EXPLANATORY MEMORANDUM TO

THE GAS AND ELECTRICITY REGULATED PROVIDERS (REDRESS SCHEME) (AMENDMENT) ORDER 2024

2024 No. 954

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Miatta Fahnbulleh, Parliamentary Under Secretary of State (Minister for Affordability and Skills) at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

2.2 Jane Walker, Acting Director, Energy Affordability & Consumers, at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Angela Giannini at the Department for Energy Security and Net Zero, redressconsultation@energysecurity.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Once this instrument is enacted, it will amend the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 ("the 2008 Order") to extend access to redress through the Energy Ombudsman services to small businesses. This means that small businesses with fewer than 50 employees and not exceeding specified annual turnover or balance sheet total limits, or with energy consumption not exceeding specified levels, will now be able to seek redress for disputes with their energy suppliers.

Where does the legislation extend to, and apply?

4.2 This instrument extends and applies to Great Britain.

5. Policy Context

What is being done and why?

5.1 The instrument amends the 2008 Order to extend access to redress through the Energy Ombudsman services to small businesses. Currently, only microbusinesses (1-9 employees and lower financial limits or lower annual energy consumption) can access it, leaving out small businesses from accessing dispute resolution services provided by the Energy Ombudsman.

5.2 The rationale behind this proposed change is to ensure that small businesses have access to a free and impartial dispute resolution service without having to resort to costly and resource-intensive legal action through the courts. By expanding access to the Energy Ombudsman services, small businesses with fewer than 50 employees and not exceeding specified annual turnover or balance sheet total limits, or with energy consumption not exceeding specified levels, will now be able to seek redress for disputes with their energy suppliers.

5.3 This initiative aligns with Ofgem's recommendation from their July 2023 non-domestic energy market review, which highlighted the benefits of extending access to dispute resolution through the Energy Ombudsman to more businesses. The proposed changes reflect the government's commitment to ensuring fair treatment and accessible avenues for dispute resolution for businesses within the energy sector. They also follow a positive response to the public consultation on a new threshold for access to the Energy Ombudsman, which closed on 31 January 2024.

5.4 Approximately 4% more of the UK business population, totalling at least an additional 200,000 businesses alongside microbusinesses, will benefit from this extension of access to redress. This means that 99% of businesses will be able to seek redress through the Energy Ombudsman, ensuring fair treatment and accessible avenues for dispute resolution within the energy sector.

What was the previous policy, how is this different?

5.5 Without this amendment, small businesses' main option to seek redress against energy suppliers would be to go through the courts. However, the practical reality is that smaller businesses, which did not fall under the category of microbusinesses in the 2008 Order, faced significant challenges in this process, often lacking the necessary resources to get adequate legal support.

5.6 Ofgem's non-domestic review identified that these smaller businesses often encountered lengthy delays in resolving complaints or did not accept the resolutions offered by suppliers. Additionally, the Legal Services Board highlighted that only a quarter of businesses with less than 50 employees utilized professional help to address legal issues, indicating that many small businesses either attempted to resolve disputes on their own or took no action at all.

5.7 This instrument addresses these shortcomings by providing an alternative avenue for dispute resolution. This represents a significant departure from the previous policy, which primarily relied on the courts for dispute resolution and did not adequately address the needs of smaller businesses.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the 2008 Order, principally by adding a definition of "small business consumer". Such consumers must either have annual electricity or gas consumption not exceeding 200,000 kWh or 500,000 kWh respectively, or fewer than 50 employees and an annual turnover or a balance sheet total not exceeding £6.5 million or £5 million respectively. The instrument enables such consumers to bring complaints about their energy supplier to the Energy Ombudsman.

6.2 The instrument also amends euros to pounds in the definition of consumers who are already able to seek redress (microbusiness consumers).

Why was this approach taken to change the law?

6.3 Amending the 2008 Order is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The consultation set out a minded to position for what that expansion could look like, by introducing a new small business definition into the 2008 Order. Following the positive feedback received, the new definition will sit alongside the existing microbusiness definition.

7.2 A total of 36 stakeholders participated in the consultation process. These stakeholders included energy suppliers, consumer groups, Third-Party Intermediaries (TPIs), businesses, their representative organizations, and industry groups.

7.3 The consultation process involved gathering responses from stakeholders through various channels. These included through an online e-consultation platform (Citizenspace.org), three virtual roundtables, written submissions, and email correspondence, as per the Government's preferences.

7.4 The consultation aimed to gauge three main objectives: confirming appetite for expanding access to redress to small businesses; gathering feedback on the proposed thresholds; and confirming if this definition should be mirrored in Ofgem’s proposed changes.

7.5 In reporting the overall response to each question, responses were analysed based on defined thresholds: 'majority' for over 50% agreement, 'minority' for less than 50%, and other categories for varying percentages.

7.6 The majority of respondents showed interest in expanding access to redress for small businesses and agreed on aligning the proposed definition with Ofgem's proposed changes. Also, most respondents provided feedback on the proposed thresholds, likely expressing concerns or suggestions regarding the specific criteria for defining small businesses. These concerns have been addressed in the final government decision.

7.7 The full Summary of Responses document can be accesses online here: https://www.gov.uk/government/consultations/new-threshold-for-businesses-accessing-the-energy-ombudsman.

8. Applicable Guidance

8.1 We recognise that some stakeholders responding to the consultation raised the benefit of guidance being prepared ahead of implementation of any expansion. We will work with Ofgem and industry professionals to produce a guidance document that sets out how we expect suppliers to share eligibility information with their customers, tackle frequently asked questions, and clarify roles and responsibilities. The Guidance will be published after the laying date for this SI, but before its entry into force. It will be accessible here: https://www.gov.uk/government/consultations/new-threshold-for-businesses-accessing-the-energy-ombudsman.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because requirements for a De Minimis assessment were met as the costs to business have an Equivalent Annual Net Direct Costs to Business (EANDCB) or Net Present Value (NPV) of less than £5m.

Impact on businesses, charities and voluntary bodies

9.2 We estimate there to be an increase in total direct costs to businesses summing to £100,000 a year on average between 2023 and 2033. While the Energy Ombudsman has lower administrative costs to parties than the Small Claims Court (SCC), there will likely be more cases brought to the Energy Ombudsman by small businesses compared to the SCC. This relative increase in take-up outweighs the cost reductions of lower administrative costs to businesses.

9.3 There is no significant impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 It is expected that the changes made by this instrument will be subject to a review period 12-18 months after they come into effect. We believe this would be beneficial to ensure that those non-domestic customers who need access to redress most are able to receive it. We envision the review would cover the thresholds that have been set out above and whether they are fit for purpose, as well as whether any further expansion of access is required.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Miatta Fahnbulleh has made the following statement: "A statutory review clause would be disproportionate when taking into account the relatively low economic impact of the amendments made by this instrument."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").