EXPLANATORY MEMORANDUM TO

THE ENERGY BILL RELIEF SCHEME (NON-STANDARD CASES) REGULATIONS 2023

2023 No. 9

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 These Regulations set out provisions to support the operation and delivery of a grant scheme known as the Energy Bill Relief Scheme for Non-Standard Customers in Great Britain and Northern Ireland ("the Scheme").

2.2 The instrument enables the Secretary of State to request information about the supply of gas or electricity to persons who are or may be eligible for financial assistance under the Scheme. It also implies terms into certain contracts connected with the provision of energy to persons who are or may be eligible for assistance under the Scheme. The instrument also requires intermediaries, such as landlords, to pass on benefits received under the Scheme to end users, such as tenants, to whom they have made energy, heating and/or hot water available, but who are not eligible to receive assistance under the Scheme terms.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 This instrument is the first exercise of the powers under section 26(9) of the Energy Prices Act 2022 ("the Act") to combine provisions subject to negative and affirmative procedures into a single instrument and under section 27(2)(b) of the Act to make provision in connection with things done under section 13 of the Act.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Rt Hon Graham Stuart, the Minister for Climate at the Department for Business, Energy & Industrial Strategy has made the following statement regarding Human Rights:

"In my view the provisions of the Energy Bill Relief Scheme (Non-Standard Cases) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The Scheme is established under section 13 of the Act. It delivers financial assistance through contracts between the Secretary of State and providers or consumers of energy. This instrument supplements the provision contained in the terms of those contracts.

6.2 Section 27(2)(b) of the Act, under which Part 2 of the instrument is made, enables the Secretary to make provisions by regulations in connection with anything done or proposed to be done under, or given effect by, section 13 of the Act.

6.3 Section 19 of the Act, under which Part 3 of the instrument is made, enables the Secretary of State to impose by regulations pass-through requirements on persons to whom energy price support is provided ("intermediaries").

6.4 The instrument makes provision for pass-through requirements in relation to the Scheme in England and Wales and Scotland and Northern Ireland. Pass-through requirements are imposed on intermediaries and establish that they must pass-through the benefits of the Scheme to end users to whom energy, heating and/or hot water has been made available in a just and reasonable way.

6.5 Previous instruments have used section 19 to impose pass-through requirements for the delivery of other energy price support schemes put in place under the Act. This includes the support provided under the Energy Bill Relief Scheme Regulations 2022 (S.I. 2022/1100) and the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 (S.I. 2022/1106) (the "EBRS Regulations"), which is passed through under the Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022 (S.I. 2022/1103) and the Energy Bill Relief Scheme and Energy Price Guarantee Pass-through Requirement and Miscellaneous Amendments Regulations 2022 (S.I. 2022/1125), amongst others.

6.6 Regulations under section 27(2)(b) are subject to the negative procedure; those under section 19, to the affirmative procedure. However, section 26(9) of the Act permits the inclusion in regulations subject to the affirmative procedure provisions that would otherwise be subject, under the Act, to the negative procedure.

7. Policy background

What is being done and why?

7.1 The Scheme is a means by which the Secretary of State provides financial assistance, in the form of grants, to certain non-domestic customers to meet costs related to the use of electricity and gas that is taken from the public networks, but not provided by licensed electricity suppliers or licensed gas suppliers. These non-domestic customers do not receive support under the EBRS Regulations, which (under sections 9 and 11 of the Act) is only available to the customer of licensed electricity supplier or licensed gas suppliers. However, they are exposed to high energy costs that have prevailed recently in a similar way to the customers of licensed suppliers. The Scheme is designed to provide them with support comparable to that given under the EBRS Regulations.

7.2 The terms on which the Secretary of State is prepared to provide such assistance are set out in a document known as the "the Scheme Terms". These can be found at https://www.gov.uk/government/publications/energy-bill-relief-scheme-non-standard-

cases. The grants are paid under "scheme agreements" that incorporate the Scheme Terms.

7.3 To benefit from the Scheme, customers (and the energy they consume) must meet certain criteria (set out in full in the Scheme Terms). Key among these are that the electricity or gas provided to them is provided by a person who does not hold a gas or electricity supply licence (and has never been provided by such a person), and that it has been conveyed over a public gas or electricity network.

7.4 The supply chains by which this energy is provided to customers often involve a number of different parties. However, under the Scheme Terms, the Secretary of State only enters into a scheme agreement with one "scheme party" in respect of the electricity or gas provided to a given customer (the person who provides it directly to the customer, a person higher up the supply chain, or the customer itself).

7.5 In any given case, in order to establish a party's eligibility to benefit under the Scheme, or otherwise to ensure that it is operating as intended, the Secretary of State may need to obtain information from third parties who are involved in the supply chain, but are not parties a scheme agreement. Regulations 3 and 4 enable the Secretary of State to verify or supplement information provided by scheme parties seeking to enter into a scheme agreement or making claims for assistance under such an agreement by obtaining information from such other parties in the supply chain.

7.6 The instrument also (in regulation 5) implies terms into certain contracts connected with the provision of energy to persons who are or may be eligible for assistance under the Scheme, in order to ensure that the operation of the Scheme (and of the information provisions in Part 2) is not obstructed by existing provision (or the lack of it) in those contracts.

7.7 Part 3 of the instrument makes provision for pass-through requirements in relation to the Scheme. Pass-through requirements are imposed on a "relevant intermediary" (defined in regulation 6) and establish that they must pass-through the benefits that they receive under the scheme to an "end user" to whom energy, heating and/or hot water has been made available. These Regulations apply in respect of relevant intermediaries other than those providing certain types of hospitality accommodation (defined as "excluded persons" under these Regulations).

7.8 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.

7.9 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 intermediary's charges to end users reflect the increased cost of energy as a result of the energy crisis.

7.10 The intermediary must, within 30 days of a scheme benefit being provided (or deemed to have been provided), 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 automatically made at the time the energy, heating and/or hot water is made available, the intermediary must notify the user of that adjustment and how to seek more information.

7.11 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 affected.

7.12 Where an intermediary fails to affect 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.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is necessary for this instrument.

10. Consultation outcome

10.1 Due to the urgent need to bring forward legislation no formal consultation process was undertaken for these Regulations.

10.2 Informal consultation took place with a number of non-standard energy providers and customers on the Scheme Terms and Guidance. The Department also opened a call for evidence from non-standard energy providers which closes on 20th January 2023. The link can be found here: https://www.gov.uk/government/publications/energy-bill-relief-scheme-non-standard-supplies-of-energy-call-for-evidence.

11. Guidance

11.1 The Department for Business, Energy and Industrial Strategy published the Scheme Terms and Guidance in relation to the operation of the Scheme on 9th January 2023. The link can be found here: https://www.gov.uk/government/publications/energy-bill-relief-scheme-non-standard-cases.

11.2 The Department for Business, Energy and Industrial Strategy has already developed guidance to explain existing pass-through requirements for a range of its energy support interventions in further detail for key stakeholders, including individuals and organisations who may be intermediaries or end users. The guidance is available here: https://www.gov.uk/government/publications/pass-through-requirements-for-energy-price-support-provided-to-intermediaries. Guidance will be updated to account for the Scheme.

12. Impact

12.1 Eligible non-domestic customers who cannot access support under the EBRS Regulations will receive relief on the wholesale element of their gas and electricity bills. Energy providers will provide the support to their customers following a

successful claim, for an initial 6-month period, covering energy usage from 1 October 2022 to 31 March 2023.

12.2 The level of support available to individual end users will be comparable with that offered under the EBRS Regulations. In terms of the total impact of the Scheme, we anticipate an impact that is similar in nature to the standard EBRS scheme, as only a subset of non-domestic consumers receives their supply from the grid, through an unlicensed energy provider. The most significant non-monetised impact is the avoidance of firm closures and redundancies. The benefits of avoiding closures will accrue to business, while the benefits of avoided redundancies will provide broader benefits to society.

12.3 This instrument places obligations on energy providers and others in the energy supply chain to share information that supports the accurate distribution of funding and reduces the risk of fraud and non-compliance. The pass-through elements will support the end user receiving relief as soon as reasonably possible. Intermediaries will be required to provide information to end users which may involve minimal administrative costs for these bodies. The additional impacts of this instrument on businesses, charities or voluntary bodies and the public sector are likely to be minimal. Civil courts will be impacted if end users decide to claim civil debts from intermediaries.

12.4 An Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. Similarly, to the main EBRS scheme, the main objective of this scheme is to support economic growth, prevent unnecessary insolvencies, protect jobs and limit inflation caused by increasing energy costs.

13. Regulating small business

13.1 The Scheme and this instrument apply to activities that are undertaken by small businesses, including businesses who receive their energy on site from a non-licensed energy provider.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that eligible customers do not need to take action or apply to the Scheme in the first instance. Instead, their energy provider will apply on their behalf and apply the discount to the customers. In exceptional circumstances where the energy provider has failed to make an application, the customer may apply directly to BEIS as outlined in the Scheme Terms. All businesses are treated in the same way irrespective of size.

13.3 All eligible non-domestic customers should receive a reduction in energy bills irrespective of size (subject to certain eligibility criteria). Micro-business that are on domestic tariffs will receive support through the Energy Price Guarantee scheme. Those on non-domestic tariff that are supplied gas and electricity by a licensed supplier will receive support under the EBRS Great Britain and EBRS Northern Ireland Regulations. The level of support within all energy support schemes are comparable.

14. Monitoring & review

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

necessary. All claims made by energy providers for payments under the Scheme will be subject to compliance checks and ongoing monitoring. The nature of these will be set out in accompanying rules and guidance.

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 Scheme.

15. Contact

15.1 James Rees at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the instrument. Alternatively, the EBRS non-standard cases mailbox can be contacted. Details as follows:

Telephone: 07741687610

Email: James.Rees@beis.gov.uk, ebrs.nonstandardcases@beis.gov.uk

15.2 Daniel Harrison, Deputy Director for Energy Affordability, 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 at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.