EXPLANATORY MEMORANDUM TO

THE ENERGY BILL RELIEF SCHEME AND ENERGY BILLS DISCOUNT SCHEME (AMENDMENT) REGULATIONS 2024

2024 No. [XXXX]

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.

2. Declaration

2.1 Miatta Fahnbulleh, Minister for Energy Consumers at the Department for Energy Security and Net Zero, confirms that this Explanatory Memorandum meets the required standard.

2.2 Jane Walker, Director for Energy Affordability and Consumers at the Department for Energy Security and Net Zero, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jonathon Griffith at the Department for Energy Security and Net Zero (Telephone: 0207 215 8999 or email: ebrs@energysecurity.gov.uk) can be contacted with any queries regarding this instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The legislation removes the requirement to calculate and apply the main discounts under the Energy Bill Relief Scheme ("EBRS") and the Energy Bills Discount Scheme ("EBDS") for energy supplied to non-domestic consumers from an energy supplier who has been "off-boarded" (see section 5.1) under those schemes. There are exceptions to this removal. The process for dealing with disputes between non-domestic consumers and their suppliers on a matter arising as a result of this instrument reverts to the normal processes for such disputes. This instrument also amends the Energy Prices Act 2022 ("EPA) to extend the period in which the Department for the Economy in Northern Ireland ("the NI Department") may exercise specified powers under the Act.

Where does the legislation extend to, and apply?

4.2 Part 1 of this instrument extends to England and Wales, Scotland and Northern Ireland; parts 2 and 3 extend to England and Wales and Scotland; part 4 extends to Northern Ireland only.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) follows its extent, as set out in the preceding paragraph.

5. Policy Context

What is being done and why?

5.1 The EBRS and the EBDS required energy suppliers to calculate and apply discounts to the bills of non-domestic consumers for energy supplied in the period 1 October 2022 – 31 March 2024. Suppliers then recovered the discounts from the Government. Many consumers received estimated bills in the first instance, to which the discounts were applied. For a small minority of non-domestic customers, the process to get a bill based on actual meter readings ("actualisation") is still going on. As bills are actualised, suppliers and the Government review the payments made and make reconciling payments so that suppliers neither under- or over-recover the discounts applied.

5.2 Generally, once a supplier has reached 95% actualisation for billed gas volumes, and 97% for billed electricity volumes, and has met other assurance criteria, they can be "off-boarded" from the scheme as follows. In cases where the actualisation targets cannot be shown to have been met for methodological or data availability reasons, the Departments will seek further assurances. To off-board a supplier, the Secretary of State must determine, in accordance with the EBRS and EBDS Regulations, that it is likely that there will be no further material discount amounts to be paid to, or received from, that supplier, after a specified date, known as the "reconciliation run-off date". After that date, the supplier cannot recover any discounts from the Government.

5.3 This legislation generally removes the requirement for a supplier who has been off-boarded to calculate and apply discounts to bills or parts of a bill that are newly identified after the supplier has left the scheme. This ensures that they do not have to fund discounts to consumers without being able to recover from Government. It also means that suppliers can likely be off-boarded from the schemes more efficiently, reducing the cost to taxpayers of administering these schemes.

5.4 Suppliers must still provide the discount for cases in which any of the following apply:

- Where the supplier is rebilling for a period, perhaps because an estimated bill is replaced by an actualised bill, for the portion of energy that was originally billed when the discount duties applied;
- Where the supplier has not previously issued a bill for the billing period when the discount duties applied;
- Where unreasonable delay or other failure by the supplier has led to it not billing energy accurately or at all when the discount duties applied.

5.5 This instrument also amends the EPA by substituting a longer period in which the NI Department may exercise specified powers under the Act.

What was the previous policy, how is this different?

5.6 The core policy has not changed – EBRS and EBDS were schemes through which the Government would fund discounts to non-domestic energy bills. However under the existing regulations, off-boarded suppliers are still obliged to calculate and apply discounts for energy consumption not billed previously, but are unable to recover those amounts from the Government. This instrument removes those discount duties to the extent set out above.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the Energy Bill Relief Scheme Regulations 2022 and the Energy Bills Discount Scheme Regulations 2023. Both sets of regulations are amended to achieve the same effects.

6.2 This instrument disapplies the main duties on a supplier to discount energy supplied during the scheme periods once they have been off-boarded. However the supplier must continue to discount energy:

- Which it has previously billed to the customer when the discount duties applied;
- Which was supplied in a billing period (e.g. a month or quarter, depending on how frequently the customer is billed) for which the supplier has not previously issued a bill when the discount duties applied;
- Where unreasonable delay, or another failure on the part of the supplier (such as error), has led to the energy not being billed accurately or at all when the discount duties applied.

6.3 The EBRS and EBDS Regulations separately provide for a supplier to decrease or increase the amount of discount where a customer has made arrangements which decrease or increase its exposure to the wholesale energy price. However for variable price contracts, the amount of discount may only be decreased. This instrument extends this position to all supply contracts once a supplier is off-boarded.

6.4 Under the EBRS and EBDS Regulations, where a customer and supplier cannot reach agreement on certain specified matters, they may refer the matter to the Secretary of State for determination. This instrument provides that any matter which arises as a result of the amendments made by this instrument may not be so referred to the Secretary of State.

6.5 This instrument also amends the EPA by substituting a longer period in which the NI Department may exercise specified powers under the Act. The period otherwise ended in August 2024, but this instrument provides for it to end in April 2026. The specified powers include those required to amend the Northern Ireland equivalent of the EBRS and EBDS Regulations.

Why was this approach taken to change the law?

6.6 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The discounting issue was raised by energy suppliers during discussions of the proposed off-boarding process in February 2024. Further engagement with the industry was carried out in workshops and similar sessions to fully understand the issue and to identify the best solution. Suppliers were asked to provide data to support analysis but generally had difficulties identifying data that would quantify the complex unknown elements.

7.2 There has not been any consultation with customers who might be affected.

8. Applicable Guidance

8.1 Existing guidance for suppliers will be updated as necessary.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the level of impact on business is expected to be low. A de minimis assessment of the direct administrative costs faced by suppliers and on the potential transfer of discounts payable or due between energy suppliers and consumers as a result of this change, was determined more appropriate and proportionate.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislation will only result in a change to transfers of discounts otherwise applicable between energy suppliers and their customers, with no significant net impact to businesses.

9.3 The legislation does not negatively impact micro business energy consumers which have similar payment terms to domestic customers and are not subject to possible billing revisions more than 12 months after the end of the period. Small and micro energy suppliers- which make up roughly half of all energy suppliers - will benefit from no longer needing to pay additional discounts.

9.4 The impact on the public sector will generally be restricted to those public sector activities that have not had an actualised bill, and whose estimated bill was lower than actual, who do subsequently get an actualised bill after this instrument comes into force, and whose supplier had off-boarded from the scheme prior to the bill being actualised. Any such customers will not receive discounts on any previously unbilled usage, except in the circumstances outlined above (paragraph 6.2).

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The low level of impacts expected does not warrant a specific monitoring and review regime. As retrospective bills cannot be issued after a certain amount of time has lapsed (the amount of time for a particular customer depends on the level of usage), the effect of the legislation will taper to zero within six years. Regular engagement with energy suppliers provides opportunities for any occurrence of the circumstances considered by this instrument to be reported to Government.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Miatta Fahnbulleh, Minister for Energy Consumers, has made the following statement:

"In my view including a requirement for review in this instrument would be disproportionate, taking into account the expected low level of economic impact which reduces over time".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Energy Consumers has made the following statement regarding Human Rights:

"In my view the provisions of the Energy Bill Relief Scheme and Energy Bills Discount Scheme (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").