EXPLANATORY MEMORANDUM TO

THE ENERGY BILL RELIEF SCHEME REGULATIONS 2022

2022 No. 1100

AND

EXPLANATORY MEMORANDUM TO

THE ENERGY BILL RELIEF SCHEME (NORTHERN IRELAND) REGULATIONS 2022

2022 No. 1106

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Instruments provide for the operation and the delivery of the Energy Bill Relief Scheme for Great Britain ("EBRS GB"), and the Energy Bill Relief Scheme for Northern Ireland ("EBRS NI"). These will be referred to collectively as "the Schemes" in this document.

2.2 These Instruments will make provision for the application of discounts on the electricity and gas bills for all eligible non-domestic consumers, including businesses, the voluntary sector (such as charities), and the public sector (such as schools and hospitals) in Great Britain and Northern Ireland. Discounts will be applied to energy usage between 1 October 2022 and 31 March 2023. For the purpose of this document, we will refer to the Regulations as "the Instruments".

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Instruments are made under powers contained in the Energy Prices Act 2022 ("the Act") and these powers are being exercised for the first time. The Instruments impose a charge on the public revenues. The primary cost of this intervention will fall on the Exchequer in the form of a transfer to non-domestic consumers via suppliers.

4. Extent and Territorial Application

4.1 The territorial extent of the EBRS GB is England and Wales, and Scotland.

4.2 The territorial application of the EBRS GB is England and Wales, and Scotland.

4.3 The territorial extent of the EBRS NI is Northern Ireland.

4.4 The territorial application of EBRS NI is Northern Ireland.

5. European Convention on Human Rights

5.1 The Secretary of State for the Department of Business, Energy & Industrial Strategy has made the following statement regarding Human Rights:

"In my view the provisions of the Energy Bill Relief Scheme Regulations 2022 and the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 These Instruments are being laid to make provision for the implementation of the Energy Bill Relief Scheme for non-domestic customers in England and Wales, Scotland, and Northern Ireland. The power of the Secretary of State to make these instruments is derived from the following parts of the Energy Prices Act 2022:

- The GB instrument is made under section 9 and Schedule 1 and is the first use of that power.
- The NI instrument is made under section 11 and Schedule 2 and is the first use of that power.

6.2 These Instruments will be supplemented by the 'pass-through' instrument under section 19 of the Act, enabling 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). The instrument for Great Britain is expected to be laid 31 October 2022. An equivalent Statutory Instrument is also expected to be laid shortly (parliamentary time allowing) in relation to Northern Ireland.

7. Policy background

What is being done and why?

7.1 The Schemes make provision to reduce electricity and gas bills for all eligible non-domestic UK consumers and provides that the Secretary of State, or anybody given responsibility for administering scheme payments on behalf of the Secretary of State, can reimburse licensed non-domestic energy suppliers applying price reductions on customers' bills representing the wholesale energy price element of the bill. This will allow non-domestic customers to receive the benefit of such a discount. This is being made in response to exceptional global circumstances affecting energy prices, which has resulted in unprecedented soaring wholesale gas and electricity prices.

7.2 Part 5 of the Instruments requires the Secretary of State, within 14 days of the schemes' introduction date, to make rules about further reductions that the suppliers must apply to the amounts payable by Qualifying Financially Disadvantaged Customers (QFDCs) of the supplier. QFDCs are customers who are on either a deemed contract or out-of-contract contract, and who does not have any charges due and payable that have been unpaid for more than 28 days. These rules will have effect for supply of gas and electricity for the period starting on the 15th day after the schemes' introduction date and ending on 31 March 2023. The current levels of many deemed and out-of-contract tariffs mean that, even with the discounts provided by the rest of the EBRS scheme, these customers are financially disadvantaged such that they would often still experience particular difficulty in obtaining a supply of energy at a reasonable rate: the further reductions to be applied under Part 5 seek to mitigate this disadvantage.

7.3 The scale of price increases and volatility in energy prices creates an undue burden on businesses and puts pressure on public and third sector organisations. These high prices create unnecessary risks for businesses navigating investments and employment decisions. Businesses need increased certainty and time to adapt their operations and optimise their decision making. Without intervention of this kind, the wider negative effects of this economic pressure would be severe and materialise very quickly.

7.4 The high-level objectives of intervention are to:

- Support economic growth
- Prevent unnecessary insolvencies of businesses unable to pay their energy bills
- Protect jobs from termination due to energy bill costs
- Limit inflation caused by increasing energy bills and knock-on impacts on prices of labour, goods and services

7.5 The most significant benefit is the avoidance of business closures and redundancies. The benefits of avoiding closures will accrue to business, while the benefits of avoided redundancies will provide broader benefits to society.

7.6 These Instruments are made under broad powers taken in primary legislation for the Schemes. Such scope of powers was necessary to enable the Government to swiftly and effectively implement a short-term response to unprecedented circumstances. To deliver the schemes as quickly as possible, the appropriate processes for appointing delivery partners and other essential functionaries for the Schemes have needed to be developed in parallel with the passage of the Act. The Government has used these broad powers to confer the necessary functions, duties and powers on the bodies which will administer the Schemes.

7.7 The Instruments being laid contain delegations of power, as expressly authorised by Schedule 1, paragraph 3 for Great Britain and Schedule 2, paragraph 3 for Northern Ireland. These powers enable the Secretary of State to make rules, which make provisions for the effective operation and implementation of the Schemes, such as the core rules for calculating the discount, the rules on discount recovery, and the rule on the separation of certain flexible price contracts. This delegation is necessary, given a significant degree of technical detail is needed for the efficient operation of the schemes and this was being worked up in parallel with the passage of the Act. This is consistent with the approach taken in the wider regulation of similarly complex energy Schemes, including the Capacity Market Rules and the Contracts for Difference scheme.

7.8 The Instruments provide powers to the Secretary of State to require regular reporting by suppliers, to request information from suppliers and customers, to require an audit of the supplier in relation to the schemes and to enable Ofgem and the Utility Regulator in Northern Ireland to enforce the obligations placed on licensed suppliers under the scheme. Matters relating to the finer details of the scheme designs will be set out in accompanying rules and guidance. Further information can be found in section 11 of this document.

7.9 Under Paragraphs 5 and 6 of Schedule 6, the Act makes clear that the powers in Clause 9 and Clause 11 respectively are time limited in that they may only provide for the reduction in charges for energy supply for a total of two years (from 1 October 2022). As such, the scheme has a sunset date, although we note that audit and compliance functions may continue beyond this date to ensure that public funds have

been used appropriately. Instruments made under the Act may only apply to energy charges that take place during a period of six months or less (up to four such periods in total). The spending power provided for in section 13 will last for three years and six months to allow for reconciliation and enforcement purposes. Without this, we would be unable to ensure that a robust fraud and compliance system is in place and would be unable to make necessary payments to suppliers. We expect there to be a high level of public interest in the policy due to the nature of the Act and the degree of media attention to date.

8. European Union Withdrawal and Future Relationship

8.1 These instruments do not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is necessary for these instruments.

10. Consultation outcome

10.1 No formal public consultation has taken place on these Instruments given the urgency of ensuring households, businesses and other organisations receive the support they need this winter. We will continue to review these Instruments as necessary following their implementation based on stakeholder feedback. Informal consultation took place with energy suppliers, regulators Ofgem and UREGNI and other relevant bodies including UKSBS, Xoserve, Elexon, and NIE N. It is intended these bodies will be responsible for the effective implementation and operation of the scheme in both Great Britain and Northern Ireland, such as for the purposes of administering payments to non-domestic suppliers on behalf of the Secretary of State, and for the purposes of audit, monitoring and compliance. There was consensus over the need for this scheme to support non-domestic customers over the winter period.

10.2 The government will publish a review into the operation of the scheme by the end of the year, to inform decisions on future support after March 2023. The review will consider: evidence from businesses, suppliers and market experts; prevailing economic conditions; and input from the Devolved Administrations. The review will also consider wider international evidence and learn lessons from interventions being made in neighbouring countries. An extension of support under the schemes would begin at the end of the initial 6-month support (or any subsequent extended period) and require further statutory instruments.

11. Guidance

11.1 The Department for Business, Energy and Industrial Strategy is developing guidance to explain these Instruments in further detail for key stakeholders, including individuals and organisations. This will be published for Great Britain and Northern Ireland on 1 November 2022. The Department also intend to publish information on how to calculate the relevant discounts for the Schemes.

11.2 Rules for Great Britain will be published on the day the Instruments are made. These are likely to cover discount recovery, separation of certain flexible contracts and Combined Heat Power. Separate Rules will be published for Northern Ireland. The Department will publish further updates to the guidance / rules as necessary.

12. Impact

12.1 The impact on business, charities or voluntary bodies is beneficial. Eligible non-domestic customers, including businesses and organisations in the voluntary and public sector, will receive a reduction on the wholesale element of their gas and electricity bills. Energy suppliers will automatically apply this discount to their customers for an initial 6-month period, covering energy usage from 1 October 2022 to 31 March 2023. Payments will commence after the date the instrument comes into force, as October's bills come through in November 2022.

12.2 The impact on the public sector is beneficial. Eligible public sector organisations, such as hospitals and schools, will receive a reduction on the wholesale element of the price of their gas and electricity.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. The schemes will support economic growth, prevent unnecessary insolvencies, protect jobs and support businesses in managing pressures from high inflation.

13. Regulating small business

13.1 The Instruments apply 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 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.

13.3 All eligible non-domestic consumers should receive a reduction in energy bills irrespective of size (subject to certain eligibility criteria). 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 approach to monitoring of this legislation is active. All claims made by suppliers for payments under the schemes will be subject to compliance checks and ongoing monitoring. The nature of these will be set out in accompanying rules and guidance.

14.2 Powers in the Instruments in Part 6, Chapter 3 will support the undertaking of robust monitoring and review. In particular, the Instruments provide for the Secretary of State to collect information for the purpose of conducting a review of the scheme. This may encompass information requests to assess the operation and effects of the Schemes.

14.3 These Instruments do not include a statutory review clause by virtue of section 28(3)(d) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Paul Henderson at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the instrument. Details as follows: Telephone: +447741688906 and Email: Paul.Henderson@beis.gov.uk

15.2 Rebecca Vallance, 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 Minister for Climate at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.