EXPLANATORY MEMORANDUM TO

THE ENERGY-INTENSIVE INDUSTRY ELECTRICITY SUPPORT PAYMENTS AND LEVY REGULATIONS 2024

2024 No. 409

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade (DBT) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes provision for electricity support payments to be provided to energy-intensive industries for the purpose of alleviating the impact of electricity costs. The instrument sets out how such payments are to be funded (through a levy on electricity suppliers) and appoints an administrator (Elexon Ltd) to administer the compensation and levy schemes.

2.2 It makes provision for determining eligibility and the corresponding application process for the proposed Network Charging Compensation Scheme, the intention of which is to provide relief on the network charging costs paid by energy-intensive industries. This includes calculation of compensation payments to beneficiaries, information sharing, enforcement of obligations and dispute resolution.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, and Scotland.

5. European Convention on Human Rights

5.1 The Rt Hon Kemi Badenoch MP, the Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Energy-Intensive Industry Electricity Support Payments and Levy Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 This amendment is being made through the powers conferred by sections 211, 212 and 331(2) of the Energy Act 2023.

7. Policy background

What is being done and why?

7.1 The policy objective is to support the most electricity-intensive industries with the highest electricity costs. These businesses are disproportionately impacted by high electricity prices due to the volume of consumption and their inability to pass on costs to their customers as they operate within highly internationally traded sectors. International competitors face lower electricity costs than their GB equivalents, for example, because they operate in jurisdictions with less stringent environmental regulations, most notably in countries outside of the EU, leading to lower associated policy costs, or because they benefit from more generous subsidies for these costs than offered in GB.

7.2 These two factors put GB energy-intensive industries (EIIs) at an international competitive disadvantage and without intervention could lead to carbon leakage, hinder decarbonisation ambitions, and lead to disinvestment and subsequent job losses in key strategic sectors.

7.3 This instrument will mitigate the risk of carbon leakage through compensating eligible EIIs for a portion of their network charging costs.

Explanations

<u>*What did any law do before the changes to be made by this instrument?*</u>

7.4 This instrument does not materially change the operation of any existing legislative systems. Section 211 of the Energy Act 2023 confers powers on the Secretary of State to make regulations to provide electricity support payments to EIIs for the purpose of alleviating the impact of electricity costs. Section 212 of the Energy Act confers powers on the Secretary of State to make provision about the payment of a levy by suppliers for the purposes of funding the compensation scheme.

<u>*Why is it being changed?*</u>

This instrument is being made to reduce the electricity costs of eligible EIIs to help mitigate the risks of carbon leakage, and disinvestment and subsequent job losses affected sectors.

<u>*What will it now do?*</u>

<u>*Support for energy intensive activities*</u>

7.5 Under these regulations, eligible EIIs will be able to apply for support payments every quarter. The instrument specifies the activities which can form the basis of an application for support, drawing on existing definitions in the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015. It sets out the information to be included in such applications such as the total amount of network charges to be paid by the eligible EII and the confirmation of such payments by a Director’s letter. These payments are funded by a levy which takes effect 12 months in arrears and the Regulations place an obligation on the administrator to publish the size of each monthly levy, six months before it is to be recovered.

7.6 In assessing applications, the instrument allows the support payments administrator to be able to acquire further information when it needs it and sets out how to determine the amount of the network charges for which each applicant can make a claim for support.

7.7 When calculating an individual EII's compensation, this instrument enables corrections to be made to support payment entitlements, for example where network charges are adjusted in light of updated information. Such corrections are then included in the next round of applications to be considered by the administrator. These calculations will also include any changes in entitlements resulting from any dispute determinations.

7.8 Additionally, to ensure that eligible EIIs receive their entitled support payments, these regulations make provision for the administrator to hold a reserve fund, which will be determined and collected by the administrator over the year beginning from April 2025.

EII levy

7.9 Under these regulations, the administrator may recover its ongoing administrative costs under the supplier levy obligations or it may seek to rely on other means to cover its costs. It must then calculate the total of any costs to be recovered, along with the total amount of support payments and any amount that needs to be collected for the reserve fund. The regulations make provision for each supplier to be notified 10 working days after the start of the month of their total levy obligation and for this amount to be paid by suppliers within 5 working days.

7.10 The administrator may become aware that information relied on in the calculation of a supplier's obligation is inaccurate. In these circumstances these regulations make provision for the administrator to calculate any change and notify the supplier as soon as reasonably practicable. These regulations also make provision for a supplier to dispute any determination made by the administrator concerning the levy notice, corrections, or mutualisation charges by giving a notice which sets out what is being disputed and on what grounds. The administrator is required by these regulations to decide and notify the disputing supplier within 28 days with either a determination of any amended amounts resulting from an acceptance, or the reasoning for a rejection.

7.11 Should a supplier to fail to pay their liability and the outstanding amount exceeds the amount kept in the reserve fund, these regulations make provision for the administrator to pass the outstanding costs amongst the other paying suppliers in a process known as "mutualisation".

7.12 Where payment is not forthcoming (regardless of whether costs have elsewhere been covered, for example, by mutualisation), the administrator can require simple interest, calculated at 5 per cent per annum over the relevant Bank of England Base rate, from a supplier who fails to make the levy payments or the mutualisation charge.

Miscellaneous

7.13 Under these regulations, an EII can request from its supplier any information they may need to support their application for electricity support payments.

7.14 The instrument also makes provision for the Secretary of State to request any information from the administrator, supplier's or EII applicants and request any advice they deem necessary from the administrator.

7.15 The regulations enable the administrator to notify the Secretary of State of their intention to withdraw as the administrator of the scheme along with any advice the Secretary of State may reasonably need relating to the termination. In this case, all property, rights, liabilities, obligations, duties, and entitlements shall transfer to the

Secretary of State when the termination takes effect six months after the issuing of the notice.

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.

9. Consolidation

9.1 This instrument does not amend another instrument.

10. Consultation outcome

10.1 On 29 June 2023, DBT launched a consultation to seek views on the EII Network Charging Compensation Scheme and Support Levy. Through the consultation, DBT sought views and evidence from a wide range of audiences, including EIIs (whether currently benefitting or not from the existing exemption scheme in respect of renewables costs), other electricity consumers, trade bodies, energy suppliers, consumer associations, the devolved administrations, and other interested parties.

10.2 DBT sought views on:

- the design of the proposed compensation scheme
- evidence of impact on suppliers
- the impact of the design on other, non-domestic consumers

10.3 Stakeholders were provided with an opportunity to provide their views and evidence to the questions posed.

10.4 The consultation was available on GOV.UK and was emailed directly to a number of stakeholders who had previously expressed an interest in this issue or could be perceived as an interested party.

10.5 The consultation ran for 8 weeks and closed on 24 August 2023. A total of 29 responses were received from stakeholders, including EII companies, business representative organisations, trade associations, energy suppliers and others. Overall, responses represented the views of over 2000 organisations, when taking into account bodies who answered on behalf of multiple members.

10.6 The majority of responses were positive and confirmed our intention to deliver the proposed policy. Respondents agreed that supporting EIIs for a portion of their network charging costs will achieve the Government's aims to ensure that these industries can remain competitive.

10.7 During the consultative phase, it was made clear, particularly by the energy suppliers, that an implementation date of April 2024 would place significant pressure on supplier billing systems due to insufficient notice. This could jeopardise the success of the scheme as it could result in defaulting suppliers. In comparison, EIIs and trade bodies voiced the need to be compensated from April 2024. Therefore, the scheme was designed to compensate EIIs from April 2025 for network charging costs incurred from April 2024. This is to ensure that EIIs receive the necessary support whilst easing the pressure on suppliers.

10.8 A link to the full consultation summary can be found at: https://www.gov.uk/government/consultations/british-industry-supercharger-network-charging-compensation-scheme.

11. Guidance

11.1 Guidance will be published in 2024 to explain the compensation scheme and how it will affect both recipients and suppliers of the scheme.

12. Impact

12.1 The impact on business, charities or voluntary bodies is the anticipated small increase to electricity bills for non-eligible users, including private businesses and households.

12.2 The impact on the public sector is the anticipated small increase to electricity bills and will depend on the electricity consumption.

12.3 An impact assessment setting out the key impacts of this policy has been completed. The Impact Assessment is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk. A copy is also available by contacting: eii.correspondence@businessandtrade.gov.uk or the Department for Business and Trade at Old Admiralty Building, Admiralty Place, London, SW1A 2DY.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 There will be a marginal additional administrative burden for small businesses that wish to benefit from the scheme.

13.3 There will be a small bill increase for small businesses who are not eligible EIIs as a result of the Network Charging Compensation scheme (estimated to be an increase of £1MWh).

13.4 Overall, we do not expect that this instrument will have a disproportionate effect on small businesses.

14. Monitoring & review

14.1 As with previous instruments amending the 2015 Regulations, this instrument is not required to include a statutory review clause as the exemption in section 28(3) of the Small Business, Enterprise and Employment Act 2015 (SBEE Act) applies. This is on the basis that the instrument makes provision varying a levy (imposed on suppliers and bill payers), or in the alternative, makes provision in connection with provision imposing or varying a levy (section 28(3)(a) of the SBEE Act). In addition, the instrument falls within the exemption in section 28(3)(c) as it amends provision in connection with the giving of financial assistance to EIIs. However, we plan to undertake an evaluation and review of the EII exemption scheme within five years as part of a review of the British Industry Supercharger, to assess whether the support continues to achieve the policy objective of reducing the risk of carbon leakage and supporting the competitiveness of energy intensive industries. This review will take account of market conditions, industrial electricity prices, effectiveness of the scheme for the first five years and any wider policies which will have been implemented which may have a material impact.

15. Contact

15.1 James Lewis at the Department for Business and Trade Telephone: 07830226600 or email: james.lewis2@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Neil Hodgson, Deputy Director for Energy Intensive Industries, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Kemi Badenoch MP, the Secretary of State at the Department for Business and Trade and the Secretary of State at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.