EXPLANATORY MEMORANDUM TO

THE ENERGY BILL RELIEF SCHEME PASS-THROUGH REQUIREMENT (HEAT SUPPLIERS) (AMENDMENT) REGULATIONS 2022

2022 No. 1280

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 The purpose of this instrument is to amend SI 2022/1101 and SI 2022/1124 to require heat suppliers to notify the Secretary of State, or in relation to a Scottish heat network the Scottish Ministers, with the name, business address and contact details of the heat supplier. Existing heat suppliers must notify by 6th January 2023, and new heat suppliers who begin operating after 7th December 2022 must notify within 30 days of beginning operations.

2.2 This instrument also provides heat suppliers with more time to provide their customers with detailed calculations of how the pass-through of the benefit from the EBRS (**Energy Bill Relief Scheme**) will impact their bills. The EBRS is a price control of wholesale energy costs for non-domestic customers. Under the original SIs, heat suppliers were required to provide calculations of the pass-through amount to customers within 30 days of benefitting from the EBRS as well as in the next bill, but the SIs are being amended so that calculations aren't required to be provided until the next bill. The definition of the next bill has also been clarified, see 2.4 below.

2.3 Heat suppliers will still need to let their customers know within 30 days of benefitting from the EBRS that they are in receipt of the benefit (including the amount and the period this covers), and to let customers know that the benefit will be passed on to them in the next bill. Suppliers will still need to let customers know within 30 days of receiving the benefit what options are available to them to make consumer complaints and address disputes.

2.4 This instrument clarifies that the next bill in which customers will see a reduction ("next bill") is either the first bill issued after 30th November 2022 or the first bill issued 30 days or more after the supplier receives the EBRS benefit, whichever is the later. The next bill for the purpose of any subsequent EBRS benefit will be the first bill issued 30 days or more after the supplier receives the benefit. This amendment addresses the case where a supplier is provided with an EBRS benefit more than once during the lifetime of the scheme.

2.5 For any bills issued between 30th November 2022 and 7th December 2022, BEIS will issue guidance online.

2.6 This instrument also makes corrections to definitions of "end user", "intermediary" and "scheme benefit" to clarify the case where an intermediary is also an end user.

2.7 The Office for Product Safety and Standards (OPSS) will have power to enforce the requirement for heat suppliers to notify information to the Secretary of State or Scottish Ministers, and will keep a database of the notifications. A maximum monetary penalty of £5000 will apply to failure to comply with a compliance notice or enforcement undertaking relating to failure to comply with this requirement.

2.8 SI 2022/1101 is being amended so that the maximum monetary penalty of £5000 also applies to failure to comply with a compliance notice or enforcement undertaking relating to failure to comply with the requirement for heat suppliers in Great Britain to join a redress scheme.

2.9 OPSS will also have power to request information from a person they suspect to be a heat supplier before imposing a compliance notice on them or accepting an enforcement undertaking from them. The maximum monetary penalty of £5000 will also apply to failure to comply with a compliance notice or enforcement undertaking relating to failure to comply with this requirement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is being laid before Parliament less than 21 days before coming into force due to the urgency of ensuring that support for heat network consumers is available this winter through the pass-through of the Energy Bill Relief Scheme. This approach is consistent with the approach to laying the original package of SIs to implement the EBRS.

3.2 It is important that this instrument comes into force quickly to ensure that the OPSS can share information about heat suppliers with the Energy Ombudsman and the General Consumer Council for Northern Ireland, to allow effective dispute resolution in Great Britain and Northern Ireland respectively, and to ensure the clarity provided by the corrections to definitions.

3.3 The Department has complied with the requirement stated in paragraph 4.7.6 of SIP to consult the SI Registrar and considers that this SI should be issued free of charge.

4. Extent and Territorial Application

4.1 The extent of this instrument is as follows: Part 1 extends to the United Kingdom, Part 2 extends to England and Wales and Scotland, and Part 3 extends to Northern Ireland.

4.2 The territorial application of this instrument is: Part 1, the United Kingdom; Part 2, Great Britain; and Part 3, Northern Ireland.

5. European Convention on Human Rights

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

"In my view the provisions of the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations amend the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022 (S.I. 2022/1101) and the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (Northern Ireland) Regulations 2022 (SI. 2022/1124) which were made under the power in section 19 of the Energy Prices Act 2022.

6.2 Section 19 of the Energy Prices Act 2022 provides for the Secretary of State to make regulations imposing pass-through requirements on persons to whom energy price support is provided ("intermediaries"). This is to ensure that intermediaries pass on the benefit of the government's energy price support to end users, and this can be enforced.

7. Policy background

What is being done and why?

7.1 Heat network operators purchase energy from energy suppliers through commercial contracts and then supply heating and hot water to domestic and non-domestic consumers. Heat network operators are therefore intermediaries which will benefit from the Energy Bill Relief Scheme. Domestic heat network consumers will not benefit from the Energy Price Guarantee for their heating and hot water needs, as this covers domestic connection electricity and gas, not heat. To ensure domestic heat network consumers receive equivalent support to other domestic consumers, heat suppliers must pass on the EBRS benefit to their customers ("the pass-through requirement").

7.2 The requirement for heat suppliers to notify the Secretary of State or Scottish Ministers of their contact details will support the enforcement of the pass-through requirement. Where there is a dispute between a heat network consumer and a heat supplier with regards to the pass-through requirement that cannot be resolved between the consumer and supplier, the consumer can make a complaint to the General Consumer Council for Northern Ireland or the Energy Ombudsman, for customers in Great Britain. To carry out their work, these bodies will use OPSS records collated from the notification process. The heat network sector is not currently comprehensively regulated and there exists no complete record of heat suppliers. The amendments made by this instrument will seek to address this.

7.3 This instrument also streamlines the information that heat suppliers must provide to their customers within 30 days after receiving the EBRS benefit. This follows consultation with industry. The complexities of billing arrangements and processes operated by some heat suppliers would have made the existing requirements very costly – a cost ultimately paid by heat network customers. Further, the retained requirements will provide customers with the most important information at the outset (that their supplier's input energy prices have been reduced and that the benefit will be passed on in the next bill, with advice on complaints procedure if not) ensuring the policy goals are still met. Details of the pass-through amount and how it is calculated will appear in the next bill.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 In October 2022, we held a workshop with around 120 heat suppliers who have notified the OPSS with details of the heat networks they operate, as required by the Heat Networks (Metering and Billing) Regulations 2014. We also held bilateral calls with organisations with high numbers of heat network customers, such as Camden Council. We engaged with these stakeholders to set out the requirements of the Pass-through Requirement Regulations and to ensure these requirements can be met by heat suppliers quickly and cost-effectively. Following later feedback from this engagement, we see value in making small amendments to SI 2022/1101 and SI 2022/1124.

11. Guidance

11.1 The Department for Business, Energy and Industrial Strategy is updating guidance to explain these Regulations in further detail, which will be published shortly after the instrument is laid.

12. Impact

12.1 The impact on business, charities and voluntary bodies will stem from the requirements on heat suppliers (given suppliers can be businesses, charities, and voluntary bodies) to notify the OPSS. This notification requirement is extremely light touch – the business' name, address, and contact details. The OPSS will provide a form for submitting notifications. We consider the costs of this are far outweighed by the benefit of ensuring the Energy Ombudsman and the Consumer Council can effectively carry out their roles. Or in other words, the EBRS discount customers will benefit from is far larger than any additional administrative costs the supplier may pass on.

12.2 By completing this light-touch notification, heat suppliers in effect are given an extension on the deadline for making the much more comprehensive notification under the Heat Network (Metering and Billing) Regulations 2014. This reduces the immediate administrative burden faced by suppliers, allowing them greater capacity to adhere to requirements under the Energy Prices Act and related Regulations.

12.3 This instrument reduces the immediate burden on suppliers by amending SI 2022/1101 and SI 2022/1124 to relax the deadline for heat suppliers to provide detailed calculations to customers on the pass-through amount. Instead of requiring this information to be given 30 days after the heat supplier receives the benefit as well as when the next bill is issued, this will only be required when the next bill is issued.

12.4 The impact on the public sector will involve the costs of the OPSS processing additional notifications and enforcing the regulatory requirements. We have discussed with the OPSS how it can take on this role in a cost-effective manner.

12.5 A full Impact Assessment for heat networks has been published and can be found online here: https://bills.parliament.uk/bills/3341/publications at Annex D.

12.6 A full Impact Assessment for the secondary legislation in relation to the Energy Bill Relief Scheme has been published and can be found online here: https://www.legislation.gov.uk/uksi/2022/1100/impacts.

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 instrument is time-limited, and guidance will accompany the instrument to aid implementation of its requirements.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be through continued engagement with the sector, for example through surveys and workshops, and through reviewing the number of notifications made to OPSS and how the information notified is used in dispute resolution by the Ombudsman and the Consumer Council.

14.2 BEIS policy officials' existing relationships with OPSS staff, the Energy Ombudsman, the General Consumer Council for Northern Ireland, and heat network officials in the Department for the Economy in Northern Ireland will be used to monitor the effectiveness of this instrument.

14.3 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 Energy Bill Relief Scheme. The Rt Hon Graham Stuart, the Minister for Climate has made the following statement:

"A review provision in these Regulations 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."

14.4 The Energy Bill Relief Scheme will last as designed until 31st March 2023 and the government has committed to a review of future support beyond this date. On 17th October 2022, the Chancellor announced that this review would be led by HM Treasury, with findings of this review published by the end of the year. 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 Arran Mornin at the Department for Business, Energy and Industrial Strategy can be contacted via email (arran.mornin@beis.gov.uk) with any queries regarding the instrument.

15.2 John Saunders, Deputy Director for Heat Networks, 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 of State for Energy and Climate, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.