

# **The Energy Bill Relief Scheme (Northern Ireland) (No.2) (Amendment) Rules 2022**

The Secretary of State makes the following Rules under regulations 33 and 34 of the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 (SI 2022 / 1106).

## **1 Citation, commencement and interpretation**

- 1.1 These rules may be cited as the Energy Bill Relief Scheme (Northern Ireland) (No.2) (Amendment) Rules 2022.
- 1.2 They come into force on 5 November 2022.
- 1.3 In these Rules:
  - (a) "the EBRIS Rules" means the Energy Bill Relief Scheme (Northern Ireland) (No.2) Rules 2022;
  - (b) "the Regulations" means the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022;
  - (c) references to a regulation by number alone are to the regulation so numbered in the Regulations.

## **2 Amendments**

- 2.1 The EBRIS Rules are amended as follows.
- 2.2 After rule 1.1.2, insert rule 1.1.2A as follows:

"1.1.2A Part 2 comes into force on 5 November 2022."
- 2.3 After rule 3, insert Part 2, as set out in Schedule 1 to these Rules.
- 2.4 At the end of the EBRIS Rules, insert Schedule 1, as set out in Schedule 2 to these Rules.
- 2.5 After Schedule 1 (as inserted by rule 2.4 of these Rules), insert Schedule 2, as set out in Schedule 3 to these Rules.
- 2.6 After Schedule 2 (as inserted by rule 2.5 of these Rules), insert Schedule 3, as set out in Schedule 4 to these Rules.



*The Rt Hon Graham Stuart MP*

Minister of State for Climate

3 November 2022

Department for Business, Energy and Industrial Strategy

## Schedule 1: Text to be inserted as Part 2 of the EBR5 Rules

### Part 2 – Discount recovery rules

#### 4 Designation of bank accounts and points of contact

4.1 A supplier must notify to the Secretary of State details of:

(a) the bank account:

- (i) into which it wishes to receive amounts payable to it under the scheme;
- (ii) from which it intends to pay any amounts payable by it under the scheme, which may, but need not, be the same account;

(b) a point of contact (including more than one mode of communication, and at least one phone number) for all communications from the Secretary of State to the supplier relating to payments under the scheme.

4.2 The Chief Financial Officer, or a director, of the supplier must confirm the details of a bank account notified under rule 4.1, in writing, to the Secretary of State.

4.3 The Secretary of State must notify to each supplier details of:

(a) the bank account:

- (i) into which the Secretary of State wishes to receive amounts payable to the Secretary of State under the scheme;
- (ii) from which the Secretary of State intends to pay any amounts payable by the Secretary of State under the scheme,

which may, but need not, be the same account;

(b) a point of contact (including more than one mode of communication, and at least one phone number) for all communications from the supplier to the Secretary of State relating to payments under the scheme.

4.4 In order to receive timely payment of its first recovery claim amount, a supplier must notify the Secretary of State under rule 4.1 by 10 November 2022.

4.5 A supplier or the Secretary of State may notify a replacement for the bank account or point of contact for the time being notified under rule 4.1 or 4.3, but if a supplier notifies a replacement bank account, it must give 10 business days' notice.

4.6 The Secretary of State may reject a bank account notified by a supplier within 3 business days of receiving the supplier's notification, if the Secretary of State considers that the bank account notified is unsuitable.

4.7 In these Rules, a person's "designated account" or "designated point of contact" is the bank account or point of contact that that person has most recently notified in accordance

with this rule and that (in the case of a supplier's bank account) has not been rejected under rule 4.6.

## **5 Payments to suppliers and the Secretary of State**

5.1 If the Secretary of State determines that an amount in respect of a discount recovery claim is payable to a supplier under the Regulations, the Secretary of State must:

- (a) pay that amount into the supplier's designated account;
- (b) send to the supplier's designated point of contact a statement in respect of the payment, including brief details of what the payment is for.

5.2 If the Secretary of State exercises any of the Secretary of State's rights under the Regulations:

- (a) to elect to pay only part of a discount recovery claim;
- (b) to adjust the amount payable in respect of a discount recovery claim;
- (c) to withhold an amount payable in respect of a discount recovery claim;
- (d) to release an amount payable in respect of a discount recovery claim, having previously withheld it;
- (e) to set off an amount owing and unpaid against an amount payable in respect of a discount recovery claim,

the statement given under rule 5.1(b) must also indicate the basis on which, and the amounts in respect of which, that right is being exercised.

5.3 If the Secretary of State determines that a supplier is required to make a payment under the Regulations:

- (a) the Secretary of State must send to the supplier's designated point of contact an invoice or statement setting out:
  - (i) the amount to be paid;
  - (ii) when and why it is to be paid;
- (b) the supplier must pay that amount to the Secretary of State's designated account by the date specified in the invoice or statement under paragraph (a).

5.4 If, otherwise than as part of a discount recovery claim, a supplier considers that a payment is required to be made to it by the Secretary of State, or (otherwise than under rule 5.3) by it to the Secretary of State, the supplier must:

- (a) in the case of a payment to the supplier, send to the Secretary of State's designated point of contact a statement setting out:
  - (i) the amount that the supplier considers is to be paid;
  - (ii) when and why the supplier considers that it is to be paid;

- (b) in the case of a payment by the supplier:
  - (i) before or when making such a payment send to the Secretary of State's designated point of contact a statement in respect of the payment, including brief details of what the payment is for;
  - (ii) make the payment to the Secretary of State's designated account.

## **6 Scheme portal: establishment and use**

- 6.1 The Secretary of State must establish an online mechanism for the submission of discount recovery claims, information required to be submitted with those claims, and related communications (the "scheme portal").
- 6.2 The scheme portal may:
  - (a) include prescribed formats in which information required to form part of a discount recovery claim, or another communication under the Regulations or Part 2 of these Rules, must be entered;
  - (b) include or issue instructions to suppliers in respect of their discount recovery claims.
- 6.3 The Secretary of State must:
  - (a) send to suppliers' designated points of contact instructions for using the scheme portal (a "user guide");
  - (b) update the user guide as necessary to reflect changes to the scheme portal or suppliers' questions, and send the updates to suppliers' designated points of contact.
- 6.4 The Secretary of State may send any communication that the Secretary of State is required to send to a supplier or a supplier's designated point of contact under the Regulations or these Rules by way of the scheme portal.

## **7 Scheme portal: operational issues**

Where the scheme portal is unavailable or fails to operate as intended, and for as long as such unavailability or failure persists:

- (a) a supplier may communicate anything that it is required to communicate to the Secretary of State under the Regulations or Part 2 of these Rules by sending it to the Secretary of State's designated point of contact, or by such other means as the Secretary of State may instruct the supplier to use;
- (b) the Secretary of State may communicate anything that the Secretary of State is required to communicate to a supplier under the Regulations or Part 2 of these Rules by sending it to the supplier's designated point of contact, or by such other means as the Secretary of State considers is appropriate to use;
- (c) for the purposes of determining compliance with any deadline set under the Regulations or Part 2 of these Rules, any failure to meet such a deadline that results directly from the unavailability or failure of the scheme portal or the use of

an alternative means of communication as provided for in paragraph (a) or (b) is to be disregarded.

## **8 Claim windows**

- 8.1 During the scheme period, the claim windows end on 10 November 2022, 24 November 2022, 12 December 2022, 28 December 2022, 12 January 2023, 26 January 2023, 10 February 2023, 24 February 2023, 10 March 2023, 24 March 2023, and 14 April 2023.
- 8.2 The Secretary of State must determine and publish the dates of subsequent claim windows at intervals decided by the Secretary of State in accordance with regulation 34(2) and (3).
- 8.3 Each claim window other than the first claim window (which starts on the day that these rules come into force) starts on the day after the end of the immediately preceding claim window.

## **9 Submission of discount recovery claims and information to be included**

- 9.1 A supplier must submit separate discount recovery claims for:
- (a) discount recovery under the electricity scheme;
  - (b) discount recovery under the gas scheme.
- 9.2 A supplier must, in addition to providing the information and documents required under regulations 30(1) and 32, include in a discount recovery claim:
- (a) the information about the supplier set out in Part 1 of Schedule 1;
  - (b) in respect of each supply contract to which the claim relates, the information set out in Part 2 of Schedule 1, organised by reference to the unique numbers given to the meter or meters associated with that supply contract (known respectively as the "meter point reference number" or "MPRN" in the case of electricity and the "supply meter point number" or "SMP" in the case of gas);
  - (c) the further information about the claim set out in Part 3 of Schedule 1;
  - (d) a concise explanation of:
    - (i) how the supplier has calculated the base recovery amount,
    - (ii) how the supplier has calculated the amount of any adjustments under regulation 23(1)(b) that form part of the calculation of the recovery claim amount;
  - (e) in relation to the application of regulation 24(3)(b), how the discount recovery claim takes account of any amounts carried forward from a previous claim.
- 9.3 When submitting a discount recovery claim, a supplier must also submit a declaration:
- (a) made on behalf of the supplier by:
    - (i) a named director of the supplier, or

- (ii) if the supplier is not a company, a named person approved by the Secretary of State for the purpose of making such a declaration,
- (b) signed by that director or other person, and
- (c) in the form set out in Schedule 2,

that, to the best of the signatory's knowledge, the claim meets the substantive requirements of validity (see rule 10.3).

9.4 The declaration submitted under rule 9.3 must state, to the best of the signatory's knowledge, whether an event of insolvency, not previously declared to the Secretary of State, has occurred in respect of the supplier.

## **10 Validity of supplier's discount recovery claims**

10.1 A discount recovery claim submitted by a supplier is valid if, or to the extent that, it meets:

- (a) the formal requirements of validity, and
- (b) the substantive requirements of validity,

for a discount recovery claim.

10.2 The formal requirements of validity for a discount recovery claim are that:

- (a) it is made:
  - (i) through the scheme portal, using such formats as the user guide prescribes and complying with any instructions that the portal includes or issues, or
  - (ii) otherwise, in accordance with rule 7(a),
- (b) it appears to comply with the requirements of rules 9.1 and 9.2, and
- (c) the supplier has complied with the requirements of rule 9.3 in respect of it.

10.3 The substantive requirements of validity for a discount recovery claim are that:

- (a) it reflects reductions that the supplier has made in the supply price under supply contracts between the supplier and its customers, in respect of energy supplied during the scheme period;
- (b) all those reductions have been calculated in accordance with the Regulations;
- (c) the supplier has, in particular, taken account of any:
  - (i) declarations made by a customer, or
  - (ii) notices given by a customer or the supplier,under Part 4 of the Regulations in calculating the reductions;

- (d) the claim does not include an amount in respect of:
  - (i) any reduction that the supplier was not required to make or any amount that the supplier is not entitled to claim under the Regulations, or
  - (ii) any reduction in respect of which the supplier has already submitted a claim;
- (e) in particular, the claim does not include any amount in respect of a reduction that the supplier has made, in accordance with Part 5 of the Regulations, in amounts payable by any of its qualifying financially disadvantaged customers;
- (f) the supplier has calculated the amount of the claim in accordance with the Regulations, and based on information that is:
  - (i) accurate and complete, or
  - (ii) to the extent that it includes estimates, fairly estimated in accordance with applicable industry rules or good industry practice.

## **11 Validation: Secretary of State's actions**

- 11.1 Before paying any amount in respect of a discount recovery claim, the Secretary of State must carry out such checks with respect to its validity as the Secretary of State considers it reasonably practicable to carry out in the time before the claim is due to be paid.
- 11.2 By making a payment in respect of a discount recovery claim in accordance with rule 5.1, the Secretary of State indicates that, to the extent that:
  - (a) the amount claimed is paid, and
  - (b) the Secretary of State does not indicate otherwise in a statement under rule 5.2 or a provisional conclusions notice,

the Secretary of State has, at the time of making that payment (and without prejudice to the subsequent exercise of any power under the Regulations or these Rules), no grounds on which the Secretary of State considers it reasonable to conclude that the claim is not valid.

## **12 Provisional conclusions notices**

- 12.1 The Secretary of State must consider any information that comes to the Secretary of State's attention that may provide grounds on which it would be reasonable to conclude that a discount recovery claim is, wholly or in part, invalid.
- 12.2 If, having considered such information, the Secretary of State concludes that a claim may be or have been, wholly or in part, invalid, the Secretary of State may give the supplier a notice setting out that information and the Secretary of State's provisional conclusions in respect of it (a "provisional conclusions notice").
- 12.3 The Secretary of State may give a provisional conclusions notice either before or after making (or declining, or electing not, to make) a payment in respect of the discount recovery claim to which the provisional conclusions notice relates.

- 12.4 The Secretary of State may give more than one provisional conclusions notice in respect of the same discount recovery claim, or part of a discount recovery claim.
- 12.5 The processes of checking the validity of a discount recovery claim and verifying any information contained in it are iterative, and the Secretary of State may continue to carry them out in respect of any discount recovery claim for up to 3 years after a supplier submits it, regardless of whether any amount has been paid to the supplier in respect of the claim.
- 12.6 The Secretary of State may give a supplier a provisional conclusions notice in respect of a discount recovery claim up to 32 months after the supplier submits it.
- 12.7 A supplier must respond to a provisional conclusions notice and address each of the points raised by the Secretary of State in it as soon as practicable.
- 12.8 When a supplier responds to a provisional conclusions notice, it must give a declaration in the form set out in Schedule 3.
- 12.9 The Secretary of State is not obliged:
- (a) to give a provisional conclusions notice before exercising the Secretary of State's rights under the Regulations in respect of a particular payment;
  - (b) where a provisional conclusions notice has been given, to wait for a supplier's response to the notice before deciding to exercise such a right.
- 12.10 Such a decision by the Secretary of State does not prejudice:
- (a) the right of the supplier, where the Secretary of State has exercised a right under the Regulations to reduce a supplier's recovery claim amount by a particular amount, to receive that amount at a later date if the Secretary of State subsequently determines that the supplier is entitled under the Regulations to receive it;
  - (b) the right of the Secretary of State, where the Secretary of State has exercised a right under the Regulations to increase a supplier's recovery claim amount by a particular amount, to reduce a later recovery claim amount paid to the supplier by that amount if the Secretary of State subsequently determines that the supplier is not entitled under the Regulations to receive it.

### **13 Early payment of discount recovery claims**

- 13.1 In this section, "early payment" means payment of a discount recovery claim on a day which is earlier than the latest day by which payments in respect of claims in the claim window are to be made.
- 13.2 Where:
- (a) a supplier makes a valid discount recovery claim,
  - (b) the total amount of the claim and any claim made by the supplier in the other claim window which ends in the same calendar month is less than £20 million, and

- (c) the supplier provides with the claim:
  - (i) a request for early payment, and
  - (ii) a statement that the condition in rule 13.3(b) is met, setting out what would be the effect on the supplier and its customers of the supplier's inability to meet its obligations referred to in that rule,

the Secretary of State may, if satisfied that all the conditions in 13.3 are met, make early payment in respect of the claim.

13.3 The conditions are that:

- (a) the supplier has a share of NI non-domestic electricity supply or NI non-domestic gas supply that, when measured by number of customer accounts or by quantities of energy supplied, is smaller than 5 per cent;
- (b) the effect of applying the discount in the amounts charged to the supplier's customers (at the times at which it normally sends invoices or statements of account for those charges) is that the supplier would be unable to meet its obligations to pay for the wholesale energy it supplies, if payment of its discount recovery claim is not made before the latest day;
- (c) it is appropriate to make early payment in respect of the claim having regard to the likely impact of not making the early payment on:
  - (i) customers of the supplier that has made the application for early payment;
  - (ii) other consumers of electricity or gas, other participants in Northern Ireland electricity and gas markets, and taxpayers.

**14 Index of defined terms used in Part 2 of these Rules and not defined in the Energy Prices Act 2022 or the Regulations**

In Part 2 of these Rules, the expressions listed below have the meanings given below, or in the provisions indicated below.

|  |             |
|--|-------------|
| "designated account"                     | rule 4.7    |
| "designated point of contact"            | rule 4.7    |
| "early payment"                          | rule 13.1   |
| "meter point reference number" or "MPRN" | rule 9.2(b) |
| "scheme portal"                          | rule 6.1    |
| "supply meter point number" or "SMP"     | rule 9.2(b) |
| "user guide"                             | rule 6.3    |



## **Schedule 2: Text to be inserted as Schedule 1 to the EBRS Rules**

### **Schedule 1**

#### **Details to be included in a discount recovery claim**

##### **Part One – information about the supplier**

1. The supplier's name and address
2. Details of the supplier's designated account
3. If the claim is under the electricity scheme, the supplier's registered licence holder name.
4. If the claim is under the gas scheme:
  - a. the supplier's registered licence holder name;
  - b. the short code used by the supplier.

##### **Part Two – information about supply contracts for which discount recovery is claimed**

###### *Information to be supplied about each supply contract (electricity or gas)*

5. To which category (fixed price contract, variable price contract, flexible price contract or, in the case of electricity, DA1 price contract) the supplier has determined that it belongs
6. Whether the supplier has determined that it is to be treated as two or more separate contracts (and, if so, on what basis)
7. The contract start date
8. The period of supply
9. The tariffs charged per kWh
10. How often the customer is sent a bill
11. Whether payment is to be made in arrears
12. Customer meter type (smart, advanced or traditional)

###### *Additional information to be supplied about each electricity supply contract*

13. The relevant meter point reference number
14. Volume of electricity supplied in the period of supply
15. Distribution Use of System Tariff Code

###### *Additional information to be supplied about each gas supply contract*

16. The relevant supply meter point number

17. Volume of gas supplied in the period of supply

**Part 3 – further information about discount recovery claim**

18. The total number of contracts for which discount recovery is claimed that the supplier has determined belong in each of the categories mentioned in paragraph 5 of this Schedule
19. The number of supply contracts under which the supplier made a NI non-domestic electricity supply or a NI non-domestic gas supply during the period to which the claim relates, for which discount recovery is not claimed, either as the result of an opt-out notice being issued or because they are excluded fixed price contracts
20. The total quantity of gas or (as the case may be) electricity (each in kWh) that the supplier has supplied during the period of supply to which the claim relates under supply contracts:
  - a. for which discount recovery is claimed;
  - b. for which discount recovery is not claimed.

### Schedule 3: Text to be inserted as Schedule 2 to the EBRS Rules

#### Schedule 2

##### Form of supplier declaration to be submitted with a discount recovery claim

[\*\* ] (the **Supplier**) [*Note: insert Supplier's registered company name and number*]

##### EBRS DECLARATION

The Supplier submits this Declaration with its discount recovery submitted in the claim window that ends on [\*\* ] (the **Claim**). [*Note: insert the end-date of the relevant claim window*]

To: The Secretary of State

I, [\*\* ], being a director of [\*\* ] (the **Supplier**), refer to rule 9.3 of the Energy Bill Relief Scheme (Northern Ireland) (No.2) (Amendment) Rules 2022 (the **Rules**) and make this Declaration on the Supplier's behalf. [*Note: if the Supplier is not a company, insert in place of "director" the position that the person approved by the Secretary of State to make the Declaration holds in relation to the Supplier.*]

Terms defined in the Energy Prices Act 2022, the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 (the **Regulations**), or the Rules have the same meanings when used in this Declaration.

I hereby declare that, to the best of my knowledge:

- (a) the Claim reflects reductions that the Supplier has made in the supply price under supply contracts between the Supplier and its customers, in respect of energy supplied during the scheme period;
- (b) all those reductions in paragraph (a) above have been calculated in accordance with the Regulations;
- (c) the Supplier has, in particular, taken account of any:
  - (i) declarations made by a customer, or
  - (ii) notices given by a customer or the Supplier, under Part 4 of the Regulations in calculating the reductions;
- (d) the Claim does not include an amount in respect of:
  - (i) any reduction that the Supplier was not required to make or any amount that the Supplier is not entitled to claim under the Regulations, or
  - (ii) any reduction in respect of which the Supplier has already submitted a discount recovery claim;
- (e) in particular, the Claim does not include any amount in respect of a reduction that the Supplier has made, in accordance with Part 5 of the Regulations, in amounts payable by any of its qualifying financially disadvantaged customers;

- (f) the Supplier has calculated the amount of the Claim in accordance with the Regulations, and based on information that is:
  - (i) accurate and complete, or
  - (ii) to the extent that it includes estimates, fairly estimated in accordance with applicable industry rules or good industry practice;
- (g) [no event of insolvency that has not previously been declared to the Secretary of State has occurred in respect of the Supplier] / [the following event of insolvency has occurred in respect of the Supplier] [*Note: please delete and complete as appropriate*].

.....

Name: [\*\* ]

Position: Director

Dated: [\*\* ]

.....

Witness's name: [\*\* ]

Occupation: [\*\* ]

Address: [\*\* ]

Dated: [\*\* ]

## Schedule 4: Text to be inserted as Schedule 3 to the EBRS Rules

### Schedule 3

#### Form of supplier declaration to be submitted with a response to a provisional conclusions notice

[\*\* ] (the **Supplier**) [*Note: insert Supplier's registered company name and number*]

#### EBRS DECLARATION

The Supplier submits this Declaration with its response to the Secretary of State's provisional conclusions notice dated [\*\* ] (respectively, the **Response** and the **Notice**). [*Note: insert the date of the provisional conclusions notice to which the Supplier is responding and that this Declaration accompanies*]

To: The Secretary of State

I, [\*\* ], being a director of [\*\* ] (the **Supplier**), refer to rule 12.8 of the Energy Bill Relief Scheme (Northern Ireland) (No.2) (Amendment) Rules 2022 (the **Rules**) and make this Declaration on the Supplier's behalf. [*Note: if the Supplier is not a company, insert in place of "director" the position that the person approved by the Secretary of State to make the Declaration holds in relation to the Supplier.*]

Terms defined in the Energy Prices Act 2022, the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 (the **Regulations**), or the Rules have the same meanings when used in this Declaration.

The Response provides information or calculations, in response to the Notice, that amend the Supplier's discount recovery claim submitted in the claim window that ended on [\*\* ] [*Note: insert the end-date of the relevant claim window*] (the **Claim**) by supplementing or correcting the information or calculations provided in it, which, for the purposes of this Declaration, when taken together with such parts of the Claim as are not so amended, constitute the Amended Claim.

Taking account of the respects in which the Response supplements or corrects the Claim, I hereby declare that, to the best of my knowledge,

- (a) the Amended Claim reflects reductions that the Supplier has made in the supply price under supply contracts between the Supplier and its customers, in respect of energy supplied during the scheme period;
- (b) all those reductions in paragraph (a) above have been calculated in accordance with the Regulations;
- (c) the Supplier has, in particular, taken account of any:
  - (i) declarations made by a customer, or
  - (ii) notices given by a customer or the Supplier,under Part 4 of the Regulations in calculating the reductions;
- (d) the Amended Claim does not include an amount in respect of:

- (i) any reduction that the Supplier was not required to make or any amount that the Supplier is not entitled to claim under the Regulations, or
  - (ii) any reduction in respect of which the Supplier has already submitted a discount recovery claim;
- (e) in particular, the Amended Claim does not include any amount in respect of a reduction that the Supplier has made, in accordance with Part 5 of the Regulations, in amounts payable by any of its qualifying financially disadvantaged customers;
- (f) the Supplier has calculated the amount of the Amended Claim in accordance with the Regulations, and based on information that is:
- (i) accurate and complete, or
  - (ii) to the extent that it includes estimates, fairly estimated in accordance with applicable industry rules or good industry practice.

.....

Name: [\*\* ]

Position: Director

Dated: [\*\* ]

.....

Witness's name: [\*\* ]

Occupation: [\*\* ]

Address: [\*\* ]

Dated: [\*\* ]