benefit was provided to it, notify its end users by notice on or near such equipment in a place in which it will be seen by end users of—
 - (i) the tariff adjustment which the relevant intermediary has applied pursuant to these Regulations to effect the pass-through to end users of the scheme benefit which has been provided to it, and
 - (ii) the contact details of the relevant intermediary which can be used should the end user require further information about its entitlements under these Regulations, including the ability to appeal to the relevant intermediary in respect of the basis on which the tariffs have been adjusted to reflect the scheme benefit provided to the relevant intermediary.

Effecting the pass-through

10.—(1) Notwithstanding any provision in the contract between the relevant intermediary and the end user at the time the scheme benefit was provided to the relevant intermediary, the relevant intermediary must effect the pass-through so that the pass-through amount is provided to the end user as soon as reasonably practicable.

(2) Where the relevant intermediary makes energy, heating and/or hot water available through equipment which automatically charges a tariff per unit of energy, heating and/or hot water used, paid by end users at the time that the energy, heating and/or hot water is made available, the relevant intermediary must as soon as reasonably practicable make such adjustments to its tariff as is necessary to effect the pass-through required under regulation 7(2).

(3) Without prejudice to paragraph (1), a pass-through can be effected, in pounds sterling or pounds sterling per kWh (as appropriate) by—

- (a) application of a credit in the next invoice, statement of account or other similar document provided by the relevant intermediary to the end user,
- (b) a payment in cash or by any other means, including a bank transfer,
- (c) tariff adjustment on tariff equipment,
- (d) adjusting the amount of money taken pursuant to a direct debit or the amount of a standing order,
- (e) set off against an amount or part of an amount which was owed by the end user to the relevant intermediary at the time at which the scheme benefit was provided to the relevant intermediary in accordance with regulation 7(5),

or a combination of the methods set out in this paragraph, as appropriate.

(4) A relevant intermediary has discharged its duty under regulations 7(2), 9(1) or 9(2), and paragraph (1) in respect of an end user if and to the extent it has taken reasonable steps to notify

and effect a pass-through of a just and reasonable pass-through amount to that end user but is unable to do so.

(5) An end user has no right to a pass-through amount if the relevant intermediary has discharged its duty under regulations 7(2), 9(1) or 9(2), and paragraph (1) pursuant to paragraph (4) and a period of six months has elapsed after the scheme benefit concerned was provided to the relevant intermediary.

(6) If the contract between the relevant intermediary and the end user expires or is terminated before the pass-through required by these Regulations is effected (such that the full value of the pass-through amount has not been provided to the end user), the relevant intermediary must effect a pass through to the end user to reflect the end user's entitlement (or remaining entitlement) under these Regulations as soon as reasonably practicable following such expiry or termination.

Enforcement

11.—(1) Where a relevant intermediary fails to effect a pass-through to which an end user is entitled by virtue of these Regulations, that end user may, subject to regulation 10(5), recover the relevant pass-through amount from the relevant intermediary as a civil debt.

(2) Where a relevant intermediary fails to effect a pass-through to which an end user is entitled by virtue of these Regulations, the end user may claim interest to be paid by the relevant intermediary on such amount at a rate of 2% per cent per annum over the Bank of England base rate from the date 60 days after the date on which the scheme benefit to which the pass-through relates was provided to the relevant intermediary.

(3) For the purposes of this regulation the “Bank of England base rate” means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or
- (b) where an order under section 19 of the Bank of England Act 1998(5) (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.