EXPLANATORY MEMORANDUM TO

THE ENERGY BILL RELIEF SCHEME AND ENERGY PRICE GUARANTEE PASS-THROUGH REQUIREMENT AND MISCELLANEOUS AMENDMENTS REGULATIONS 2022

2022 No. SI.1125

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy 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 This instrument requires intermediaries, such as landlords, in Northern Ireland to pass on benefits received from the Energy Bill Relief Scheme Northern Ireland and/or the Energy Price Guarantee Northern Ireland, as appropriate, to end users, such as tenants, who are the intended beneficiaries of the relevant schemes.

2.2 This instrument also makes amendments to the Energy Bill Relief Scheme Regulations 2022 and Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 (collectively "the EBRS Regulations") and minor amendments to the Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022.

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 is Northern Ireland, except for regulations 9 and 10 (Part 4 of the instrument) for which the extent is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Northern Ireland, except for regulations 9 and 10 (Part 4 of the instrument) which applies to England and Wales and Scotland.

5. European Convention on Human Rights

5.1 The Rt Hon Graham Stuart, the Minister for Climate, has made the following statement regarding Human Rights:

"In my view the provisions of the Energy Bill Relief Scheme and Energy Price Guarantee Pass-through Requirement and Miscellaneous Amendments Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 19 of the Energy Prices Act 2022 ("the Act") enables the Secretary of State to impose by regulations pass-through requirements on persons to whom energy price support is provided ("intermediaries").

6.2 This instrument makes provisions for pass-through requirements on intermediaries in Northern Ireland in respect of the Energy Bill Relief Scheme Northern Ireland and/or the Energy Price Guarantee Northern Ireland and makes minor amendments to the Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022.

6.3 This instrument is part of a wider legislative package which give effect to pass-through requirements. This instrument is similar to instruments covering pass-through requirements on intermediaries for equivalent schemes in Great Britain. In particular, those instruments are the Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022 and the Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022. In addition, this instrument cross-refers to the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022. Together these two instruments ensure that pass-through requirements are in place in Northern Ireland for the relevant energy support schemes outlined in the Act. Regulation 10 makes minor amendments to the Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022.

6.4 Further instruments are expected to be made in respect of the Energy Bills Support Scheme Northern Ireland, providing pass-through requirements for the scheme.

6.5 Section 9 and Schedule 1 of the Act enables the Secretary of State to make regulations for the implementation of the Energy Bill Relief Scheme ("EBRS") for non-domestic customers in England and Wales, and Scotland. Section 11 and Schedule 2 of the Act enables the Secretary of State to make regulations for the implementation of the Energy Bill Relief Scheme for non-domestic customers in Northern Ireland. Regulation 9 makes a minor amendment to the Energy Bill Relief Scheme Regulations 2022 and regulation 8 makes minor amendments to the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022.

7. Policy background

What is being done and why?

7.1 The Act provides statutory underpinning for, or enables the creation of, energy support schemes to help households, businesses, and others with energy costs for winter 2022 and future periods. Failing to offer support could result in financial turmoil for businesses and consumers, with energy bills estimated to increase significantly without intervention. The support schemes enabled by the Act will see a typical household pay significantly less for energy, while some businesses could be paying less than half of predicted wholesale costs this winter.

7.2 The purpose of section 19 of the Act (requirement to pass on energy price support to end users) is to enable the government to ensure that intermediaries who have received energy price support pass through the benefit obtained to end users (who are the intended beneficiaries of the relevant schemes). For example, the legislation will

require landlords with all-inclusive contracts to pass support to their tenants as appropriate. This instrument ensures that pass-through requirements for the Energy Bill Relief Scheme Northern Ireland and/or Energy Price Guarantee Northern Ireland are put in place in Northern Ireland. The Energy Price Guarantee Northern Ireland will reduce the unit cost of electricity and gas. The Energy Bill Relief Scheme Northern Ireland will provide a price reduction to ensure that all businesses and other non-domestic customers are protected from excessively high energy bills over the winter period.

7.3 This instrument includes provisions for pass-through requirements to apply to energy price support that has been provided to intermediaries in advance of the pass-through regulations coming into force. Some intermediaries receiving support through EBRS may be exempt from this where they have equipment which automatically charges tariffs as the energy is used, for example electric vehicle charging facilities.

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. For the purposes of the regulations an end user does not include a person to whom a relevant intermediary supplies or makes available energy at premises located outside Northern Ireland.

7.5 Intermediaries should pass on the discount irrespective of how the end user pays for their energy use. The intermediary should pass the discount in a just and reasonable way and must follow the regulations in calculating the pass-through amount. The instrument sets out what must be taken into account in determining a just and reasonable amount in various circumstances depending on how energy costs are borne by the end user and whether the intermediary itself bears energy costs related to the benefit concerned, for example for common services provided.

7.6 If an intermediary does not pass through the whole of the scheme benefit provided to them, then they must demonstrate to the end user that the amount they are passing on is just and reasonable, including taking into account the extent to which the intermediaries' charges to end users reflect the increased cost of energy as a result of the energy crisis. The intermediary must follow the regulations in calculating the pass-through amount.

7.7 The intermediary must, within 30 days of a scheme benefit being provided or the regulations coming into force (whichever is later), provide information to the end user in writing. This includes, but is not limited to, the amount of scheme benefit received, the amount that the intermediary intends to pass through to the end user, when and how they will pass-through the benefit, and that the end user can recover amounts to which they are entitled to but do not receive as a civil debt. In the case of tariff adjustments, the intermediary must notify the user of that adjustment and how to seek more information.

7.8 The intermediary must ensure the end user receives the pass-through amount as soon as reasonably practicable. The instrument sets out the ways in which a pass-through can be effected.

7.9 Where an intermediary fails to effect a pass-through to which an end user is entitled, that end user may recover the amount from the intermediary as a civil debt. In such cases the end user may claim interest to be paid by the relevant intermediary at a rate of 2% per annum above the Bank of England base rate from 60 days after the intermediary receives the scheme benefit.

7.10 Regulations 8 and 9 make minor amendments to regulation 44(2)(b) of the EBRS Regulations (44(2)(b) is mirrored in the NI EBRS Regulations). As currently drafted, regulation 44(2)(b) places an obligation on a customer to provide declarations to a supplier on a periodic basis that certain amounts of electricity supplied is an 'ineligible quantity' (pursuant to regulation 44(1)). This amendment is required to ensure that regulation 44(2)(b) obliges customers to also declare an ineligible quantity of gas supplied so that the EBRS operates as intended. Without this amendment, a customer would not be obliged to declare ineligible quantities of gas supplied, when the purpose of this part of the EBRS Regulations is to capture both electricity and gas.

7.11 Regulation 8 also makes minor amendments to the NI EBRS Regulations to correct a number of incorrect cross references in regulations 61, 67 and 72.

7.12 Regulation 10 makes minor amendments to regulations 2, 3 and 6 of the Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No consolidation is necessary as this is the first exercise of the power in relation to the pass-through requirements on intermediaries in Northern Ireland in relation to the Energy Bill Relief Scheme Northern Ireland and/or the Energy Price Guarantee Northern Ireland. The amendments to other instruments are minor and so no consolidation is proposed.

10. Consultation outcome

10.1 No formal public consultation has taken place on this instrument given the urgency of ensuring households, businesses and other organisations receive the support they need this winter. We will continue to review this instrument as necessary following implementation based on stakeholder feedback.

11. Guidance

11.1 The Department for Business, Energy and Industrial Strategy has already published guidance to help explain the pass-through requirements on intermediaries in Great Britain and will update this guidance to reflect the pass-through requirements on intermediaries in Northern Ireland as set out under this instrument.

11.2 The Secretary of State has made Rules in relation to the operation of the EBRS and also published guidance in relation to the operation of certain aspects of the schemes.

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal as the instrument does not change the energy price support to which they are entitled under each of the relevant schemes; rather the instrument ensures that the support they receive as intermediaries is passed on to the end user. Intermediaries will be required to provide information to end users which may involve minimal administrative costs for these bodies.

12.2 The impact on the public sector is minimal. Some public sector bodies, such as Local Authorities, may be classed as intermediaries. Civil courts will be impacted if end users decide to claim civil debts from intermediaries.

12.3 The original intent of the EBRS instruments was that references to gas and electricity would be included in the relevant regulation. This amendment ensures that the EBRS instruments operate as intended.

12.4 Full Impact Assessments for the Energy Price Guarantee and the Energy Bill Relief Schemes have been published. They can be found online here: https://bills.parliament.uk/bills/3341/publications for the Energy Price Guarantee and online here: https://www.legislation.gov.uk/uksi/2022/1100/impacts for the Energy Bill Relief Schemes.

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 this instrument.

13.3 In relation to the EBRS, to minimise the impact of the requirements on small businesses, the approach taken is that eligible customers do not need to take action or apply to the scheme and support will automatically be applied to bills for eligible customers. No specific action is proposed to minimise regulatory burdens on small suppliers responsible for applying reductions. All suppliers are treated in the same way irrespective of size given they all have the same responsibilities under their supply licence conditions.

13.4 All eligible non-domestic consumers should receive a reduction in energy bills irrespective of size (subject to certain eligibility criteria and limited exclusions like regulation 44 of the EBRS Regulations). Micro-businesses that are on domestic tariffs will receive support through the Energy Price Guarantee scheme. Those on non-domestic tariffs will receive support through the Schemes.

14. Monitoring & review

14.1 The Department will continue to monitor this instrument following implementation, including any feedback from stakeholders, and will review as necessary.

14.2 This instrument does not include a statutory review clause by virtue of section 28(3)(d) of the Small Business, Enterprise and Employment Act 2015. This is because the instrument will only have effect for the duration of the each of the schemes to which it relates. The Rt Hon Graham Stuart, the Minister for Climate, has made the following statement:

"A review provision in this instrument is not included given the urgent need to ensure businesses and consumers receive the support they need, including ensuring this is passed on by intermediaries to end users as appropriate."

14.3 The Energy Price Guarantee Northern Ireland will last as designed until 31 March 2023. It is the Government's intention that, after this winter, support is better focused on the most vulnerable households and those least able to pay, with greater incentives to improve energy efficiency. A Treasury-led review will consider how best to deliver these objectives. The EBRS will also continue as designed until 31 March 2023. The Government will publish a review halfway through the scheme. This review will consider how best to offer further support to customers who are the most vulnerable to energy price increases.

15. Contact

15.1 For pass-through requirements, Ruth Womersley (Ruth.Womersley@beis.gov.uk) at the Department for Business, Energy and Industrial Strategy. For the Energy Bill Relief Schemes, Purba Naidu (Purba.Naidu2@beis.gov.uk) and Paul Henderson (Paul.Henderson@beis.gov.uk) at the Department for Business, Energy and Industrial Strategy.

15.2 Ben Pledger, Deputy Director for Energy Affordability, Strategy, Devolution & Legislation at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Graham Stuart, the Minister for Climate, can confirm that this Explanatory Memorandum meets the required standard.