STATUTORY INSTRUMENTS

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ENERGY

The Energy Bill Relief Scheme Regulations 2022

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PART 1

Introductory

CHAPTER 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Energy Bill Relief Scheme Regulations 2022 and come into force on 1st November 2022.

(2) These Regulations extend to England and Wales and Scotland.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Energy Prices Act 2022;

"base discount" has the meaning given in regulation 17;

"base rate" means—

(a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or

(b) where an order under section 19 of the Bank of England Act 1998(**b**) (reserve powers) is in force, any equivalent rate determined by the Treasury under that section;

"base recovery amount" has the meaning given in regulation 22(2);

(**a**) 2022 c. 44.
(**b**) 1998 c. 11.

"billing period" means, in relation to a supply contract, a period of energy supply in respect of which, under the terms of the supply contract, the supplier is obliged or entitled to send to the customer an invoice or other statement of account;

"business day" means any day other than a Saturday, a Sunday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**a**) in any part of the United Kingdom;

"claim window" means a period in which a supplier may submit a discount recovery claim, set in accordance with regulation 34;

"climate change levy" means the climate change levy as defined in section 30 of and Schedule 6 to the Finance Act 2000(**b**);

"contract parties" means, in relation to a supply contract, the supplier and customer which are parties to the supply contract;

"contracted wholesale price" means, in relation to a supply contract, that part of the supply price which represents the cost to the supplier at the wholesale price of energy supplied under the contract (whether or not it is separately identified in the contract);

"the court" means—

(a) the High Court, or

(b) in Scotland, the Court of Session;

"customer" means a person supplied or to be supplied by a supplier with electricity by way of GB non-domestic electricity supply(**c**) or gas by way of GB non-domestic gas supply(**d**);

"deemed contract" has the meaning given in the relevant standard conditions(**e**);

"discount" has, in respect of a supply contract, the meaning given in regulation 18;

"discount recovery" means the recovery in accordance with Part 3 by a supplier from the Secretary of State of the amounts by which its charges under supply contracts have been reduced by the application of discounts under the electricity scheme or (as the case may be) the gas scheme;

"discount recovery claim" has the meaning given in regulation 22(3);

"discount recovery rules" means the rules made by the Secretary of State under regulation 33;

"discounted supply price" means, in relation to a supply contract, the supply price reduced by the discount;

"electricity scheme" has the meaning given in regulation 3(1)(a);

"electricity system" means a transmission system or distribution system (as defined in section 4(4) of the Electricity Act 1989(**f**));

"energy" means electricity supplied by way of GB non-domestic electricity supply or gas supplied by way of GB non-domestic gas supply;

"energy reconciliation" means—

(a) the determination, by the reading of a meter, of the quantity of energy supplied under a supply contract in the period since a prior reading of the meter, and a reconciliation by comparison with the quantity previously estimated as supplied in that period, or

(b) the resolution, in respect of any period, of any question or dispute about a meter or a reading of a meter, or otherwise about the quantity of energy supplied under a supply

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(**a**) 1971 c. 80.

(**b**) 2000 c. 17; Schedule 6 has been extensively amended, but the amendments are not relevant for the purposes of identifying the levy, and paragraphs 1 to 3 of the Schedule, which contain the core definition of the levy, have not been amended.

(**c**) Defined in the Energy Prices Act 2022, section 10(4).

(**d**) Defined in the Energy Prices Act 2022, section 10(8).

(**e**) Defined in the Energy Prices Act 2022, section 10(5) (in relation to GB non-domestic electricity supply) and section 10(9) in relation to GB non-domestic gas supply.

(**f**) 1989 c. 29. The definition of "distribute" and cognate terms in section 4(4) was inserted by section 28(3)(a) of the Energy Act 2004 (c. 20); the definition of "transmission system" was substituted by section 135(4) of the Energy Act 2004.

contract, and a reconciliation by comparison with the quantity previously determined as supplied in that period;

"excluded fixed price contract" means a fixed price contract for which the price-fix date is before the fixed price cut-off date;

"fixed price contract" means a supply contract under which, at the time the contract is entered into, or is treated, for the purposes of regulation 13, as being entered into, the contracted wholesale price is fixed for the term of the contract, including where it is fixed so that different prices apply, for example, at different times of day, or in different seasons in the term of the contract;

"fixed price cut-off date" means the date specified as such in regulation 7;

"flexible price contract" means a supply contract under which the customer may elect from time to time to fix the contracted wholesale price for particular quantities of energy to be supplied during certain periods, and to cancel any such fixing of the contracted wholesale price, or which provides another mechanism by which the contracted wholesale price will be determined for periods specified in or determined under the contract;

"gas scheme" has the meaning given in regulation 3(1)(b);

"government supported price" means the price determined, for the purposes of the electricity scheme and the gas scheme respectively, under regulation 8(1)(a) or regulation 8(2);

"grid-delivered" has the meaning given in regulation 42(1)(b);

"ineligible quantity" has the meaning given in regulation 44(1);

"kWh" means kilowatt hours;

"maximum discount" means the amount determined under regulation 8(1)(b) or regulation 8(2) for the purposes of the electricity scheme and the gas scheme respectively as the maximum amount of any discount (other than in relation to fixed price contracts, except as provided in regulation 18);

"meter" means a meter (and associated equipment) installed at or near to the customer's premises by means of which the quantity of energy supplied to the customer in a period may be determined;

"minimum supply price" means, for the purposes of the electricity scheme and the gas scheme respectively, a price equal to the government supported price, subject to regulation 8(2);

"out-of-contract contract" means a supply contract that continues to apply to a customer, and under which the supplier continues to supply energy to that customer, after it has been terminated or has expired through the passage of time;

"p/kWh" means pence per kilowatt hour;

"period of supply" means, in respect of a supply contract, a period of a whole number of consecutive days, in which the supplier has supplied energy to the customer, in respect of which the supplier claims discount recovery;

"price-fix date" in relation to a fixed price contract means the date when the contracted wholesale price applicable to that contract was fixed;

"qualifying amount" has the meaning given in regulation 50;

"qualifying financially disadvantaged customer" or "QFDC" has the meaning given in regulation 51;

"reconciliation run-off date" has the meaning given in regulation 29(6)(a);

"recovery claim amount" has the meaning given in regulation 24(1);

"reference wholesale price" means, in relation to a supply contract and a period of supply, the wholesale price which is deemed for the purposes of the scheme to be the contracted wholesale price, as determined under regulation 10 or in accordance with regulation 11;

"scheme" has the meaning given in regulation 3;

"scheme commencement date" means 1st October 2022;

"scheme end date" has the meaning given in regulation 29(6)(c);

"scheme introduction date" means the date on which these Regulations are made;

"scheme period" means the period specified in regulation 6;

"supplier" means a licensed electricity supplier(**a**) or a licensed gas supplier(**b**);

"supply contract" means a contract, including a deemed contract or an out-of-contract contract, between a supplier and a customer which provides for GB non-domestic electricity supply or GB non-domestic gas supply at any time during the scheme period;

"supply contract recovery amount" has the meaning given in regulation 23(1);

"supply price" has the meaning given in regulation 9;

"supply quantity" means the quantity of energy supplied to a customer under a supply contract in any period of supply, excluding any ineligible quantity;

"valid" in relation to a discount recovery claim, has the meaning given in regulation 30(3), and "invalidity" is to be construed accordingly;

"variable price contract" means a supply contract under which the supplier may change the contracted wholesale price at any time by giving notice (as provided in the contract) to the customer;

"wholesale price" means a price at which electricity or gas is traded in the wholesale electricity or gas market.

(2) In these Regulations—

(a) references, in the context of a supply contract, to the supplier or the customer are to the supplier or customer which is party to the supply contract;

(b) references to quantities of energy are (unless otherwise specified) to quantities of electricity or gas expressed in kWh;

(c) references to energy supplied under a supply contract are to energy supplied during the scheme period;

(d) references to energy (or a quantity of energy) supplied under a supply contract are to energy supplied to the customer at its premises and measured as supplied by a meter or meters or (where no meter is installed) estimated pursuant to a document designated for the purposes of section 173 of the Energy Act 2004(**c**);

(e) references to the supply quantity under a supply contract in any period, at any time at which that quantity has not been determined by meter reading, are to the quantity of energy estimated by the supplier, in accordance with the supply contract, as supplied in that period;

(f) references to—

(i) the price of energy (or the price payable by the customer for energy) supplied under a supply contract are to the price expressed in p/kWh;

(ii) charges payable by the customer under a supply contract are to the charges expressed in pounds.

(3) In these Regulations—

(a) a "gas day" is the period starting at 05.00 hours on one day and ending at 05.00 hours on the next day;

(b) for the purposes of the gas scheme—

(i) a reference to a day is to a gas day;

(**a**) Defined in section 10(2) of the Energy Prices Act 2022.
(**b**) Defined in section 10(6) of the Energy Prices Act 2022.
(**c**) 2004 c. 20; section 173 has been amended, but the amendments are not relevant. The power of designation was exercised in S.I. 2014/1293.

(ii) a reference to a week, month or other period ("P") is to the period from the start of the gas day which starts on the first day of P to the end of the gas day which starts on the last day of P.

CHAPTER 2

Energy Bill Relief Scheme

Establishment of the scheme

3.—(1) These Regulations make provision for—

(a) a support scheme(**a**) in respect of GB non-domestic electricity supply (the "electricity scheme"), and

(b) a support scheme in respect of GB non-domestic gas supply (the "gas scheme"),

known collectively as the Energy Bill Relief Scheme for Non-Domestic Customers in Great Britain) (the "scheme").

(2) These Regulations apply separately for the purposes of the electricity scheme and the gas scheme, unless otherwise provided in these Regulations.

Application of the scheme

4.—(1) These Regulations apply in respect of energy supplied in the scheme period.

(2) These Regulations apply in relation to—

(a) each supplier;

(b) each supply contract;

(c) all quantities of energy supplied under such supply contracts, other than—

(i) ineligible quantities;

(ii) quantities supplied under an excluded fixed price contract;

(iii) quantities supplied under a supply contract for which an opt-out notice has been given, as provided in paragraph (4), and has not been withdrawn.

(3) Where a person has been a supplier during the scheme period but has ceased to hold an electricity supply licence or gas supply licence, the Regulations continue to apply to that person (as if it were a supplier) for the purposes of reconciliation, as provided in regulation 29.

(4) A customer may, by giving notice to a supplier, in respect of a supply contract between them, elect that no discount is to apply in respect of energy supplied under the supply contract on and from the date specified in such notice (which may be before, on, or after the date when the notice is given) (an "opt-out notice").

(5) Where a customer has given an opt-out notice, it may give a further notice to the supplier, withdrawing the opt-out notice in respect of energy supplied under the supply contract on and from the date specified in such further notice (which may not be before the date when the notice is given).

Making rules

5. Rules made under these Regulations must—

(a) be made by the Secretary of State;

(b) be published as soon as is reasonably practicable after the rules are made;

(c) come into force no earlier than the day after the day on which the rules are published.

(**a**) Defined in paragraph 1 of Schedule 1 to the Energy Prices Act 2022 (c. 44).

CHAPTER 3

Basic terms of the scheme

Scheme period

6. The scheme period is the period from 1st October 2022 to 31st March 2023 inclusive.

Fixed price cut-off date

7. The fixed price cut-off date is 1st December 2021.

Government supported price, maximum discount and minimum supply price

8.—(1) The Secretary of State must, no later than the scheme introduction date, determine and publish, for the purposes of each of the electricity scheme and the gas scheme—

(a) the price (in p/kWh) which is the government supported price;

(b) the amount (in p/kWh) which is the maximum discount.

(2) The Secretary of State may, for purposes of the electricity scheme or the gas scheme, revise the government supported price, the maximum discount or the minimum supply price by publishing a notice that specifies—

(a) the revised government supported price, maximum discount or minimum supply price;

(b) the date, which must not be earlier than the date of publication, with effect from which the revision is made ("revision date");

(c) whether the revision applies in respect of—

(i) variable price contracts, flexible price contracts or fixed price contracts, and

(ii) in the case of variable price contracts or flexible price contracts, to those contracts entered into before the revision date.

(3) A revised government supported price, maximum discount or minimum supply price—

(a) applies in respect of supply contracts entered into on or after the revision date;

(b) does not apply in respect of fixed price contracts entered into before that date;

(c) applies, where so specified under paragraph (2)(c)(ii), in respect of variable price contracts or flexible price contracts entered into before that date;

(d) does not in any case apply in respect of energy supplied under a supply contract before that date.

PART 2

Discounted supply price

CHAPTER 1

Determination of prices

Supply price

9.—(1) In these Regulations "supply price" in relation to a supply contract means—

(a) the price (before the application of a discount under the scheme) of energy supplied under that contract, so far as that price is to be paid in respect of the quantity of energy supplied in any period, or

(b) if the supply contract provides for different prices (in respect of energy supplied at different times of day or measured by different meters, or otherwise), the average of such prices—

(i) weighted by the quantities in the relevant period to which each such price applies, or

(ii) where applicable, and to the extent that determining the average under sub-paragraph (b)(i) is not practicable, weighted by the number of hours in the day for which each such price applies.

(2) The supply price does not include amounts in respect of—

(a) value added tax;

(b) climate change levy.

Reference wholesale price – fixed price and variable price contracts

10.—(1) The Secretary of State must establish and publish a methodology for determining reference wholesale prices applicable to fixed price contracts and variable price contracts, including a timetable for publishing those prices.

(2) The methodology may—

(a) make different provision in respect of fixed price contracts and variable price contracts;

(b) in relation to a fixed price contract, make reference to the price-fix date of that contract;

(c) provide, in relation to any category of supply contract, for a reference wholesale price to be determined for the whole of the scheme period or for different reference wholesale prices to be determined for different periods within the scheme period;

(d) refer to published quotations of wholesale prices for gas or electricity traded in the wholesale markets at different times and for delivery at different times;

(e) permit the Secretary of State to decide the times at which it is appropriate, for the proper operation of the scheme, that reference wholesale prices should be published.

(3) The methodology must not refer to—

(a) any particular details of a variable price contract;

(b) any particular details of a fixed price contract other than the price-fix date.

(4) Where the methodology provides, in relation to a category of supply contract, for different reference wholesale prices to be determined for different periods, the methodology must provide for how it is to be determined which of those reference wholesale prices applies to any particular supply contract in that category.

(5) The Secretary of State must determine and publish, in accordance with and at the times determined under the methodology, the reference wholesale prices for variable price contracts and fixed price contracts.

(6) The Secretary of State may amend the methodology by giving notice of the amendment.

(7) Where, in accordance with the methodology or any amendment of it, the Secretary of State revises any wholesale reference price which has already been determined in respect of variable price contracts—

(a) the Secretary of State must publish the date, which must not be earlier than the date on which such revised price was published, on which the revision takes effect ("effective date");

(b) the revised wholesale reference price—

(i) applies in respect of variable price contracts entered into on or after the effective date;

(ii) where so determined by the Secretary of State, applies in respect of energy supplied on and after the effective date under variable price contracts entered into before that date.

Reference wholesale price – flexible price contracts

11.—(1) In relation to a flexible price contract the reference wholesale price for any period ("P") in which energy is supplied is the contracted wholesale price on a volume-weighted average basis for that period.

(2) The volume-weighted average contracted wholesale price for P is determined by reference to any of the following that apply under that contract—

(a) any elections (and the quantities, periods and prices subject to those elections) made by the customer to fix the contracted wholesale price;

(b) any cancellations by the customer of such an election;

(c) any amounts (so far as relating to wholesale prices) payable by or to the customer in respect of such elections or cancellations;

(d) any amounts payable by the customer in respect of quantities of energy in default of such elections;

(e) the quantities, periods and prices on the basis of which the contracted wholesale price was fixed under any other mechanism under the contract;

(f) other amounts referable to the wholesale cost of electricity in accordance with the principle in paragraph (3),

each so far as attributable to energy supplied under the contract in P.

(3) The principle is that amounts payable by the customer under the supply contract—

(a) should be included in the contracted wholesale price where such payment has the effect of passing through to the customer a cost or risk incurred by the supplier and related to the cost of wholesale energy;

(b) should not be included in the contracted wholesale price where such amount is payable to compensate or reward the supplier for bearing, and not passing through to the customer, such a cost or risk.

(4) A supplier must—

(a) establish a methodology setting out the basis on which it will determine the reference wholesale price under each flexible price contract, or each kind of flexible price contract, that it enters or has entered into;

(b) keep the methodology under review and update it if appropriate;

(c) maintain, in respect of each flexible price contract, the data necessary to make those determinations in accordance with the relevant methodology;

(d) apply the relevant methodology in making those determinations.

CHAPTER 2

Categorisation of supply contracts

Categories of supply contracts

12.—(1) Subject to paragraph (2) and any rule made under regulation 21(b) or (d), any supply contract is to be treated for the purposes of the scheme as a fixed price contract, flexible price contract or variable price contract.

(2) If a contract between a supplier and customer provides for the supply of both electricity and gas, it must be treated for the purposes of these Regulations as comprising separate supply contracts for electricity and gas respectively.

Treatment of fixed price contracts at end of term

13.—(1) Paragraphs (2) and (3) apply where, as a result of a relevant amendment of a fixed price contract—

(a) the contracted wholesale price is fixed under the new contract for any period starting at or after the end of the original fixed term;

(b) at any time before the end of the original fixed term, the contracted wholesale price fixed under the new contract differs from the contracted wholesale price under the original contract.

(2) In a case within paragraph (1)(a), subject to paragraph (3), the new contract is to be treated for the purposes of the scheme as a new fixed price contract for which the price-fix date is determined by reference to the time when the relevant amendment was made.

(3) In a case within paragraph (1)(b), until the end of the original fixed term, the base discount applicable in respect of the new contract is the base discount that was applicable to the original contract.

(4) Where with effect from the end of the original fixed term—

(a) a supply contract continues in force, and

(b) the contracted wholesale price is not fixed for any period after the original fixed term,

the contract is to be treated as a variable price contract entered into at the time of any relevant amendment to it or (in the absence of any relevant amendment) at the end of the original fixed term.

(5) In this regulation—

(a) the "original contract" is the fixed price contract before the relevant amendment;

(b) the "original fixed term" is the term for which the contracted wholesale price was fixed under the original contract;

(c) the "new contract" is the contract which results from the relevant amendment;

(d) a "relevant amendment" is any amendment, extension or variation of the fixed price contract, or the entry by the contract parties into another contract which replaces the fixed price contract, or any other arrangement between the contract parties which has a similar effect.

Duty of supplier to categorise contracts

14.—(1) A supplier must, in respect of each of its supply contracts—

(a) where required under rules made under regulation 21(b), determine whether, and if so on what basis, it is to be treated as comprising more than one supply contract, in which case the further provisions of this paragraph apply in respect of each of those supply contracts;

(b) determine whether it is a fixed price contract, a flexible price contract or a variable price contract;

(c) in the case of a fixed price contract—

(i) determine the price-fix date;

(ii) determine whether it is an excluded fixed price contract.

(2) A supplier must give notice to the customer of the determinations made under paragraph (1).

Times by which determinations are to be made and notices given

15. The determinations in respect of a supply contract under regulation 14(1) must be made and notice under paragraph 14(2) given—

(a) in the case of a supply contract in force at the scheme introduction date, as soon as practicable after that date, and no later than 45 days after the scheme introduction date;

(b) in the case of a supply contract entered into after the scheme introduction date, by the later of—

(i) the time at which the supply contract is entered into, and

(ii) 45 days after the scheme introduction date.

Methodology for contract categorisation

16. A supplier must—

(a) establish a methodology setting out the basis on which it will make the determinations under regulation 14(1);

(b) keep the methodology under review and update it if appropriate, having regard in particular to—

(i) any change in the basis or terms on which it enters or offers to enter into supply contracts;

(ii) any determination of the Secretary of State in respect of the categorisation of the supplier's supply contracts under Chapter 4 of Part 6;

(c) maintain, in respect of each supply contract, the data necessary to make the determinations under regulation 14(1) in accordance with the methodology;

(d) apply the methodology in making those determinations, and ensure that it has in place reliable systems and procedures to apply the methodology.

CHAPTER 3

Discounting supply price under supply contracts

Calculation of base discount

17.—(1) Subject to paragraph (3), the "base discount" in respect of a supply contract for any period ("P") is determined as—

$$(RWP\text{-}GSP)$$

Where—

RWP is the reference wholesale price applicable to that supply contract for P, subject to paragraph (4);

GSP is the government supported price.

(2) The Secretary of State must determine the base discounts for fixed price contracts and variable price contracts, and publish them with the corresponding reference wholesale prices.

(3) Where regulation 48 applies, the base discount is reduced in accordance with that regulation.

(4) Where regulation 39(1) applies, the reference wholesale price is determined under sub-paragraph (c) of that regulation.

Calculation of discount

18. The reduction (in p/kWh) in the supply price under a supply contract to be applied pursuant to the scheme in respect of that contract for any period ("P") ("the discount") is calculated as—

$$\max\{\min(BD, MD, (SP - MP)), 0\}$$

Where—

BD is the base discount in respect of that supply contract for P;

MD is—

(a) in relation to a variable price contract or a flexible price contract, the maximum discount;

(b) in relation to a fixed price contract—

(i) except as provided in sub-paragraph (ii), the base discount;

(ii) if the price-fix date is later than the date the contract is entered into, in respect of any period before the price-fix date, the maximum discount;

SP is the supply price for P;

MP is the minimum supply price.

Duty of suppliers to provide the discount

19.—(1) A supplier must, in respect of each supply contract—

(a) determine the base discount and the discount for any period in respect of that contract;

(b) reduce the supply price under each supply contract by the discount;

(c) reduce the amount charged to the customer in respect of supply in any billing period by an amount calculated as the billed supply quantity multiplied by the discount;

(d) for each billing period, inform the customer in, or within 15 days of issuing, its invoice or other statement of account in relation to the supply contract in respect of that period, of—

(i) the amount of the discount;

(ii) the discounted supply price;

(iii) the amount by which its charges for supply in the billing period have been reduced by applying the discount, or the basis on which that amount can be determined.

(2) In relation to a flexible price contract the information provided by the supplier under paragraph (1)(d) must include an explanation of how the reference wholesale price for the relevant billing period has been calculated.

(3) Where a supplier adjusts its charges to a customer in consequence of energy reconciliation in respect of any period, the adjustment must be made on the basis of the discounted supply price applicable to such period.

(4) In respect of the period from the scheme commencement date to the scheme introduction date, a supplier must, no later than 45 days after the scheme introduction date—

(a) determine the amount by which its charges to a customer for energy supplied in that period are to be reduced by the application of the discount;

(b) where it has issued an invoice or statement of account to the customer in respect of any such charges, revise such invoice or statement or issue a credit note to reflect such reduction in charges;

(c) where the customer has paid any amount in respect of such charges, credit to the customer's account the amount by which such payment exceeds what was payable on the basis of the discounted supply price, or at the customer's request reimburse such amount to the customer.

(5) A supplier must ensure that—

(a) the amounts which are the subject of arrangements it makes with or requirements it imposes on any customer in connection with the payment (or assurance of payment) or collection of charges under a supply contract, are amounts calculated by reference to the discounted supply price;

(b) where a customer takes its supply through a prepayment meter, the prepayment meter is set or reset, or other arrangements are made, as soon as reasonably practicable after the scheme introduction date, to ensure that the amounts paid by the customer over the scheme period reflect charges at the discounted supply price for supply in the scheme period.

(6) Arrangements referred to in paragraph (5)(a) include (without limitation) arrangements for advance payment, payment by direct debit, payment by instalments, security or credit cover for payment.

Consequences of change in contract categorisation

20. Where the categorisation of a supply contract under regulation 14 is revised, either by agreement of the contract parties or by determination of the Secretary of State under these Regulations, the supplier must—

(a) redetermine the amount of any charges for energy supplied under the contract prior to the date of such revision on the basis of the discounted supply price applicable to the contract as re-categorised;

(b) determine the amount by which any such charges already included in any invoice or statement of account are to be revised to reflect such redetermination;

(c) notify the customer of its determinations under paragraphs (a) and (b) and take the necessary steps to ensure the amount in paragraph (b) is credited or debited to the customer by way of credit note, or adjustment of an existing invoice or statement of account, or inclusion in a future invoice or statement of account.

CHAPTER 4

Rules as to matters in this Part

Rules as to matters in this Part

21. The Secretary of State may make rules—

(a) about the determination (including as to what is, and what is not, to be taken into account in the determination) of weighted average contracted wholesale prices in respect of flexible supply contracts in accordance with regulation 11;

(b) about the basis on which it is to be determined whether a supply contract is a fixed price contract, a variable price contract or a flexible price contract;

(c) about the basis on which the price-fix date of a fixed price contract is to be determined;

(d) requiring that, in circumstances specified in the rules, a supply contract must be treated for the purposes of the scheme as comprising, as to different portions of the energy supplied under it, as more than one contract, and, for these purposes, the two or more contracts which it is to be treated as comprising may be of the same or different categories as referred to in regulation 12(1).

PART 3

Discount recovery

CHAPTER 1

Entitlements in respect of discount recovery

Entitlements in respect of discount recovery

22.—(1) A supplier is entitled to recover from the Secretary of State, as provided in this Part, the amount by which, in any period, its charges to customers under supply contracts are reduced by the application of discounts in accordance with Part 2 and Part 4.

(2) The amount (the "base recovery amount") which a supplier is entitled to recover from the Secretary of State in respect of energy supplied in any period under a supply contract is the quantity supplied multiplied by the discount.

(3) In order to obtain discount recovery a supplier must submit a claim in accordance with Chapter 4 (a "discount recovery claim").

(4) The Secretary of State is entitled to recover from a supplier any amount paid to the supplier under this Part that exceeds what the supplier is entitled to recover under this Part.

Determination of amounts subject to discount recovery

23.—(1) For each supply contract, the "supply contract recovery amount" is the amount that is payable to or by the supplier in respect of a discount recovery claim, and is calculated as the sum of—

(a) the base recovery amount, in respect of energy supplied in the period of supply specified in the claim, and

(b) each of the following, so far as it qualifies under paragraph (2)—

(i) any adjustment of a base recovery amount for an earlier period of supply arising as a result of energy reconciliation;

(ii) any adjustment of a base recovery amount in respect of an earlier period of supply arising as a result of the correction of any error (in the calculation of that amount) in accordance with the discount recovery rules;

(iii) any adjustment of the base recovery amount in respect of an earlier period of supply arising as a result of failure to apply (or to apply correctly) any of regulations 39, 44 or 48 in the determination under sub-paragraph (a) of the base recovery amount for that earlier period of supply;

(iv) any adjustment of the base recovery amount in respect of an earlier period of supply where the customer has given an opt-out notice effective from a date before the notice was given;

(v) any adjustment in consequence of a determination of the Secretary of State under regulation 63 or 64 or a reconsidered decision of the Secretary of State under regulation 65.

(2) An amount in paragraph (1)(b) qualifies for inclusion in a discount recovery claim where it was not taken into account in the supply contract recovery amount under any prior discount recovery claim.

(3) In paragraph (1)(b), an amount which is—

(a) payable to the supplier, is counted as a positive amount;

(b) payable to the Secretary of State, is counted as a negative amount.

(4) The period of supply specified for any supply contract in a discount recovery claim—

(a) must be a period ending before the date on which the claim is submitted;

(b) must not include any day which falls in the period of supply specified for that supply contract in any earlier claim.

(5) A supplier may not claim discount recovery in respect of a supply contract unless it has complied with regulation 14(1) in relation to the contract.

(6) For any supply contract, where any of the amounts referred to in paragraph (1)(b) is an amount payable to the Secretary of State, the supplier must—

(a) submit a discount recovery claim in accordance with Chapter 4 in the first claim window which starts after such amount has been determined;

(b) include those amounts in the supply contract recovery amount in that discount recovery claim.

(7) The amount payable by the Secretary of State to a supplier in respect of a discount recovery claim may be adjusted in accordance with regulation 31(2).

(8) Amounts under paragraph (1)(b) continue to be determined and payable by or to a supplier after the scheme end date in accordance with regulation 29.

(9) Where a customer gives an opt-out notice in respect of a supply contract, this Part continues to apply in relation to the amounts referred to in paragraph (1)(b) for any period of supply under the supply contract before the day from which the opt-out notice was effective.

Payment of amounts in respect of discount recovery

24.—(1) The amount payable in respect of a supplier's discount recovery claim as a whole ("the recovery claim amount") is, subject to the application of regulation 31, the sum of—

(a) the supply contract recovery amounts payable in respect of each of its supply contracts, and

(b) any amount carried forward from the preceding discount recovery claim under paragraph (3)(b)(i).

(2) The recovery claim amount is payable—

(a) to the supplier, provided that the discount recovery claim was valid and submitted in compliance with the requirements in regulation 30, or

(b) as the case may be, to the Secretary of State, subject to paragraph (3)(b),

no later than the 10th business day after the last day of the claim window in which the claim was submitted.

(3) If (in respect of a discount recovery claim) the recovery claim amount is negative—

(a) that amount is payable (disregarding its negative sign) by the supplier to the Secretary of State;

(b) the Secretary of State may, by notice to the supplier, elect—

(i) that such amount is to be carried forward and deducted in calculating the recovery claim amount under the next following discount recovery claim submitted by the supplier, or

(ii) that the supplier must pay the amount to the Secretary of State.

(4) Where any amount is owing and unpaid by a supplier to the Secretary of State under either the electricity scheme or the gas scheme, the Secretary of State may set that amount off against any amount which is payable to the supplier by the Secretary of State under either the electricity scheme or the gas scheme.

(5) If an amount payable by a supplier or the Secretary of State under this regulation is not paid by the due date, simple interest is payable on the unpaid amount, from the day following the due date until the day on which the amount is paid in full, at a rate calculated as base rate plus 2 percentage points per annum.

(6) An amount payment of which is withheld by the Secretary of State under regulation 27 is not an amount payable by the Secretary of State for the purposes of paragraph (5) unless and until the amount is released under regulation 28.

(7) An amount payable to a supplier or the Secretary of State under this regulation is recoverable as a civil debt by the person to which it is payable.

Assignment of rights in respect of payment

25. A supplier may not assign, transfer or otherwise deal with its right to receive payment of amounts in respect of discount recovery under this Part except with the consent of the Secretary of State.

Absolute right of Secretary of State to recover

26. The Secretary of State may at any time (including after the reconciliation cut-off date) require a supplier to pay any amount which has been paid to the supplier in excess of what the supplier is entitled to be paid under the scheme.

CHAPTER 2

Withholding of payments in respect of discount recovery

Rights of Secretary of State to withhold payment

27.—(1) The Secretary of State may withhold payment of all or part of the amount payable to a supplier in respect of a recovery claim amount in the following circumstances—

(a) if paragraph (2) applies or the Secretary of State has reasonable grounds to suspect that paragraph (2) applies in relation to the supplier or a customer of the supplier;

(b) if the Secretary of State has reasonable grounds to believe that, by the application of any regulation in Part 4, any significant amounts are payable and unpaid or (if that regulation were complied with) would become payable to the Secretary of State;

(c) if, in relation to any discount recovery claim—

(i) the supplier has failed to provide (as required under Chapter 4) supporting information, or

(ii) the Secretary of State has reasonable grounds to believe that the supporting information provided is incorrect,

and as a result the Secretary of State is unable to verify any of the amounts claimed;

(d) if paragraph (4) applies;

(e) if an event of insolvency has occurred in relation to the supplier and the Secretary of State considers that any amounts will in future become payable by the supplier to the Secretary of State under the scheme;

(f) if, not more than 30 days before the scheme end date, the Secretary of State considers it appropriate to establish a reserve in respect of the amounts that may become payable by the supplier after the scheme end date by the operation of regulation 29.

(2) This paragraph applies if, in connection with the scheme, a supplier or a customer has acted dishonestly, provided materially misleading information, or failed to take proper measures to prevent or report actual or anticipated fraud or corruption.

(3) Where paragraph (2) applies as a result of the acts or omissions of a customer, the withholding under paragraph (1)(a) may be made only as to that part of the recovery claim amount referable to that customer's supply contract.

(4) This paragraph applies if—

(a) the Secretary of State considers that a supplier is failing to meet acceptable standards in the submission of discount recovery claims under the discount recovery rules,

(b) the Secretary of State has given notice to that effect to the supplier, giving reasons for the Secretary of State's view, and requiring the supplier to take measures to remedy such failings by a date specified in the notice, and

(c) the supplier does not, by that date, satisfy the Secretary of State that it has taken those measures.

(5) For the purposes of paragraph (1)(e), "event of insolvency" means any of the following in relation to a supplier—

(a) it is, or is deemed for the purposes of section 123(1)(e) or 123(2) of the Insolvency Act 1986(**a**) to be, unable to pay its debts as they fall due (save that the words "proved to the satisfaction of the court" are deemed omitted from such sections);

(b) it admits its insolvency or its inability to pay its debts as they fall due;

(c) it suspends making payments on any of its debts or announces an intention to do so;

(**a**) 1986 c. 45; there are no relevant amendments to section 123.

(d) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the rescheduling or restructuring of any of its indebtedness;

(e) a moratorium is declared in respect of any of its indebtedness;

(f) any step is taken with a view to a moratorium or a composition, compromise assignment or arrangement with any of its creditors;

(g) a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution, to petition for or to file documents with a court or any registrar for its winding-up, administration or dissolution or any such resolution is passed;

(h) any person presents a petition, or files documents with a court or any registrar for its winding-up, administration or dissolution or seeking relief under any applicable bankruptcy, insolvency, company or similar law other than any such petition or filing which is frivolous or vexatious and is discharged, stayed or dismissed within 15 business days;

(i) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;

(j) its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer in respect of it or any of its assets;

(k) any other analogous step or procedure is taken in any jurisdiction (whether England and Wales or elsewhere).

Release of amounts withheld

28.—(1) If the Secretary of State withholds payment under regulation 27(1)(b), when it is—

(a) agreed or determined by the supplier under any provision of Part 4, or

(b) determined by the Secretary of State under regulation 63 or 64,

what amounts (if any) are payable to the Secretary of State as a result of the application of any regulation in Part 4, the Secretary of State must release the amount withheld, or so much of it as exceeds any amount agreed or determined to be so payable, within a reasonable time after such agreement or determination.

(2) If—

(a) the Secretary of State withholds payment under regulation 27(1)(c), and

(b) the supplier provides the supporting information or (as the case may be) correct supporting information,

the Secretary of State must, within a reasonable time, release the amount withheld or so much, if any, of it as is shown (by such supporting information) to be payable by the Secretary of State.

(3) If—

(a) the Secretary of State withholds payment under regulation 27(1)(d), and

(b) the supplier demonstrates to the satisfaction of the Secretary of State that the supplier has taken the measures referred to in regulation 27(4)(b),

the Secretary of State must, within a reasonable time, release the amount withheld, less any amount established not to be payable by the Secretary of State.

(4) If the Secretary of State withholds payment under regulation 27(1)(e)—

(a) simple interest at base rate runs on the amount withheld from the day following the day when such amount was otherwise due for payment to the supplier to the day on which it is paid;

(b) the Secretary of State must release the amount withheld, together with the accrued interest or so much, if any, of it as exceeds the amounts finally determined as payable by the supplier, when those amounts are finally determined.

(5) If the Secretary of State withholds payment under regulation 27(1)(f)—

(a) simple interest at base rate runs on the amount withheld from the day following the day when such amount was otherwise due for payment to the supplier to the day on which it is paid;

(b) the Secretary of State must keep under review the amount withheld in comparison with the amounts which are payable in consequence of regulation 29 by the supplier or the Secretary of State;

(c) the Secretary of State may release a part of the amount withheld where, on the basis of the review under sub-paragraph (b), the Secretary of State considers the amount held in reserve exceeds what is appropriate;

(d) the Secretary of State must release the amount withheld, or so much of it as remains withheld, together with accrued interest, within 5 business days after the reconciliation run-off date.

CHAPTER 3

Reconciliation run-off

Reconciliation run-off

29.—(1) This regulation provides for reconciliation and adjustment to continue, after the scheme end date, in respect of claims for discount recovery in respect of periods of supply within the scheme period.

(2) The provisions of this Part continue to apply, on the basis set out in paragraph (3), with effect from the scheme end date until the reconciliation run-off date.

(3) No day after the scheme end date is counted in any period of supply in respect of any supply contract, and accordingly there is no base recovery amount in respect of any period after the scheme end date.

(4) Unless otherwise permitted by the Secretary of State, a supplier must submit a discount recovery claim in each claim window in the reconciliation run-off period.

(5) The Secretary of State must determine, in respect of each supplier or some or all suppliers collectively, the date after the scheme end date with effect from which it is not likely (in the opinion of the Secretary of State) that any material amounts will be calculated under regulation 23(1)(b), and at least 10 days before that date give notice to the supplier or suppliers of that date.

(6) In this regulation—

(a) the "reconciliation run-off date" in respect of a supplier is the date determined by the Secretary of State under paragraph (5);

(b) the "reconciliation run-off period" is the period from the day after the scheme end date to the reconciliation run-off date (both dates inclusive);

(c) the "scheme end date" is—

(i) in relation to a person who (as described in regulation 4(3)) ceases to hold an electricity supply licence or gas supply licence, the date on which it ceases to hold that licence;

(ii) in relation to any other supplier, the last day of the scheme period.

CHAPTER 4

Procedure for discount recovery

Submission of a valid discount recovery claim

30.—(1) A supplier may apply for discount recovery by submitting a discount recovery claim to the Secretary of State, setting out—

(a) the date on which the claim is submitted;

(b) the supply contracts in respect of which discount recovery is claimed;

(c) for each such supply contract—

(i) the period of supply to which the claim relates, and

(ii) the supply contract recovery amount;

(d) any amount carried forward from the preceding discount recovery claim under regulation 24(3)(b)(i);

(e) the details required under regulation 32 in respect of any supply contract;

(f) details of any opt-out notice which since the preceding discount recovery claim, or in the case of the first such claim the scheme introduction date, has been given or withdrawn by a customer under regulation 4(4);

(g) the recovery claim amount.

(2) A supplier may submit only one discount recovery claim, relating to all supply contracts for which it claims discount recovery, in any claim window.

(3) A "valid" discount recovery claim is one that meets the requirements for a valid discount recovery claim set out in the discount recovery rules.

Invalid, erroneous or absent discount recovery claims

31.—(1) Where the Secretary of State considers that a claim submitted by a supplier is not a valid discount recovery claim the Secretary of State may—

(a) decline to make any payment in respect of it, or

(b) elect to pay part only of the amount claimed,

until the invalidity is corrected or the claim is replaced by a valid discount recovery claim.

(2) Where the Secretary of State considers that a discount recovery claim is valid but any amount set out in the claim is erroneously stated—

(a) the Secretary of State, after taking reasonable steps to resolve the matter with the supplier, may adjust the amount of the claim to reflect what the Secretary of State considers to be the correct amount;

(b) the amount payable under regulation 24 by or to the Secretary of State in respect of the discount recovery claim is the adjusted amount under sub-paragraph (a).

(3) If in a claim window a supplier does not submit a discount recovery claim, and the Secretary of State considers that, if a claim had been submitted on the last day of the claim window, the recovery claim amount, calculated disregarding any base recovery amount, would be an amount payable to the Secretary of State—

(a) the Secretary of State may give notice to the supplier setting out that recovery claim amount and details of how it was calculated;

(b) the notice is to be treated as a valid discount recovery claim for the purposes of this Chapter.

Reporting details of Part 4 arrangements

32.—(1) A supplier must include, in each discount recovery claim that it submits—

(a) each declaration received from a customer under regulation 38(1)(b) or 43(1)(b) or sent to or received from a customer under regulation 47(2) since the preceding discount recovery claim (or in the case of the first, since the scheme introduction date);

(b) details of any customer to which, since the preceding discount recovery claim (or in the case of the first, since the scheme introduction date), the supplier has given notice under regulation 38(2)(b) or regulation 43(2)(b) unless the customer has either sent a declaration (as referred to in sub-paragraph (a)) or confirmed to the supplier in writing that the Chapter under which the supplier gave that notice does not apply.

(2) A supplier must include, in each discount recovery claim that it submits, the following matters in respect of the period of supply to which the discount recovery claim relates, and any other period of supply for which such matters have not been included in a prior discount recovery claim—

(a) in relation to any supply contract in respect of which Chapter 1 or 2 of Part 4 applies, details of each declaration submitted by the customer, and each determination made by the supplier, under regulation 39(2) or 44(2);

(b) in relation to any supply contract in respect of which Chapter 3 of Part 4 applies, details of each notice given or received by the supplier under regulation 48(b)(ii) and confirmation that the requirements in regulation 48(c) are being complied with.

Discount recovery rules

33. The Secretary of State must make rules which provide for—

(a) establishing arrangements (including the notification of bank account details) for the making of payments to and by suppliers under this Part;

(b) the means by which and form in which a supplier may submit a discount recovery claim, and any other requirements to be met in respect of the claim for it to be a valid discount recovery claim;

(c) the supporting information that a supplier must submit with a discount recovery claim;

(d) the review and validation of the claim and initial verification of the supporting information;

(e) any adjustment (as provided in regulation 31(2)) of the amount of the claim following such validation and initial verification;

(f) the payment of recovery claim amounts;

(g) the further investigation and verification of discount recovery claims after payment has been made;

(h) the correction of errors identified by such further investigation and verification;

(i) such other matters as the Secretary of State considers appropriate in relation to the process of discount recovery.

Claim windows for discount recovery

34.—(1) Subject to paragraph (2), the discount recovery rules must set out the claim windows, by specifying the first and last day of each claim window, such that—

(a) the first claim window ends not more than 15 days after the scheme introduction date;

(b) each other claim window starts on the day after the previous claim window ends;

(c) the last claim window starts not less than 24 months after the scheme period ends (but this is without prejudice to the determination by the Secretary of State of the reconciliation run-off date);

(d) two claim windows start in each calendar month (except the month in which the first claim window starts, if it starts after the 10th day of that month).

(2) The discount recovery rules may provide, in respect of claim windows starting after the end of the scheme period, that—

(a) the Secretary of State may decide that only one such claim window is to start in each calendar month;

(b) the dates of such windows, instead of being set out in the rules, are to be determined and published by the Secretary of State at intervals decided by the Secretary of State.

(3) The dates of claim windows determined under paragraph (2)(b)—

(a) must be consistent with the requirements in paragraph (1)(b), (c) and (d), subject to paragraph 2(a);

(b) must be published at least 3 months in advance of each such claim window.

Delegation of functions related to discount discovery

35.—(1) The Secretary of State may delegate to any person the performance of any of the Secretary of State's functions under the discount recovery rules.

(2) Where, in performing those functions, the delegate is required to make or receive any payment or give or receive any communication to or from suppliers, the Secretary of State must give notice of the delegation identifying the functions which the delegate is to perform.

(3) A notice of delegation under paragraph (2) may specify that paragraph (4) applies, subject to any limitations or conditions in the notice, in relation to the delegate.

(4) Where this paragraph applies, subject to what is provided in the notice of delegation (and without prejudice to any provision of any contract between the delegate and any person), the delegate is not liable in damages for anything done or omitted to be done by it in the exercise or purported exercise of the functions delegated to it.

PART 4

Adjustment of discount or supply quantity in certain cases

CHAPTER 1

Arrangements in respect of customer's financial exposure to wholesale price

Interpretation of this Chapter

36. For the purposes of this Chapter—

(a) "arrangement benefit" has the meaning given in regulation 39(1)(a);

(b) "balancing services" means a customer varying its consumption of energy in order to provide a service—

(i) to a person holding a transmission licence, in connection with the balancing of flows of electricity onto and off a transmission system, or

(ii) to a gas transporter, in connection with the balancing of flows of gas into and out of a pipe-line system;

(c) in paragraph (b)—

(i) "gas transporter" and "pipe-line system" have the meanings given to them in section 5(10) of the Gas Act 1986(**a**);

(ii) "transmission licence" has the meaning given in section 6(1)(b) of the Electricity Act 1989(**b**);

(**a**) 1986 c. 44. The definition of "pipe-line system" was inserted by the Energy Act 2004, section 149(1) and (3).
(**b**) 1989 c. 29. The definition of "transmission licence" was substituted by the Energy Act 2004, section 136(1).

(iii) "transmission system" has the meaning given to it in section 4(4) of that Act 1989(**a**);

(d) "Chapter 1 arrangement" means an arrangement of the kind described in regulation 37(1)(b) and (2);

(e) "contract financial exposure" has the meaning given in regulation 37(1)(b);

(f) a "declaration period" is the period between the initial declaration date and the first periodic declaration date, or between a later periodic declaration date and the next periodic declaration date;

(g) "effective financial exposure" has the meaning given in regulation 37(1)(b);

(h) the "initial declaration date" in respect of a supply contract is the later of—

(i) the scheme introduction date, if on that date the customer has made a Chapter 1 arrangement and is party to the supply contract, and

(ii) such later date on which the customer—

(aa) enters into the supply contract, having already made a Chapter 1 arrangement, or

(bb) makes a Chapter 1 arrangement, being already a party to the supply contract;

(i) "periodic declaration dates" are dates chosen by the supplier, falling at intervals of not more than 31 days, of which the first must be not more than 31 days after the initial declaration date and the last must be the last day of the scheme period.

Application of this Chapter

37.—(1) This Chapter applies in respect of a supply contract where—

(a) it may reasonably be expected that—

(i) the quantity of energy supplied to the customer at the premises to which the supply contract relates in the 12 month period starting on 1st October 2022 will exceed 0.5 gigawatt hours, or

(ii) the maximum rate at which energy is supplied under the contract at any time will exceed 0.5 megawatts, and

(b) the customer has made arrangements, otherwise than in a supply contract, by virtue of which the customer's overall financial exposure to the wholesale price of energy supplied to it in any period within the scheme period (the "effective financial exposure") differs from its financial exposure in that period to the contracted wholesale price under the supply contract (the "contract financial exposure").

(2) The ways in which a customer may make an arrangement of the kind described in paragraph (1)(b) include entering into—

(a) financial instruments in respect of the wholesale price of energy;

(b) arrangements under which the customer obtains a benefit from the provision of balancing services;

(c) in connection with the electricity scheme, arrangements under which the customer obtains a benefit by exporting electricity to an electricity system.

Customer declaration where this Chapter applies

38.—(1) A customer must, as soon as practicable and in any event within 21 days after the initial declaration date—

(a) determine whether this Chapter applies in respect of a supply contract to which it is party;

(b) if it so determines, send to the supplier a declaration to that effect.

(**a**) The definition of "transmission system" was substituted by section 135(4) of the Energy Act 2004.

(2) A supplier must, when it enters into a supply contract, or for a supply contract which it has entered into before the scheme introduction date, within 45 days after the scheme introduction date—

(a) determine whether either of the circumstances in regulation 37(1)(a) applies;

(b) if so, give the customer notice of that determination, drawing this Chapter to the attention of the customer, unless the customer has already sent a declaration under paragraph (1)(b).

Adjustment of discount

39.—(1) In respect of any period and supply contract in respect of which Chapter 1 arrangements apply—

(a) subject to paragraph (d), the "arrangement benefit" is the amount determined as—

$$\{CFE - EFE\}$$

Where for that period—

(i) CFE is the contract financial exposure;

(ii) EFE is the effective financial exposure;

(b) the "unit arrangement benefit" (expressed in p/kWh) is the arrangement benefit (expressed in pence) divided by the supply quantity in respect of that period;

(c) the reference wholesale price applicable to the supply contract in that period is determined as—

$$\{RWP' - UAB\}$$

Where—

(i) RWP' is the price that would otherwise be determined (under regulation 10 or in accordance with regulation 11) as the reference wholesale price;

(ii) UAB is the unit arrangement benefit;

(d) in relation to a variable price contract, if the term {CFE – EFE} in paragraph (a) is negative, the arrangement benefit in respect of that period is zero.

(2) Where this Chapter applies in respect of a supply contract—

(a) the supplier must, as soon as practicable after receiving the customer's declaration under regulation 38(1)(b), give notice to the customer of each periodic declaration date and the declaration period for each such date;

(b) the customer must, as soon as practicable and in any event within 14 days after each periodic declaration date, determine and send to the supplier a declaration of the amount of the arrangement benefit in respect of the relevant declaration period, unless the arrangement benefit is less than £100 per day of the declaration period;

(c) the supplier must, on the basis of the arrangement benefit declared in each such declaration—

(i) calculate the unit arrangement benefit for the declaration period;

(ii) calculate the reference wholesale price under paragraph (1)(c);

(iii) calculate the base discount rate under regulations 18 and 19 on the basis of that wholesale reference price;

(iv) determine or redetermine its charges for energy supplied in the declaration period on the basis of that discount.

(3) Where this Chapter applies and the customer is party to more than one supply contract, the effect of the Chapter 1 arrangements is to be determined in respect of the supply contracts

collectively and the arrangement benefit is to be allocated between the supply contracts on an appropriate basis.

(4) The contract parties may agree a basis on which an estimate of the arrangement benefit will be used in determining charges for a billing period before (and with a subsequent reconciliation when) the steps in paragraph (2) are completed.

Rules in relation to this Chapter

40. The Secretary of State may make rules about—

(a) the kinds of arrangements which fall or do not fall, or factors which indicate whether arrangements fall or do not fall, within regulation 37(1)(b);

(b) the basis on which arrangement benefit in respect of any period is to be determined;

(c) the basis on which arrangement benefit is to be allocated between supply contracts under regulation 39(3);

(d) the form and content of any declaration to be made by the customer.

CHAPTER 2

Arrangements for customer to deliver electricity to the grid

Interpretation of this Chapter

41. For the purposes of this Chapter—

(a) "Chapter 2 arrangement" means an arrangement of the kind described in regulation 42(1)(b);

(b) a "declaration period" is the period between the initial declaration date and the first periodic declaration date, or between a later periodic declaration date and the next periodic declaration date;

(c) the "initial declaration date" in respect of a supply contract is the later of—

(i) the scheme introduction date, if on that date the customer has made a Chapter 2 arrangement and is party to the supply contract, and

(ii) such later date on which the customer—

(aa) enters into the supply contract, having already made a Chapter 2 arrangement, or

(bb) makes a Chapter 2 arrangement, being already a party to the supply contract;

(d) "periodic declaration dates" are dates chosen by the supplier, falling at intervals of not more than one month, of which the first must be not more than 31 days after the initial declaration date and the last must be the last day of the scheme period;

(e) references to the storage of electricity include the use of electricity to create potential energy which is used at a different time to generate electricity.

Application of this Chapter

42.—(1) This Chapter applies in respect of a supply contract, subject to paragraph 2, where—

(a) it may reasonably be expected that—

(i) the quantity of energy supplied to the customer at the premises to which the supply contract relates in the 12 month period starting on 1st October 2022 will exceed 0.5 gigawatt hours, or

(ii) the maximum rate at which energy is supplied under the contract at any time will exceed 0.5 megawatts, and

(b) the customer has made arrangements under which—

(i) gas supplied to the customer under the supply contract may be used for the purpose of generating electricity (whether or not in conjunction with the production of heat), or

(ii) electricity supplied to the customer under the supply contract may be stored by or for the customer, and

in either case, some or all of the electricity generated or stored, may be delivered to an electricity system (such electricity being "grid-delivered").

(2) This Chapter does not apply where—

(a) the capacity of the facility in which electricity supplied to the customer under the supply contract and generated or stored as described in paragraph (1)(b) is not material;

(b) the quantities in which that electricity is or may be delivered to an electricity system are not material;

(c) the application of this Chapter would be disproportionate, having regard to the complexity of determining ineligible quantities and to the capacity or quantities referred to in sub-paragraphs (a) or (b).

Customer declaration where this Chapter applies

43.—(1) A customer must, as soon as practicable and in any event within 21 days after the initial declaration date—

(a) determine whether this Chapter applies in respect of a supply contract to which it is party;

(b) if it so determines, send to the supplier a declaration to that effect.

(2) A supplier must, when it enters into a supply contract, or for a supply contract which it has entered into before the scheme introduction date, within 45 days after the scheme introduction date—

(a) determine whether either of the circumstances in regulation 42(1)(a) applies, and

(b) if so, give the customer notice of that determination, drawing this Chapter to the attention of the customer, unless the customer has already sent a declaration under paragraph (1)(b).

Determination of ineligible quantity

44.—(1) Where this Chapter applies in respect of a supply contract, that part of—

(a) the quantity of gas supplied in any period which was used to generate grid-delivered electricity; or

(b) the quantity of electricity supplied in any period which, having been stored, was grid-delivered (together with a corresponding proportion of the electricity used or lost in storage),

is an "ineligible quantity" for the purposes of the scheme.

(2) Where this Chapter applies in respect of a supply contract—

(a) the supplier must as soon as practicable after receiving the customer's declaration under regulation 43(1)(b) give notice to the customer of each periodic declaration date and the declaration period for each such date;

(b) the customer must, as soon as practicable and in any event within 14 days after each periodic declaration date, determine and send to the supplier a declaration of the quantity of electricity supplied in the relevant declaration period which is an ineligible quantity;

(c) the supplier must, on the basis of the ineligible quantity declared in each such declaration—

(i) determine the amount of the supply quantity for the declaration period to which the discounted supply price is to apply;

(ii) determine or redetermine its charges for energy supplied in the declaration period accordingly.

(3) The contract parties may agree a basis on which—

(a) an estimate of the ineligible quantity will be used in determining charges for a billing period before the steps in paragraph (2) are completed; and

(b) a subsequent reconciliation will be performed when those steps are completed.

Rules in relation to this Chapter

45. The Secretary of State may make rules about—

(a) the kinds of arrangements which fall or do not fall, or factors which indicate whether arrangements fall or do not fall, within regulation 42(1)(b);

(b) the circumstances in which, by virtue of regulation 42(2), this Chapter does not apply;

(c) the basis on which it is to be determined what part of the quantity of gas or electricity supplied is an ineligible quantity;

(d) the basis on which a proportion (corresponding to the grid-delivered quantity) of electricity used or lost in storage is to be determined;

(e) the form and content of a declaration to be made by the customer.

CHAPTER 3

Abuse of scheme

Interpretation of this Chapter

46. In this Chapter—

(a) "abusive arrangement" means an arrangement of the kind described in regulation 47(1);

(b) "benefit of the scheme" means the amount by which the charges to a customer for energy supplied under a supply contract are reduced under the scheme;

(c) the "declaration date", in relation to an abusive arrangement, is—

(i) the date on which the abusive arrangement is made, or

(ii) if the abusive arrangement was made before the scheme introduction date, the scheme introduction date;

(d) in relation to an abusive arrangement, "relevant party" means—

(i) the supplier, if it is party to the abusive arrangement;

(ii) otherwise, the customer.

Application of this Chapter and declaration of abusive arrangement

47.—(1) This Chapter applies in respect of a supply contract if either the customer or the supplier or each of them is party to an arrangement the purpose or main purpose of which is to achieve an increase in the benefit of the scheme (an "abusive arrangement").

(2) Where this Chapter applies in relation to a supply contract, each contract party which is party to the abusive arrangement must, as soon as practicable and in any event within 21 days after the declaration date, send to the other contract party a declaration to that effect.

Reduction of discount

48. If in relation to a supply contract either the customer or the supplier is party to an abusive arrangement—

(a) the base discount is to be reduced by such amount as will ensure that the benefit of the scheme is not increased by that arrangement;

(b) the relevant party must promptly and as frequently as is required to give effect to this regulation—

(i) determine the reduction in the discount required under paragraph (a);

(ii) give notice of that reduction to the other contract party;

(c) the supplier must—

(i) reduce the base discount by the amount determined under paragraph (a);

(ii) determine or redetermine its charges for energy supplied accordingly.

Rules in relation to this Chapter

49. The Secretary of State may make rules about—

(a) the kinds of arrangements which are or are not, or factors which indicate whether arrangements are or are not, abusive arrangements;

(b) the determination of the amount by which the benefit of the scheme is increased by an abusive arrangement;

(c) how the discount is to be reduced to ensure such increase is not achieved.

PART 5

Qualifying financially disadvantaged customers

Interpretation of this Chapter

50. In this Part—

"qualifying amount" means any amount payable by a customer to a supplier under a supply contract, that is not an amount payable in respect of value added tax or climate change levy;

"qualifying supply" means energy that a supplier supplies to a qualifying financially disadvantaged customer under a variable price contract during—

(a) the period beginning 15 days after the scheme introduction date and ending on 31st March 2023, or

(b) if the customer is a QFDC of the supplier only for a part of that period, that part of that period;

"required reductions" has the meaning given in regulation 52(1);

"required reductions rules" means rules made under regulation 52.

Qualifying financially disadvantaged customers

51.—(1) Subject to paragraph (2), for the purposes of this Part, a customer that was a customer of a supplier on the scheme commencement date is a "qualifying financially disadvantaged customer" or "QFDC" of the supplier if, and for so long, during the scheme period, as—

(a) it continues to be a customer of the supplier on and after the scheme introduction date, and

(b) the supplier supplies it with energy under a deemed contract or an out-of-contract contract.

(2) A customer is not a QFDC for the purposes of this Part if, and for so long, during the scheme period, as—

(a) any qualifying amount due and payable by it under its supply contract has been unpaid for more than 28 days after it became payable, and

(b) in respect of that amount—

(i) the customer has not proposed or accepted a plan for payment, or

(ii) such a plan has been agreed, but the customer has failed to make two or more payments when they fell due under the plan.

Rules in relation to this Part

52.—(1) The Secretary of State must, no later than 14 days after the scheme introduction date, make rules ("required reductions rules") about further reductions that suppliers are to apply under regulation 53(1)(b), in addition to any discount applied under regulation 19(1)(b), to the qualifying amounts payable by QFDCs ("required reductions").

(2) The purpose of the required reductions rules is to mitigate the financial disadvantage otherwise experienced by QFDCs in obtaining an affordable supply of energy.

(3) The required reductions rules—

(a) must specify—

(i) the required reductions, or

(ii) a methodology for determining them, and

(b) must provide for required reductions to be specified or determined—

(i) by reference to qualifying amounts, and

(ii) in p/kWh, in pounds, or as a percentage.

(4) The required reductions rules may provide—

(a) that where specified conditions are satisfied, the amount of a required reduction is reduced (or that no required reduction is applicable);

(b) that required reductions are to be different in different cases, as specified in or determined under the rules;

(c) for the Secretary of State or suppliers to publish required reductions.

Reduction in qualifying amounts payable by qualifying financially disadvantaged customers

53.—(1) A supplier must, in respect of any billing period in which it makes a qualifying supply—

(a) identify which of its customers are QFDCs for some or all of that period;

(b) for as much of the billing period as a QFDC is a QFDC, apply the required reductions, as specified in or determined under the required reductions rules, to the qualifying amounts payable by it in respect of its qualifying supply;

(c) inform each QFDC in respect of whose qualifying supply it has applied the required reductions of the amount of such reductions, or the basis on which they can be determined, either in, or within 15 days of issuing, an invoice or other statement account in respect of that period.

(2) If a supplier issues an invoice or statement of account to a QFDC in respect of any billing period in which it makes a qualifying supply without having applied the required reductions in accordance with paragraph (1)(b), it must as soon as practicable—

(a) revise the invoice or statement or issue a credit note to reflect the required reductions, and

(b) if the customer pays any amount in respect of such invoice or statement, it must credit to the customer's account the amount by which such payment exceeds what was payable on the basis of the required reductions, or at the customer's request reimburse such amount to the customer.

Terms of supply to qualifying financially disadvantaged customers

54. If a supplier changes the terms on which it provides a qualifying supply, the terms applicable to that qualifying supply immediately after that change must not be less favourable to the QFDC than those applicable to it immediately before the change.

PART 6

Further provisions

CHAPTER 1

Duties of suppliers in connection with the scheme

Increases in charges and other changes in relation to supply contracts

55.—(1) A supplier must not, in respect of energy supplied under a supply contract, unreasonably—

(a) increase the rates at which it charges qualifying amounts,

(b) expose a customer to any additional risk, or

(c) change—

(i) the terms of the supply contract;

(ii) the terms on which the supplier offers to enter into supply contracts;

(iii) the process by which prices or charges payable under supply contracts are set;

(iv) the way in which the supplier exercises its rights under its supply contracts,

so that any of them are less favourable to the customer.

(2) For the purposes of determining whether a supplier has behaved unreasonably in doing any of the things referred to in paragraph (1)(a) to (c)—

(a) a supplier's conduct is, in particular, unreasonable if, and to the extent that, the conduct, or the supplier's ability to retain the customer as a customer while engaging in it, is facilitated by the existence or operation of the scheme;

(b) it is, in particular, reasonable for a supplier to increase its charges—

(i) to its customers collectively, by an amount that in aggregate does not exceed the efficiently incurred costs of complying with these Regulations;

(ii) to any customer, by an amount that does not exceed its fair and reasonable share of such efficiently incurred costs (but this does not entitle a supplier to increase the qualifying amounts payable by a QFDC above the levels resulting from the application of regulation 53(1)(b)).

CHAPTER 2

Deemed terms of supply contracts

Deemed terms of supply contracts

56.—(1) Subject to paragraphs (3) and (4), terms to the following effect are implied into a supply contract—

(a) that in respect of energy supplied under the contract during the scheme period, the supply price is reduced by the discount as required under Part 2 and Part 4;

(b) if the customer is a qualifying financially disadvantaged customer, that the qualifying amounts payable by it are reduced as required under regulation 53(1)(b);

(c) that where the application of the Regulations changes the discount or a quantity of energy to which the discount applies, the rights and obligations of the supplier and customer in respect of payment for energy supplied are determined, or as necessary redetermined, so as to reflect such change in discount or quantity;

(d) that no term of the contract, and no act or omission on the part of the customer, is to be construed as entitling the supplier to require the customer, at any time or in any circumstances—

(i) to pay a greater amount than the supplier would have been entitled to require it to pay if acting in accordance with the Regulations, or

(ii) to be otherwise subject to terms that it would not have been lawful under the Regulations for the supplier to have included in a supply contract,

in respect of any energy supplied by the supplier in the scheme period;

(e) that nothing done by the supplier or the customer in order to comply with these Regulations or rules made under them, or in following guidance issued by the Secretary of State in relation to the scheme, is a breach of any provision of the contract;

(f) that none of: the coming into force of the Act, the making of these Regulations or rules under them, or the issuing of guidance by the Secretary of State in relation to the scheme, is—

(i) a change in the law for the purposes of any provision (however expressed) of the contract which permits the supplier to increase its prices or charges or take any other action in consequence of a change in the law;

(ii) an event or circumstance which under any provision of the contract (however expressed) excuses the supplier or the customer from performance of its obligations, or from liability for failure to perform its obligations, under the contract.

(2) In paragraph (1)(b), the reference to—

(a) the application of the Regulations includes the making or revision of any determination or other decision under the Regulations;

(b) a change includes a change applying in respect of energy already supplied to the customer;

(c) rights and obligations include rights and obligations for adjustment of charges already made or paid.

(3) Paragraph (1) does not apply to an excluded fixed price contract or a supply contract for which an opt-out notice has been given, and has not been withdrawn, under regulation 4(4).

(4) None of the terms listed in paragraph (1) is to be construed as preventing a supplier from increasing its charges to a customer in order to recover the costs of complying with Parts 2 and 3 if and to the extent it is permitted to do so under the terms of its supply contract, its electricity supply licence or gas supply licence, and regulation 55(2)(b).

CHAPTER 3

Reporting, information requests and audit

Regular reporting by suppliers

57.—(1) The Secretary of State may by notice require suppliers to provide to the Secretary of State at specified intervals a report about the operation of the scheme as respects the supplier and its customers.

(2) The notice shall specify—

(a) the matters which are to be included in the report;

(b) the dates when the report is to be provided.

(3) The Secretary of State may by further notice modify, revoke or replace a notice given under paragraph (1).

(4) A supplier must provide reports as required by the notice.

Information requests

58.—(1) Where the Secretary of State considers it necessary or expedient to do so for any of the purposes set out in regulation 60, the Secretary of State may give notice to any supplier or any customer requiring it, by a time specified in the notice—

(a) to produce to the Secretary of State or a person nominated by the Secretary of State any document specified, or of a description specified, in the notice that is held by that supplier or customer, or

(b) to provide to the Secretary of State or a person nominated by the Secretary of State, such information as may be specified or described in the notice.

(2) No person is to be compelled under this regulation to produce any document which they could not be compelled to produce in civil proceedings in the court or to provide any information which they could not be compelled to give in evidence in any such proceedings.

Audit

59.—(1) Where the Secretary of State considers it appropriate to do so for the purposes set out in regulation 60(a), (b) or (c), the Secretary of State may by notice to a supplier require that an audit of the books, records, systems, processes and methodologies of the supplier is performed by a suitably qualified person (the "auditor") appointed by the Secretary of State.

(2) Where the Secretary of State requires an audit to be performed under paragraph (1)—

(a) the supplier shall procure for the auditor access to its personnel, books, records, systems, processes and methodologies sufficient for performance of the audit;

(b) the audit shall be performed so far as practicable without causing disruption to the supplier in carrying on its business;

(c) the costs of the auditor are to be borne by the Secretary of State.

Purposes for which powers under this Chapter may be exercised

60. The purposes are—

(a) ascertaining whether any provision of the Regulations is being complied with;

(b) ascertaining whether pursuant to any provision of Part 3 or Part 4, any significant amount—

(i) is payable to, or

(ii) upon that provision being complied with, would become payable to, or would not be payable by,

the Secretary of State;

(c) otherwise ensuring the proper accounting for, tracing or control of public money in discount recovery;

(d) obtaining information in connection with any review, including a review under section 9(5) of the Act, by the Secretary of State of the operation and effects of the scheme;

(e) otherwise obtaining information in connection with the exercise of any of the functions of the Secretary of State in or under these Regulations.

Application of data protection legislation

61.—(1) Nothing in these Regulations authorises or requires a disclosure of information if the disclosure would contravene the data protection legislation, as defined in section 3 of the Data Protection Act 2018(**a**).

(2) In determining whether a disclosure would contravene that legislation, the powers conferred and duties imposed by regulations 57 to 59 are to be taken into account.

CHAPTER 4

Certain determinations made under the Regulations

Interpretation of this Chapter

62.—(1) In this Chapter—

(a) "applicant" in relation to a review request, means the supplier or, under regulation 65(1), customer making the request;

(b) reference to a "determination" includes a redetermination;

(c) "Part 2 or Part 4 matter" means any matter which is to be determined or declared in relation to a supply contract by a supplier or customer under Part 2 or Part 4;

(d) "Part 3 decision" means a decision by the Secretary of State—

(i) under regulation 27, to withhold payment to a supplier of any amount in respect of a recovery claim amount;

(ii) under regulation 28, as to the release of an amount withheld under regulation 27;

(iii) under regulation 29, as to the reconciliation cut-off date in relation to any supplier;

(iv) under regulation 31(1), to decline to make payment (in whole or part) in respect of a discount recovery claim on the grounds of invalidity;

(v) under regulation 31(2), to adjust the amount of a discount recovery claim;

(vi) under regulation 31(3), to give a notice that is to be treated as a discount recovery claim;

(e) "other party" in relation to a review request under regulation 65(1), means the contract party which is not the applicant;

(f) "reconsidered decision" has the meaning given in regulation 65(4)(c)(i);

(g) "relevant decision" in relation to a review request, means the determination or decision in respect of which the request is made;

(h) a "review request" is a request made to the Secretary of State under regulation 65(1) or (2).

(2) For the purposes of this Chapter a referral under regulation 63 or a review request does not meet the applicable threshold if—

(a) it is vexatious or frivolous,

(b) the financial consequences for the applicant or (where applicable) the other party of a determination under regulation 63(3) or a reconsidered decision would not be material, or

(c) the referral or review request is not made within a period which (in all the circumstances) is reasonable after—

(i) the customer was notified or otherwise informed of the supplier's determination referred to in regulation 63(1)(a), or

(ii) (as the case may be) the relevant decision was made.

(**a**) 2018 c. 12; relevant provisions of section 3 were amended by S.I. 2019/419.

Referrals in respect of disagreement between contract parties

63.—(1) Where, in relation to a supply contract, the customer disagrees with a determination made by the supplier in respect of a Part 2 or Part 4 matter—

(a) the customer may, within a reasonable time after the supplier gave notice to or otherwise informed the customer of the determination, give notice to the supplier setting out what it disagrees with and explaining why it does;

(b) following such notice the customer and the supplier must endeavour to resolve the disagreement, but this does not require or entitle the supplier to make any determination which is not consistent with these Regulations.

(2) If the disagreement is resolved, the supplier shall, if such resolution so requires, redetermine the matter in question and give a revised notice to or otherwise inform the customer of such redetermination accordingly.

(3) If the disagreement is not resolved within a reasonable time after the notice was given—

(a) the supplier's determination shall remain effective, and the relevant matter shall be determined on the basis of what is said in the notice, pending any determination pursuant to a reference under sub-paragraph (b);

(b) the supplier or the customer may refer the matter for determination by the Secretary of State;

(c) the Regulations shall apply in relation to the supply contract on the basis of the determination made by the Secretary of State and the contract parties shall comply with that determination.

(4) The Secretary of State may decline to determine a matter referred under this regulation where the Secretary of State considers that the referral does not meet the applicable threshold, by giving notice to that effect to the contract parties setting out the reasons for so considering.

Power of the Secretary of State to make determinations

64.—(1) This regulation applies if the Secretary of State considers that, in relation to a supply contract—

(a) a determination by the supplier of any Part 2 or Part 4 matter, or a declaration by the customer in respect of a Part 4 matter, is not in conformity with the Regulations or is otherwise incorrect, or

(b) a determination by the supplier or declaration by the customer which should have been made in respect of a Part 2 or Part 4 matter has not been made.

(2) Where this regulation applies the Secretary of State may determine the Part 2 or Part 4 matter in question by giving notice of such determination to the contract parties.

(3) Before making a determination under this regulation the Secretary of State must—

(a) give notice to the contract parties—

(i) setting out the matter in question;

(ii) setting out the reasons for which the Secretary of State proposes to make a determination;

(iii) setting out the determination which the Secretary of State proposes to make;

(iv) inviting the contract parties to make representations in respect of the proposal by a time specified in the notice;

(b) consider any representations made and not withdrawn by either contract party by that time.

(4) The Regulations apply, in relation to the supply contract, on the basis of the determination made by the Secretary of State and the contract parties must comply with that determination.

Review of decisions of the Secretary of State

65.—(1) A supplier or a customer may request the Secretary of State to review a determination made by the Secretary of State under regulation 63 or 64 in respect of a Part 2 or Part 4 matter.

(2) A supplier may request the Secretary of State to review a Part 3 decision.

(3) The Secretary of State may decline to review a relevant decision where the Secretary of State considers that the request does not meet the applicable threshold, by giving notice to that effect to the applicant setting out the Secretary of State's reasons for so considering.

(4) Except as provided in paragraph (3), upon receiving a review request, the Secretary of State must—

(a) where the request relates to the determination of a Part 2 or Part 4 matter, give the other party a reasonable opportunity to submit its views on the determination;

(b) reconsider the relevant decision;

(c) give notice to the applicant and (where applicable) the other party of—

(i) the outcome of the reconsideration (the "reconsidered decision"), and

(ii) the reasons for the reconsidered decision.

(5) The reconsidered decision is final and binding on the applicant and (where applicable) the other party, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

Rules in relation to this Chapter

66.—(1) The Secretary of State must, no later than 14 days after the scheme introduction date, make rules setting out procedures for—

(a) a supplier or customer to make a referral under regulation 63;

(b) the Secretary of State to determine a matter referred under regulation 63;

(c) the Secretary of State to determine a matter under regulation 64;

(d) a supplier or customer to request a review under regulation 65(1);

(e) a supplier to request a review under regulation 65(2);

(f) the Secretary of State to reconsider a relevant decision under regulation 65.

(2) The rules may specify—

(a) time periods within which any step to be taken in respect of a referral or review request must be taken;

(b) thresholds of materiality for the purposes of regulation 62(2)(b).

CHAPTER 5

Enforcement

Supplier obligations enforceable as relevant requirements

67.—(1) The obligations of suppliers under the following provisions are enforceable by GEMA as if they were relevant requirements on a regulated person for the purposes of section 25 of the Electricity Act 1989(**a**) or section 28 of the Gas Act 1986(**b**)—

(a) Chapters 2 and 3 of Part 2;

(b) Part 4;

(**a**) 1989 c. 29. The definitions of "regulated person" and "relevant requirement" in section 25(8) were amended by S.I. 2011/2704, S.I. 2019/530, S.I. 2020/96 and S.I. 2020/2016.

(**b**) 1986 c. 44. The definitions of "regulated person" and "relevant requirement" in section 28(8) were amended by the Gas Act 1995, section 10(1) and S.I. 2011/2704.

(c) Part 5;

(d) Chapters 1, 2 and 3 of this Part.

(2) Paragraph (1) applies in respect of a person which has ceased to hold an electricity supply licence or gas supply licence as described in regulation 4(3).

(3) For the purposes of considering whether a supplier has contravened any obligation enforceable under paragraph (1), no—

(a) determination of the Secretary of State under regulation 63 or 64;

(b) reconsidered decision of the Secretary of State under regulation 65,

shall be called into question.

(4) Where it appears to the Secretary of State that a supplier may be contravening, or may have contravened, any of the requirements referred to in paragraph (1) the Secretary of State may so inform GEMA.

Civil penalties for customers

68.—(1) A customer is liable to the civil penalty referred to in paragraph (4) where the customer fails to make a relevant declaration by the required time.

(2) A customer is liable to the civil penalty referred to in paragraph (5) where the information in a relevant declaration made by the customer is defective.

(3) But the customer is not liable—

(a) to the civil penalty referred to in paragraph (4), if the customer demonstrates to the satisfaction of the Secretary of State that it had a reasonable excuse for failing to make the relevant declaration by the required time or (in the case of paragraphs (4)(b) and (c)) within the relevant period after the required time (but see paragraph 12);

(b) to the civil penalty referred to in paragraph (5), if the customer demonstrates to the satisfaction of the Secretary of State that it took reasonable care to ensure that the information in the relevant declaration was not defective.

(4) For the purposes of paragraph (1) the civil penalty is—

(a) £1,000 for failure to make a relevant declaration by the required time;

(b) an additional £1,000 for failure to make a relevant declaration within 28 days after the required time;

(c) an additional civil penalty equal to 10 per cent of the default amount, for failure to make a relevant declaration within a further 30 days after that 28 days.

(5) For the purposes of paragraph (2) the civil penalty is 10 per cent of the default amount.

(6) If the Secretary of State considers that a customer is liable to the civil penalty referred to in paragraph (4) or (5) the Secretary of State must impose the civil penalty on the person by giving a notice (a "penalty notice") to the customer.

(7) The penalty notice must set out—

(a) the grounds for liability;

(b) the amount of the penalty;

(c) the date by which the penalty must be paid (the "due date"), which must not be less than 28 days after the day on which the notice is given;

(d) how payment may be made;

(e) information about rights of appeal.

(8) The customer to whom a penalty notice is given must pay the civil penalty set out in the notice as set out in the notice on or before the due date.

(9) A civil penalty imposed by a penalty notice is recoverable by the Secretary of State as a civil debt.

(10) A customer may appeal to the court against the imposition of a civil penalty.

(11) In this regulation—

(a) "default amount" means the amount by which the charges for energy supplied to the customer in the default period are increased as a result of the application of Part 4 following the making of the relevant declaration or the correction of the defective declaration;

(b) in paragraph (a) the "default period" is the period between—

(i) the required time or (as the case may be) the making of a defective declaration, and

(ii) the time when the declaration was made or (as the case may be) a declaration which is not defective was made, or (if earlier) the end of the scheme period;

(c) a declaration is "defective" where it is false or materially misleading or incomplete;

(d) "penalty notice" has the meaning given in paragraph (5);

(e) "relevant declaration" means a declaration required to be made by a customer under Part 4;

(f) "required time" means the time by which, under the relevant provision of Part 4, a customer was required to make a relevant declaration.

(12) For the purposes of paragraph (3)(a) it is not a reasonable excuse that a supplier did not inform the customer of a determination under regulation 38(2)(b) or 43(2)(b), or send a declaration under regulation 47(2).

CHAPTER 6

Notices

Notices

69.—(1) Any notice or other communication to be given by the Secretary of State, a supplier or a customer under these Regulations must be given in writing.

(2) Any notice to be given by the Secretary of State under the Regulations (unless it is to be given to a particular supplier or customer) may be given by the Secretary of State publishing the notice in such manner as the Secretary of State considers appropriate.

Graham Stuart
Minister of State for Climate
Department for Business, Energy and Industrial Strategy

At 3.30 p.m. on 27th October 2022

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in Great Britain, establish the Energy Bill Relief Scheme for Non-Domestic Customers in Great Britain ("EBRS"). EBRS is a scheme for reducing the costs, to non-domestic customers, of being supplied with electricity or gas ("energy") by a supplier that holds a supply licence under the Electricity Act 1989(**a**) or Gas Act 1986(**b**).

The Regulations require suppliers to reduce, by amounts prescribed by the Secretary of State, the prices that they charge customers for energy during the "scheme period" (1st October 2022 to 31st March 2023). Suppliers are entitled to recover from the Secretary of State reductions made under Parts 2 and 4, but not under Part 5, of the Regulations.

Part 1 (introductory) defines key terms and parameters of EBRS. With certain exceptions, EBRS applies in respect of all contracts for the supply of electricity and gas by licensed suppliers to non-domestic customers during the scheme period. However, the detail of its application to any given contract (including how discounts are calculated) depends on how prices are set under it.

Part 2 (discounted supply price) sets out how the discounts that are to be applied by suppliers are to be calculated, based on wholesale energy prices. The Regulations set out how the figures to be used in calculating discounts are derived (regulations 10 and 11). A supplier must first assign each contract to the correct category (e.g. "fixed price contract": see regulations 12 and 14 to 16) before calculating the applicable discount and providing it to the customer (regulations 17 to 20).

Part 3 (discount recovery) deals with the process by which each supplier is entitled to be paid by the Secretary of State an amount equal to the charges it has foregone in applying discounts under Part 2. In specified circumstances, the amount that a supplier receives in response to its claim for payment of an amount in respect of discounts is adjusted. Where such adjustments result in a negative sum, the customer must pay that sum (as a positive amount) to the Secretary of State. Amounts claimed by suppliers may be withheld in certain cases, for example where a supplier has acted dishonestly or failed to take proper measures to prevent fraud.

Part 4 (adjustment of discount or supply quantity in certain cases) makes provision to prevent suppliers or customers from deriving greater benefit from EBRS than is intended in certain scenarios. The Regulations provide for the benefits that customers and suppliers receive from the scheme to be reduced to take account of their entry into specified kinds of arrangements.

Part 5 provides for an additional reduction to be applied to the amounts payable for energy by a defined group of customers who are supplied under so-called "deemed" or "out-of-contract" contracts. Reductions applied under Part 5 are not recoverable from the Secretary of State.

Part 6 (further provisions) deals with a number of different matters. Regulation 55 prohibits unreasonable increases in suppliers' charges and other changes adverse to the customer. Regulation 56 implies terms relating to the scheme into non-domestic supply contracts. Regulations 59 to 62 impose information and reporting obligations. Regulations 62 to 66 make provision about the resolution of disputes arising from the operation of the scheme. Regulation 67 provides that specified obligations of suppliers under the regulations are enforceable by the Gas and Electricity Markets Authority. Regulation 68 provides for the Secretary of State to impose civil penalties in respect of missing or defective declarations under Part 4.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London, SW1H 0ET and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

(**a**) 1989 c. 29.
(**b**) 1986 c. 44.

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