



Department for  
Business, Energy  
& Industrial Strategy

# Energy Bill Relief Scheme Guidance

Great Britain and Northern Ireland

1 November 2022



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# Contents

Introduction	4
1 Outline of the EBRIS schemes	7
2 Supply Price (GB and NI Schemes)	9
3 Classification of contracts (GB Scheme only)	13
4 Fixed Price Contracts (GB and NI Schemes)	17
5 Flexible Price Contracts (GB and NI Schemes)	21
6 Chapter 1 of Part 4 - Effective financial exposure to wholesale energy prices (GB and NI Schemes)	28
7 Chapter 2 of Part 4 – Arrangements for Customer to deliver electricity to the grid (GB and NI Schemes)	34
8 Chapter 3 of Part 4 – Abusive arrangements (GB and NI Schemes)	42
9 Northern Ireland specific guidance including differences into the classification of contracts (NI Scheme only)	46

# Introduction

## Purpose of this guidance

The purpose of this guidance is to help Suppliers and Customers with the operation of:

- The Energy Bill Relief Scheme for Non-Domestic Customers in Great Britain (the **GB Scheme**), and
- The Energy Bill Relief Scheme for Non-Domestic Customers in Northern Ireland (the **NI Scheme**).

The GB Scheme is established under the Energy Bill Relief Scheme Regulations 2022 (S.I. 2022 / 1100) (the **EBRS GB Regulations**), together with the supporting Energy Bill Relief Scheme Rules (the **EBRS GB Rules**).

The NI Scheme is established under the Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 (S.I. 2022/1106) (the **EBRS NI Regulations**), together with the supporting Energy Bill Relief Scheme (Northern Ireland) Rules (the **EBRS NI Rules**).

The EBRS GB Regulations and the EBRS NI Regulations come into force on 1 November 2022 (the **Scheme Commencement Date**).

This guidance explains how the Discounts under Part 2 of the EBRS GB Regulations and the EBRS NI Regulations are to be calculated. This includes the application of Part 4 of the EBRS GB Regulations and the EBRS NI Regulations.

References to quantities of energy in the EBRS GB Regulations and EBRS NI Regulations are, unless otherwise expressly provided, to quantities of electricity or gas expressed in kWh.

## Application of the guidance to Great Britain and Northern Ireland

This guidance applies to both the GB Scheme and the NI Scheme (collectively the **EBRS Schemes**), except where indicated otherwise. In particular, sections 1, 2 and 4 to 8 apply to both the GB and NI Schemes. Section 3 applies just to the GB Scheme and section 9 applies just to the NI Scheme.

In this guidance:

- the **Regulations** refers to the EBRS GB Regulations and EBRS NI Regulations collectively (unless otherwise stated), and
- the **Rules** refers to the EBRS GB Rules and EBRS NI Rules collectively (unless otherwise stated).

## Status of the guidance

Suppliers and Customers should ensure that they obtain legal or professional advice as necessary in relation to the Regulations and their supporting Rules. This guidance:

1. does not create any rights enforceable at law in any legal proceedings,
2. is not a substitute for legal advice,
3. is not a set of binding instructions, although it includes references to provisions in the Regulations and supporting Rules which are legal requirements, and
4. does not limit the right of the Secretary of State or their delegates from exercising their own discretion in accordance with the Regulations and any supporting Rules.

In the event of conflict between this guidance and the Regulations or any Rules, the Regulations or Rules take precedence over this guidance.

The guidance is based on the law as at the time this document was published.

Any numbers or prices used in examples in the guidance document are purely illustrative and are not a substitute for legal advice.

This guidance was issued on 1 November 2022 and will be updated from time to time.

## Defined Terms

The following terms are defined in the Regulations at regulation 2(1). They have the same meaning in this guidance document and, unless indicated otherwise, apply to both GB and NI Schemes. These terms have been capitalised in this guidance document.

Customer	Means a person, other than an excluded electricity consumer, supplied with electricity by way of non-domestic electricity supply or with gas by way of non-domestic gas supply.
DAI rice Contract (for the NI Scheme)	Means an electricity supply contract under which the contracted wholesale price is determined solely by reference to a day-ahead index of the wholesale price for electricity.
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.
Excluded Fixed Price Contract	Means a fixed price contract for which the price-fix date is prior to the fixed price cut-off date.
Fixed Price Contract	Means a supply contract under which, at the time the contract is entered into, the contracted wholesale price is fixed for the term of the contract.
Flexible Price Contract	(For the GB Scheme:) Means a supply contract, under which the customer may elect from time to time to fix the contracted

	<p>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.</p> <p>(For the NI Scheme, Flexible Price Contract has the same definition as for the GB Scheme, except for the NI Scheme the definition excludes DAI Price Contracts.)</p>
Price-Fix Date	Means the date where the price is fixed under a fixed price contract.
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 Introduction Date	Means the date on which these Regulations were made.
Supplier	Means a licensed electricity supplier or licensed gas supplier.
Supply Contract	Means a contract, including a deemed contract or an out-of-contract contract, between a supplier and a customer which provides for non-domestic electricity supply or non-domestic gas supply at any time during the scheme period.
Supply Price	Means a) the price of energy supplied under that supply contract so far as that price is to be paid in respect of the quantity of energy supplied in any period or b) the average of prices in the relevant period.
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.

# 1 Outline of the EBRS schemes

The Energy Bill Relief Schemes are established for Great Britain (GB) and Northern Ireland (NI) under the Energy Bill Relief Scheme Regulations 2022 (S.I. 2022 / 1100) (“EBRS GB Regulations”), Energy Bill Relief Scheme (Northern Ireland) Regulations 2022 (S.I. 2022/1106) (“EBRS NI Regulations”) and the supporting Rules. The EBRS Schemes require licensed energy suppliers to provide a Discount on wholesale gas and electricity prices for all non-domestic Customers (including all UK businesses, the voluntary sector such as charities, and the public sector such as schools and hospitals) whose current gas and electricity prices have been significantly inflated in light of global energy prices. The licensed suppliers will be able to make a recovery claim from the Government to recover the cost to them of applying these Discounts to their Customers.

The EBRS Schemes will apply to Fixed Price Contracts agreed on or after 1 December 2021, as well as to Variable Price Contracts, Flexible Price Contracts and (in NI) DAI Price Contracts. It will apply to energy usage from 1 October 2022 to 31 March 2023, running for a six-month period for all eligible non-domestic energy users. The Government has announced that it will publish a review by the end of 2022 to inform decisions on future support after March 2023.

The EBRS Schemes will operate by reference to a Government Supported Price. For all non-domestic energy users in GB and NI this has initially been set at:

- 21.1p/kWh for electricity
- 7.5p/kWh for gas

The Government will determine and publish the Government Supported Price and Maximum Discount for the EBRS Schemes for each of gas and electricity.

For each contract that is eligible for a Discount a Reference Wholesale Price must be determined. The Base Discount is then calculated as:

$$\text{Reference Wholesale Price} - \text{Government Supported Price}$$

The Government will publish the Reference Wholesale Prices and Base Discount for Fixed Price Contracts, Variable Price Contracts and (for NI) the DAI Price Contracts<sup>1</sup>.

The Discount to be applied to the Customer’s Supply Price is then potentially capped to ensure that the Discount does not exceed the Maximum Discount for Variable Price Contracts and flexible rate contracts. It is also potentially capped to ensure that the

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<sup>1</sup> At the date this guidance was issued, these amounts were published at: <https://www.gov.uk/government/publications/energy-bill-relief-scheme-discounts-for-fixed-default-and-variable-contracts>

Discount does not cause the Supply Price after the Discount to drop below the Minimum Supply Price.

Customers can 'opt-out' of the Discounts being applied in respect of a Supply Contract under regulation 4(4). A Customer may subsequently withdraw an opt-out notice, but this cannot take effect before the date when the notice of the withdrawal is given. However, a Customer that is an 'intermediary' (and so may be required to pass the benefit of the Discount onto an end user) is not permitted to opt-out of the EBRS Schemes. See regulation 3(1) of Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022.

The EBRS Schemes only apply to the supply of gas and electricity to Customers by licensed suppliers. Licensed suppliers in GB and NI are required to operate the EBRS Schemes in accordance with the Regulations

The EBRS Schemes make separate provision for Suppliers to further reduce the amounts payable by certain qualifying financially disadvantaged Customers at Part 5 of the EBRS GB Regulations and the EBRS NI Regulations. Unlike the Discount mechanism described in this guidance, the sums involved in these further reductions will not be recoverable from Government. These further reductions (which will be the subject of rules made under Part 5 of the Regulations) are not covered by this guidance.



## 2 Supply Price (GB and NI Schemes)

### 2.1 Introduction

The Supply Price is important as the EBRs Schemes include provision that ensures that a Discount under the scheme cannot result in the Supply Price, after the Discount has been deducted, going below the Minimum Supply Price.

The Supply Price is defined in the Regulations as follows:

*(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 subparagraph (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.*

*Regulation 9*

### 2.2 Application of the Minimum Supply Price

Suppliers are required to ensure that where Discounts are being applied under the Schemes, the effective supply price after the Discount for a Customer’s gas and electricity does not fall below the Minimum Supply Price (which has initially been set equal to the Government Supported Price) for each (regulation 18).

#### **Example 1**

*If a Customer had a unit supply price of 25p/kWh for electricity, and the electricity discount per kWh for the appropriate discount date is 7p/kWh, then applying the Discount would mean a unit supply price of 18p/kWh. As 18p/kWh is below the Government supported price for electricity of 21.1p/kWh, the Supplier would be required to reduce the Discount paid by 3.1p/kWh. This would mean the resulting Discount would be 3.9p/kWh.*

The Minimum Supply Price should be applied to electricity and gas unit rates as billed to the Customer and not to standing charges or other charges. Where Customers have contracts whereby costs not related to the wholesale cost of electricity are passed through, then Suppliers should calculate the unit price on the same basis as if the unit price was inclusive of all these costs. Where estimated reference prices are used for certain pass-through charges then the reference prices should be applied to the unit price.

Suppliers would normally include wholesale electricity costs, line losses, Supplier charges related to Assistance for Areas with High Electricity Distribution Costs (AAHEDC), Balancing Services Use of System (BSUoS), Renewables Obligation (RO), Feed in Tariff (FIT), Contract for Difference (CfD), Capacity Market, Distribution Use of System (DUoS) unit rates, Transmission Network Use of System (TNUoS) and Supplier costs in the unit rates but would exclude metering costs, DUoS standing charges, DUoS capacity charges and settlement charges.

## 2.3 Application of discounts for multi-rate meters

For Customers with multi-rate meter configurations (e.g. day and night rates), the expectation is that Suppliers will apply the relevant Discount across all Customer consumption in each given period.

For Customers with multi-rate meter configurations for electricity the preference is that the adjustments to apply the Minimum Supply Price are made on a volume weighted basis so that the overall effective unit rate across all consumption is not below the Minimum Supply Price when a Discount is applied.

### **Example 2**

*A Customer has a day and night meter configuration and in October they consume 8,788kWh on the day register and 2,495kWh on the night register, giving a total consumption of 11,283kWh. The Customer is on a Fixed Price Contract with a day unit rate of 69.32p/kWh and a night unit rate of 33.61p/kWh. The Customer agreed the Fixed Price Contract on 1 August 2022, and therefore a Discount of 34.73p/kWh*

*applies to the Supply Contract based on the published Reference Wholesale Price and Base Discount for that date<sup>2</sup>.*

*The Supplier calculates the total unit consumption charge as £6,930.41 less a Discount of £3,918.59 (11,283kWh x 34.73p/kWh) resulting in a net consumption charge of £3,011.83. The Supply Price after the application of the Discount is 26.69p/kWh (£3,011.83 ÷ 11,283kWh). This is above the Minimum Supply Price and therefore no restriction of the discount for this is needed.*

Where it is not possible for technical or operational reasons to apply the Discount as highlighted above, the Supplier is expected to use best endeavours to apply the Discount on a weighted basis across the unit rates using either contracted volumes, forecast volumes, profiled consumption pattern or similar. The methodology applied should be documented and tested by the Supplier to ensure there is no significant deviation when compared to applying the Discount across all consumption. The same methodology must be applied consistently across the scheme period. The Supplier may apply credits/debits in subsequent billing periods to account for any significant deviations.

### **Example 3**

*A Customer has a day and night meter configuration and they are contracted to consume 70% of their consumption on the day register and 30% of their consumption on the night register. The Customer is on a Fixed Price Contract with a day unit rate of 39.33p/kWh and a night unit rate of 29.38p/kWh. The Customer agreed the Fixed Price Contract on 4 September 2022 and therefore a Base Discount of 46.67p/kWh prima facie applies to the Supply Contract based on the published Reference Wholesale Price and Base Discount for that date<sup>3</sup>.*

*The Supplier calculates the average unit rate of 36.35p/kWh<sup>4</sup> across the forecast consumption. Applying the Base Discount to this would result in an effective rate below the Minimum Supply Price of 21.10p/kWh. The Supplier therefore adjusts the Discount to be applied to each register to align the average unit rate after the Discount with the Minimum Supply Price. This results in a day rate of 22.83p/kWh<sup>5</sup> and night rate of 17.05p/kWh<sup>6</sup>.*

<sup>2</sup> At the date this guidance was issued, these rates were published at: <https://www.gov.uk/government/publications/energy-bill-relief-scheme-discounts-for-fixed-default-and-variable-contracts>

<sup>3</sup> At the date this guidance was issued, these rates were published at: <https://www.gov.uk/government/publications/energy-bill-relief-scheme-discounts-for-fixed-default-and-variable-contracts>

<sup>4</sup>  $36.35\text{p/kWh} = 0.7 \times 39.33\text{p/kWh} + 0.3 \times 29.38\text{p/kWh}$

<sup>5</sup>  $22.83\text{p/kWh} = 21.1\text{p/kWh} \times 39.33\text{p/kWh} \div 36.35\text{p/kWh}$

<sup>6</sup>  $17.06\text{p/kWh} = 21.1\text{p/kWh} \times 29.38\text{p/kWh} \div 36.35\text{p/kWh}$

*The Supplier may apply credits/debits in subsequent billing periods to account for any significant deviations in energy split between day and night consumption.*

## 3 Classification of contracts (GB Scheme only)

### 3.1 Introduction

The GB Scheme classifies contracts into three categories – Fixed Price Contracts, Variable Price Contracts and Flexible Price Contracts. Different provisions operate under the scheme in respect of each type of contract which determine how the Discount is calculated. It is therefore important to ensure that contracts are correctly classified. The equivalent provisions for contracts in Northern Ireland are set out in section 9.2 below.

The EBRS GB Regulations provide the following definitions for the three types of Supply Contract:

**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.

**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 of time, 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.

**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.

*Regulation 2(1) of the EBRS GB Regulations*

Contracts should be classified to the category which closest fits the contract in question. Where, however, a contract is not a close fit to either a Fixed Price Contract or a Variable Price Contract, then it should in any case be treated as a Flexible Price Contract.

This section should be read in conjunction with sections 4 and 5 below, which sets out guidance in respect of particular circumstances involving Fixed Price Contracts and Flexible Price Contracts.

## 3.2 Examples

### **Example 1 (Simple Fixed Price Contract)**

*A Customer enters into a contract in August 2022 under which it will be charged a day unit rate of 80p/kWh and a night unit rate of 30p/kWh for the period of six months from 1 September to 28 February 2023. This would be a Fixed Price Contract as the price is fixed for the term of the contract.*

### **Example 2 (Simple Variable Price Contract)**

*A Customer comes to the end of a Fixed Price Contract and does not take out a new Fixed Price Contract with the Supplier. As a result, the Customer is placed on an 'out of contract' contract. Under the terms of this contract, the Supplier charges a price which is notified to the Customer, and changed from time to time (for example, this may typically be done monthly or quarterly). The Customer can cancel the contract at any time and enter a new Supply Contract (for example a fixed rate contract) of their choosing. This is a Variable Price Contract as the Supplier can change the contracted wholesale price at any time by notice to the Customer.*

### **Example 3 (Typical Flexible Price Contract)**

*A Customer has a contract with the Supplier under which the Customer can buy and sell blocks of energy on the wholesale market or to purchase on forward price indices. Any residual consumption would be charged based on a day-ahead index. This ability to elect to fix and unfix prices for particular volumes, or to otherwise determine the prices, falls within the definition of a Flexible Price Contract.*

### **Example 4 (Tracker)**

*A Customer has a contract under which the price of the energy is tracked to index. For example, the index may be linked to day-ahead or forward wholesale prices. The Supply Contract therefore sets out how the price will be determined, and therefore the contract falls within the definition of a Flexible Price Contract.*

### **Example 5 (Reset contract)**

*A Customer has a Supply Contract for a three year period, under which the price for each six month block is fixed at certain reset points during the contract. The price for*

*the first six month block is fixed on the inception of the contract. However, as the contracted wholesale price for the energy is not fixed for the whole term of the contract at the start of the contract, it cannot be treated as a fixed rate contract. As the prices for future blocks during the period of the contract will be fixed at a later date this therefore falls to be treated as a Flexible Price Contract.*

**Example 6 (Corporate Power Purchasing Agreement)**

*A Customer has entered into a corporate power purchase agreement (PPA) with a counterparty. It separately has a Supply Contract with a licensed Supplier, and the Supplier agrees that the PPA can be ‘physically sleeved’ such that the electricity is physically delivered to the Customer by the Supplier and the Customer pays the Supplier the price agreed under the PPA. The Supply Contract also allows the Customer to fix blocks of energy that would not be covered by the PPA, and provide that any residual consumption of energy is charged at a day-ahead price. Given that the Customer has the ability to fix prices for the blocks during the period of the contract and for the price to be determined under the contract, this therefore falls to be treated as a Flexible Price Contract.*

**Example 7 (Multi-purchase product)**

*A Customer has a contract under which the Customer has an agreed a set number of commodity purchases that provide them the ability to fix a percentage of their forecast consumption under the contract. The Customer is able to choose the period (e.g. month/season/annual) and the percentage of their half-hourly shaped forecast consumption to fix in each purchase based on a price provided by their Supplier. As the Customer has the ability to fix prices for different percentages and periods of their consumption during the period of the contract and for the price to be determined under the contract, this therefore falls to be treated as a Flexible Price Contract.*

### 3.3 Administration

A Supplier must determine whether a Supply Contract is a Fixed Price Contract, a Flexible Price Contract or a Variable Price Contract (regulation 14(1)(b) of the EBR5 GB Regulations).

In terms of timings by which the Supplier must notify the Customer of this determination:

- Where the contract was in force at the Scheme Introduction Date, the Supplier must notify the Customer of this determination as soon as practicable after that

date and no later than 45 days after the Scheme Introduction Date (regulation 15(a) of the EBRB GB Regulations).

- Where the contract was entered into after the Scheme Introduction Date, the Supplier must notify the Customer time at which the Supply Contract is entered into, or within 45 days after the Scheme Introduction Date if later, whatever is later (regulation 15(b) of the EBRB GB Regulations).

Where a Customer disagrees with this determination, then the Customer should notify the Supplier of this within a reasonable time. In most cases it is expected that the Supplier and the Customer will be able to resolve the disagreement and the Supplier should, if the resolution so requires, redetermine the matter in question. If the disagreement is not resolved within a reasonable time, the Supplier or the Customer may refer the matter to BEIS. See regulation 63 of the EBRB GB Regulations for further details of this.



## 4 Fixed Price Contracts (GB and NI Schemes)

For guidance as to how to classify contracts into Fixed Price Contracts, Flexible Price Contracts and Variable Price Contracts in GB, see section 3 above. For guidance as to how to classify contracts into Fixed Price Contracts, Flexible Price Contracts, Variable Price Contracts and DAI price contracts in NI, see section 9.

This section sets out additional guidance in respect of Fixed Price Contracts, and applies equally to both the GB and NI Schemes.

### 4.1 Price-Fix Date

Where a Customer has a Fixed Price Contract, the amount of the Discount that is available for the contract is based on the Price-Fix Date for the contract.

In particular:

- Where the Fixed Price Contract has a price-fix date before 1 December 2021 the Customer will not be eligible for any Discount under the EBRIS Schemes (an Excluded Fixed Price Contract).
- Where the Fixed Price Contract has a pre-fix date on or after 1 December 2021 the Customer will be eligible for a Discount based on the amount by which the Reference Wholesale Price for the pre-fix date exceeds the Government Supported Price.

It is therefore important that the Price-Fix Date is correctly identified for the contract.

The Regulations contains the following definition:

*Price-fix date in relation to a fixed price contract means the date when the contracted wholesale price applicable to that contract was fixed.*

*Regulation 2(1)*

Suppliers should determine the Price-Fix Date to reflect the most accurate available date recorded by Suppliers for when the contracted wholesale price in the contract was set.

Where it is appropriate to do so, Suppliers should use the date the Fixed Price Contract was agreed between the Supplier and the Customer as the Price-Fix Date. In other words, the date recorded as the point at which the Fixed Price Contract was accepted such that the fixed price became legally binding between the parties.

However, in certain cases it may be more appropriate to an alternative date because this better reflects the date at which the contracted wholesale price was fixed under the contract.

A Supplier should be consistent with the approach it takes to determine the Price-Fix Date for a particular type of product. Different approaches can be taken for different types of product.

Suppliers should retain evidence to support such dates.

### **Example 1**

*A Supplier provides a large Customer with a quote for a bespoke price for a Fixed Price Contract starting 1 October 2022 on 28 July 2022. The Customer decides to proceed with the quote. They inform Supplier on 29 July 2022, and this is accepted by the Supplier on that date. In this case, the Price-Fix Date will be 29 July 2022.*

### **Example 2**

*A Supplier has launched a price book for Fixed Price Contracts at a set price which is marketed to a group of Customers. The wholesale price used to set the price was determined at the date the product was launched. In this case, the Price-Fix Date will be the date the product is launched.*

## 4.2 Fixed Price Contracts applying early

Where a Customer, which was previously on a Variable Price Contract, enters into a Fixed Price Contract that has a back-dated start date, the Price-Fix Date should be the date on which the contract was priced or agreed, not the date the contract is back-dated to.

The Discount relevant for this Price-Fix Date should apply for all backdated consumption during the period of the EBRs Schemes. However, under regulation 18, where such Discount would exceed the Maximum Discount the Discount should be limited to the Maximum Discount for the period between the back-dated date and the Price-Fix Date (see in particular, regulation 18(b)).

### **Example 3**

*A Customer has a variable rate contract. On 10 November the Customer agrees with the Supplier to enter into a new Fixed Price Contract, and that this contract should take effect from 1 November 2022.*

*The discount for energy supplied from 1 November 2022 shall be calculated based on the discount available for a fixed priced contract with a Price-Fix Date of 10 November 2022. However, for the period 1 November 2022 to 10 November 2022, the discount available under the EBRs Schemes is capped by the Maximum Discount.*

## 4.3 Fixed Price Contracts extended into a new fix

Regulation 13(1)-(3) applies for Fixed Price Contracts that are repriced or extended during the original contract term.

In such cases, under regulation 13(2) the new contract shall be treated for the purposes of the EBRs scheme as a new Fixed Price Contract for which the Price-Fix Date is determined by reference to the time when the amendment to the original contract was made.

For amendments that takes effect before the end of the original fixed term, regulation 13(3) provides that the Base Discount applicable to the new contract shall be the original Base Discount up until the end of the original fixed term.

### **Example 4**

*A Customer has a Fixed Price Contract to purchase electricity at a wholesale price of 30p/kWh for the period 1 July 2022 to 31 December 2022. On the 1 December 2022 the Customer agrees to purchase electricity at a wholesale price of 36p/kWh for the period 1 December to 30 June 2023. (In effect, the new price of 36p/kWh reflected a blended cost of the original 30p/kWh for December and a price of 37p/kWh for 1 January 2023 to 30 June 2023.)*

*The Base Discount in respect of the original Fixed Price Contract continues to apply for the remainder of the original contract term (ie. through to 31 December 2022). The contract should be treated as comprising a new Fixed Price Contract for the period of 1 January 2023 to 30 June 2023, with the Base Discount calculated by reference to the Price-Fix Date of 1 December 2023.*

## 4.4 Fixed Price Contracts not extended

Regulation 13(4) applies where a Fixed Price Contract is not extended into a new fix, and therefore reverts to a 'deemed' or 'out of contract' tariff at the end of the original fixed term. Where this applies, the Supply contract shall be treated for the purposes of the scheme as a separate Variable Price Contract that is entered into at the end of the original fixed term (in the absence of any relevant amendment).

**Example 5**

*A Customer has taken out a six-month Fixed Price Contract from 1 July 2022 to 31 December 2022. It does not take out a new Fixed Price Contract and therefore the contract switches to a 'default' or 'out of contract' tariff from 1 January 2023.*

*Irrespective of whether legally the supply is treated under the original contract or a new contract, the Customer will be treated as having a new variable rate contract from 1 January 2023.*

## 4.5 Administration

Under regulation 14(1)(c), a Supplier must determine the Price-Fix Date of a Fixed Price Contract and whether the contract is an Excluded Fixed Price Contract.

The Supplier must notify the Customer of this determination.

- Where the contract was in force at the Scheme Introduction Date, the Supplier must notify the Customer of this determination as soon as practicable and, in any case, no later than 45 days after the Scheme Introduction Date (regulation 15(a)).
- Where the contract was entered into after the Scheme Introduction Date, the Supplier must notify the Customer by the time at which the Supply Contract entered into (or by 45 days after the Scheme Introduction Date if later) (regulation 15(b)).

Where a Customer disagrees with this determination, then the Customer should notify the Supplier of this within a reasonable time. In most cases it is expected that the Supplier and the Customer will be able to resolve the disagreement and the Supplier should, if the resolution so requires, redetermine the matter in question. If the disagreement is not resolved within a reasonable time, the Supplier or the Customer may refer the matter to BEIS. See regulation 63 for the EBRS GB Regulations or regulation 68 for the EBRS NI Regulations for further details of this.

## 5 Flexible Price Contracts (GB and NI Schemes)

### 5.1 Introduction

For guidance as to how to classify contracts into Fixed Price Contracts, Flexible Price Contracts and Variable Price Contracts, see section 3 above. For guidance as to how to classify contracts into Fixed Price Contracts, Flexible Price Contracts, Variable Price Contracts and DAI Price contracts in NI, see section 9.

This section sets out further guidance in respect of Flexible Price Contracts.

### 5.2 Reference Wholesale Price

In relation to a Flexible Price Contract the Reference Wholesale Price for any period is the volume-weighted average contracted wholesale price (WAP) for the period.

#### ***Reference wholesale price – flexible price contracts***

*(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 period 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 period 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.*

*Regulation 11(1) to (3)*

The WAP calculation should consider all fixes and unfixed trades and defaulting volume (baseload, peakload, index (e.g. day ahead) and cash-out) the Customer has made irrespective of when the trades occurred (i.e. these fixes and unfixed could be made prior to 1 December 2021). The WAP calculation should consider the net value of fixes and unfixed for the given billing period, e.g. any gains made from unfixing volumes should be reflected in a lower Customer WAP.

The WAP should not include any fees that are not directly related to the cost of wholesale energy, examples may include trading charges, charges for volume tolerance breaches in addition to cash out prices, premiums for shape/imbalance, management fees or similar. For clarity, where the supplier is assuming the market price risk then the cost should not be included in the WAP calculation (e.g. £/MWh fee applied to all volumes for shape), whereas if the Customer is assuming the market price risk (e.g. day ahead settlement of residual volumes) then the cost should be included in the WAP calculation.

The Discount calculated between the WAP and the Government Supported Price (and taking account of the Maximum Discount and the Minimum Supply Price) should be applied to all Customer actual consumption at meter supply point level irrespective whether it was traded or covered by a shaping/imbalance fee.

Where a Supplier has offered to bill a Customer on a reference price or flattened Customer prices (based on already executed trades) for cashflow purposes (e.g. over a quarter, season, year), the WAP calculation should be based on the underlying trades for each billing period not the agreed billing price.

Customers with physically sleeved corporate power purchase agreements (CPPAs) should have these volumes and prices included as part of their WAP calculation (this would include sleeving fees related to converting the CPPA shape to baseload).

**Example 1**

*Customer elects to fix electricity volumes for delivery in October 2022 starting in March 2021. At the end of October, the Supplier calculates the weighted average price of all baseload and peakload trades related to October consumption as £323.23/MWh. This is the Reference Wholesale Price for the Customer in October and is compared against the Government Supported Price of £211/MWh to calculate the Discount of £112.23/MWh. The Supplier charges £11.45/MWh to manage the Customers residual shape and imbalance risk, this is not included in the weighted average price for the Customer. The Discount of £112.23/MWh is applied to the Customer's invoiced meter supply point consumption for October 2022 and the Customer is billed the net value of the invoice.*

**Example 2**

*Customer elects to fix 80% of their forecast gas consumption for delivery in November 2022 starting in November 2021, the remaining 20% of their forecast is indexed to a gas day ahead price. The Customer has agreed a volume tolerance of 80%-120% with volumes outside of this tolerance charged at the relevant system average price. At the end of November, the Supplier calculates the weighted average price of all the fixes and the day ahead prices related to November consumption. The Customer's consumption was 130% of the contracted volume for November, so the Supplier calculates the cost of this over consumption at the system average price. The Reference Wholesale Price for the Customer in November is calculated as the weighted average price of the fixes, the day ahead exposure and the system price exposure. This works out to be £98/MWh and is compared against the Government supported price of £75/MWh to calculate the Discount of £23/MWh. The Discount of £23/MWh is applied to the Customer's invoiced meter supply point consumption for November 2022 and the Customer is billed the net value of the invoice.*

## 5.3 Effective financial exposure to wholesale price of energy

Customers with Flexible Price Contracts may, instead of electing under the contract to fix the wholesale price of the energy supplied, take out related financial instruments or enter other arrangements to manage risks to the wholesale price. See section 6 below for further details of the provisions in Chapter 1 of Part 4 dealing with the effective financial exposure to wholesale price of energy.

## 5.4 Manipulation of Flexible Price Contracts

Under a Flexible Price Contract, the Reference Wholesale Price reflects the blended average of all the positions taken under the contract. This, therefore, reflects the overall cost to the Suppliers of its energy.

Flexible rate contract Customers should continue to manage their contracts and hedges in the same way they would have done had the scheme not been in place. They should not make changes to intentionally manipulate the levels of Government support they would otherwise have received. For example, they should not separate out consumption under a flexible contract into distinct contract. Otherwise, the anti-abuse provisions may be engaged. See section 8 below for further details of the anti-abuse provisions in Chapter 3 of Part 4.

## 5.5 Separation of certain Flexible Price Contracts

The Government made the Rules in support of the EBRS Schemes<sup>7</sup>. In particular, rule 2 make provision to treat certain Flexible Price Contracts as being comprised separate contracts in three situations.

### ***Rule 2.1 – Customer as intermediary***

Under rule 2.1, a Flexible Price Contract should be treated for the purposes of the EBRS Schemes as comprising separate contracts where the Customer is an intermediary in relation to the EBRS Schemes, and the Customer makes certain elections under the Supply Contract to fix the contracted wholesale price or cancel such elections based on the instructions of those end users or based on the pricing adopted by those end users.

In these circumstances, the Flexible Price Contract should be treated as comprising separate Flexible Price Contracts between the Supplier and the Customer:

- in respect of each of the end users (or group of end users that are in the same position as regards elections made or cancelled under the Supply Contract), and
- in respect of the Customer itself (to the extent of the energy supplied for which there is no end user),
- each such separate contract being defined so that a volume weighted average contracted wholesale price can be determined for it.

### ***Rules 2.2 – Customer with several sites***

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<sup>7</sup> These rules have been published at <https://www.gov.uk/government/publications/energy-bill-relief-scheme-ebrr-scheme-documents>



Under rule 2.2, a Flexible Price Contract should be treated for the purposes of the EBRIS Schemes as comprising separate contracts where:

- the Customer operates from more than one different site, each site with a separate meter,
- the Customer makes certain elections under the Supply Contract to fix the contracted wholesale price or cancel such elections based on the instructions of the management of each site or based on the pricing charged to each site, and
- those arrangements existed for the Customer before 21 September 2022 (being the date the details of the EBRIS Schemes were announced).

In these circumstances, the Flexible Price Contract should be treated as comprising separate Flexible Price Contracts between the Supplier and the Customer in respect of each site (or group of sites that are in the same position as regards elections made or cancelled under the Supply Contract), each such separate contract being defined so that a volume weighted average contracted wholesale price can be determined for it.

### ***Rule 2.3 – Customer providing balancing services***

Under rule 2.3, a Flexible Price Contract should be treated for the purposes of the EBRIS Schemes as comprising separate contracts where the Customer provides balancing services.

In these circumstances, the Flexible Price Contract should be treated as comprising separate Flexible Price Contracts between the Supplier and the Customer in respect of:

- energy supplied in respect of balancing services, and
- energy otherwise supplied.

See example 2 in section 6.3 for further explanations of how balancing services will be treated under the EBRIS Schemes.

### ***Example***

*A Customer AB Ltd purchases electricity from Supplier S under a flexible rate contract. AB Ltd supplies the energy onto PQ Ltd and RS Ltd, as well as consuming some of the electricity itself. AB Ltd elected to fix certain blocks under the Supply Contract as follows:*

- *In relation to its own consumption, AB Ltd elected to fix 80% of the electricity at a price of 10p/kWh.*
- *Under the instruction from PQ Ltd, AB Ltd elected to fix 80% of the electricity supplied to PQ Ltd at a price of 15p/kWh.*
- *Under the instruction from RS Ltd, AB Ltd did not elect to fix any of the electricity supplied to RS Ltd.*

- *For the electricity that was not fixed, the Supplier applied a default rate of 30p/kWh for the period.*

*AB Ltd, PQ Ltd and RS Ltd each used 1GWh of energy in the period.*

*Under rule 2.1 of the Rules, the flexible rate contract should be treated as comprising three separate contracts:*

*A flexible rate contract under which 1GWh of electricity is supplied at a blended rate of 14p/kWh (being 80% at 10p/kWh and 20% at 30p/kWh).*

*A flexible rate contract under which 1GWh of electricity is supplied at a blended rate of 18p/kWh (being 80% at 15p/kWh and 20% at 30p/kWh).*

*A flexible rate contract under which 1GWh of electricity is supplied at a blended rate of 30p/kWh.*

*As a result, a Discount of 8.9p/kWh<sup>8</sup> is applied to (3). No Discount applies to (1) or (2)<sup>9</sup>.*

*If the flexible contract was not separated out in this way, then no Discount would have been available under the scheme. This is because the overall blended wholesale price would have been 20.7p/kWh.*

Where the circumstances in rules 2.1, 2.2 or 2.3 apply, the Customer should make sure that the Supplier is aware of this, to allow the Supplier to ensure that the Discount is calculated correctly.

## 5.6 Administration

Under regulation 14(1)(a), a Supplier must determine whether a Flexible Price Contract should be treated as comprising separate components under this rule.

The Supplier must notify the Customer of this determination.

- Where the contract was in force at the Scheme Introduction Date, the Supplier must notify the Customer of this determination no later than 45 days after the Scheme Introduction Date (regulation 15).
- Where the contract was entered into after the Scheme Introduction Date, the Supplier must notify the Customer by the time at which the Supply Contract entered into (or by 45 days after the Scheme Introduction Date if later) (regulation 15).

Where a Customer disagrees with this determination, then the Customer should notify the Supplier of this within a reasonable time. In most cases it is expected that the

<sup>8</sup> 8.9p/kWh = 30p/kWh – 21.1p/kWh

<sup>9</sup> Both 14p/kWh and 18p/kWh are below the Government Supported Price of 21.1p/kWh for electricity.

Supplier and the Customer will be able to resolve the disagreement and the Supplier should, if the resolution so requires, redetermine the matter in question. If the disagreement is not resolved within a reasonable time, the Supplier or the Customer may refer the matter to BEIS. See regulation 63 of the EBRS GB Regulations or regulation 68 of the EBRS NI Regulations for further details of the Secretary of State's powers in these circumstances.

## 6 Chapter 1 of Part 4 - Effective financial exposure to wholesale energy prices (GB and NI Schemes)

### 6.1 Introduction

The EBRS Schemes are designed to provide energy bill relief for non-domestic contracts. The amount of the Discount depends on the Reference Wholesale Price of the contract, and it is intended that Customers with contracts that reflect a high deemed wholesale energy price receive a larger Discount than those Customers that have contracts that reflect a lower wholesale energy price. As a result, relief under the scheme is targeted to those who need it the most.

In most cases, a Customer's exposure to the price of energy is limited purely to the cost that it pays its Supplier under the Supply Contract. In these cases, the attributes of the Supply Contract can therefore determine the amount of Discount which should be applied to the energy purchased under the contract. The information about the contract is all available to the Supplier and they can use this information to apply the correct Discount to the gas and electricity supplied to the Customer.

However, in certain cases, the Customer enters into wider arrangements which mean that its effective financial exposure to the wholesale energy prices is greater than or less than the Reference Wholesale Price reflected in relation to the Supply Contract.

In these cases, the provisions in Chapter 1 of Part 4 (regulations 36 to 40) may apply to adjust the Discount available under the Supply Contract to reflect the Customer's overall effective financial exposure to the wholesale energy prices.

### 6.2 The Chapter 1 provisions

The Chapter 1 provisions are engaged by regulation 37(1)(a) where it may reasonably be expected that either:

- the energy supplied to the Customer at the premises to which the Supply Contract relates in the 12-month period starting from 1 October 2022 will exceed 0.5 gigawatt hours, or
- the maximum rate at which energy is supplied under the contract at any time will exceed 0.5 megawatts.

The Chapter 1 provisions apply where 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”) (regulation 37(1)(b)).

So this would apply to cases where the Customer is party to arrangements to hedge the wholesale price of the gas or electricity under the Supply Contract, or is otherwise related to the Customer’s financial exposure to the contracted wholesale price under the contract.

Where the Chapter 1 provisions apply, it is necessary to adjust the Reference Wholesale Price to take effect of the arrangements as follows (regulation 39(1)).

Determine the “arrangement benefit” for the period which is calculated for the period as:

$$\text{Contract financial exposure (CFE)} - \text{Effective financial exposure (EFE)}$$

This is then converted into the “unit arrangement benefit” (expressed in pence) being the arrangement benefit divided by the supply quantity in the period.

The Reference Wholesale Price for the period is then determined as:

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

Where:

RWP' is the price that would otherwise be determined as the Reference Wholesale Price

UAB is the unit arrangement benefit

The provisions apply symmetrically between cases where the effective financial exposure exceeds or is less than the contract financial exposure. However, no adjustment to increase the Reference Wholesale Price is to be made in relation to a Variable Price Contract (regulation 39(1)(d)).

There is no obligation for the Customer to declare the arrangement benefit to the supplier if the arrangement benefit is less than £100 per day in the declaration period (regulation 39(2)(b)).

## 6.3 Example

### ***Example 1: Financial hedges***

*A Customer has a Flexible Price Contract with an energy Supplier to purchase energy based on a month ahead price on a rolling basis. In addition, the Customer*

*takes out a financial swap with a third-party counterparty to hedge the risk of energy prices to a set price.*

*The Customer is therefore exposed to paying out high energy prices to the Supplier if energy prices increase. However, in such a case they are compensated for this through the payments they receive under the swap.*

*Equally, if energy prices were to fall the Customer will pay a lower price to its Supplier. However, they would be required to make a payment under the financial swap to the counterparty.*

*Economically the Customer is in the same net position as if they entered into a fixed rate contract with the Supplier when the energy prices were low. We consider it would be unfair (and not justified) for such Customers to benefit under the scheme in situations where the energy prices have increased when they have been protected against that increase through the hedge.*

*As a result, where the Customer has made a financial profit on its financial hedge of its energy prices, that financial profit will represent an 'arrangement benefit' under the Chapter 2 provisions. This amount will therefore need to be converted into a unit arrangement benefit and then deducted from the Reference Wholesale Price. This will feed through to a reduced Base Discount for the period.*

*Equally, if energy prices were to fall then this would result in the Customer incurring a financial cost on its financial hedge. That financial cost will represent a negative 'arrangement benefit' under the Chapter 1 provisions. This negative amount will therefore need to be converted into a unit arrangement benefit and then deducted from the Reference Wholesale Price (so resulting in an actual increase in the Reference Wholesale Price). This will feed through to an increased Base Discount for the period.*

### **Example 2: Balancing services**

*A Customer has signed up to a balancing service with the Electricity System Operator (ESO) whereby they receive payments to increase the import at their site to accommodate excess generation on the grid. The Customer's import demand would normally be 6MW, but the ESO has requested them to increase their import demand to 20MW for a period of time to help the grid manage excess generation. The Customer is paid for providing this service.*

*In this example the fee the Customer receives from the ESO in respect of the additional 14MW of import demand over the defined period will be an 'arrangement benefit' under the Chapter 1 provisions. This amount will therefore need to be converted into a unit arrangement benefit and then deducted from the Reference Wholesale Price. This will feed through to a reduced Base Discount for the period.*

*As set out above at section 5.5 in relation to rule 2.3, where a Customer has a Flexible Price Contract the Supply Contract under which the Customer undertakes balancing services will be treated for the purposes of the EBRS Schemes as comprising a separate contract for the energy supplied in respect of the balancing services.*

*As a result, it is likely that the Customer would not be eligible for additional EBRS support in respect of the 14MW as the Customer has already been compensated for this demand by the ESO.*

*The Discounts available under the EBRS Schemes in respect of the 6MW should not be affected by the energy supplied in respect of balancing services given that will be treated as a separate Flexible Price Contract.*

### **Example 3: Spillage under a Power Purchase Agreement**

*A Customer has a flexible purchase agreement with a Supplier under which they have a significant part of its volumes which are not covered by a fixed price and are therefore charged at a day-ahead price. During the month, the Customer separately enters into a corporate power purchase agreement (PPA) with a third party counterparty. This PPA will be physically sleeved within the supply agreement from the following month. However, for the current month this is treated as being outside of the Supply Contract.*

*In the current month the Supplier charges the Customer for the volumes supplied based on the day-ahead price under the Supply Contract. In addition, and separate to the charges in respect of the Supply Contract, the Supplier makes an adjustment to the Customer's bill to reflect the effect of the PPA. As a result, there will be a net payment due either to or from the Supplier to reflect the effect of the PPA contained within the bill.*

*The payment is made outside of the Supply Contract and, therefore, should not be reflected in the weighted average price of the energy under the contract. The payment should, however, be reflected in the Customer's overall effected financial exposure to the wholesale cost of energy. An adjustment should therefore be made to reflect this in the Discounts available to the Customer under the EBRS Schemes.*

*In the case where a net credit is made to the bill by the Supplier in respect of the PPA, this will represent an 'arrangement benefit' for the period. This amount will therefore need to be converted into a unit arrangement benefit and then deducted from the Reference Wholesale Price. This will feed through to a reduced Base Discount for the period.*

*Equally, in cases where a net charge is made to the bill by the Supplier in respect of the PPA, this will represent a negative 'arrangement benefit' under the Chapter 1*

*provisions. This negative amount will therefore need to be converted into a unit arrangement benefit and then deducted from the Reference Wholesale Price (so resulting in an actual increase in the Reference Wholesale Price). This will feed through to an increased Base Discount for the period.*

**Example 4: Electricity generation example**

*A Customer has a gas generator on site that is used to export electricity to the grid. At a separate site they import electricity from the electricity grid.*

*The Customer has taken out a Fixed Price Contract to fix the purchase of the gas for the generator which was taken out when the Reference Wholesale Price was below the Government Supported Price.*

*The Customer sells the electricity from the generator based on the day-ahead prices, and likewise purchases the electricity from the other site base on the day-ahead prices. As a result, the Customer uses the revenue received on the export of electricity as a natural hedge of the cost of the import of electricity. The Chapter 1 provisions are therefore engaged.*

*This means that where the Customer makes a financial profit on the generation of the electricity, that this will be taken into account in the overall effective financial exposure to the purchase of electricity. So, in effect, the arrangement benefit will equal the financial profit made on the electricity generation. This amount will therefore need to be converted into a unit arrangement benefit and then deducted from the Reference Wholesale Price. This will feed through to a reduced Base Discount for the period.*

*Note that a similar position also arises where the Customer purchases gas at day-ahead prices and makes a profit from the spread between the gas and electricity prices.*

## 6.4 Administration

Where a Customer determines that the provisions of Chapter 1 apply to them, they are required to disclose this to the Supplier as soon as practicable and, in any case, within 21 days of the 'initial declaration date' (regulation 38(1)). The initial declaration date is the later of (i) the date they entered into the arrangements being already a party to the Supply Contract, (ii) the date they entered into the Supply Contract, having already made an arrangement meeting the conditions in Chapter 1, or (iii) the Scheme Commencement Date.



The Supplier is then required, as soon as practicable, to provide the Customer with each periodic declaration date and declaration period (regulation 39(2)).

The Customer must, as soon as practicable and within 14 days after each periodic declaration date, send the Supplier a declaration of the amount of the arrangement benefit in respect of the relevant declaration period (regulation 39(2)).

In addition, the Supplier has certain obligations under regulation 38(2) to bring the Chapter 2 provisions to the attention of Customers that fall above the minimum thresholds in regulation 37(1).

# 7 Chapter 2 of Part 4 – Arrangements for Customer to deliver electricity to the grid (GB and NI Schemes)

## 7.1 Introduction

The provisions in Chapter 2 of Part 4 (regulations 41 to 45) require that, in certain cases, where a Customer uses energy for the purpose of generating or storing electricity to be Grid-Delivered, the gas or electricity so used will not be eligible for Discounts under the EBRs Schemes.

References in the regulations to electricity being Grid-Delivered are where electricity is delivered to an Electricity System (regulation 42(1)). An Electricity System is defined in the regulations as any transmission or distribution system (within section 4(4) of the Electricity Act 1989) or for NI, a transmission system or distribution system (as defined in section 3 of the Electricity (Northern Ireland) Order 1992).

Regulation 42(1) specifies that Chapter 2 applies where both (i) the minimum thresholds in regulation 42(1)(a) are engaged, and (ii) one of the two cases specified in regulation 42(1)(b) apply.

The minimum thresholds in regulation 42(1)(a) are where it may reasonably be expected that either:

- the energy supplied to the Customer at the premises to which the Supply Contract relates in the 12-month period starting from 1 October 2022 will exceed 0.5 GWh, or
- the maximum rate at which energy is supplied under the contract at any time will exceed 0.5 MW.

The two situations where (assuming the minimum thresholds are engaged) the provisions in Chapter 2 apply are set out in regulation 42(1)(b) as follows:

- Gas supplied to the Customer is used for the purpose of generating electricity, some or all of which is Grid-Delivered. In this case the gas used to generate the electricity to be Grid-Delivered would be excluded.
- Some or all of the electricity supplied to the Customer is stored (eg. under battery or pumped storage) to be subsequently Grid-Delivered. In this case, the electricity that was used to be stored and then subsequently Grid-Delivered is excluded (including corresponding proportion of electricity that was used or lost in the storage).

The exclusions included in Chapter 2 do not, therefore, apply to electricity used to supply a gas generator. Nor do they apply to gas or electricity used to supply other types of generators that are not covered by the above cases.

In addition, regulation 42(2) provides that Chapter 2 does not apply where:

- the capacity of the facility is not material,
- the quantities in which electricity is or may be Grid-Delivered any electricity system are not material, or
- the application of the provisions in Chapter 2 would be disproportionate having regard to the complexity of determining ineligibility quantities and to the amounts involved.

Rules have been issued which applies this in respect of combined heat and power (CHP) schemes that have capacity of 5 MWe or less (see next section).

## 7.2 Combined Heat and Power (CHP)

The Rules published on 1 November 2022 define a CHP-scheme as follows<sup>10</sup>:

*CHP means a system which involves the simultaneous generation of heat and power in a single process.*

*CHP-scheme means all the equipment, operating systems and monitoring systems for the total system of the CHP.*

*Rule 3.3*

A simple CHP consists essentially of an electrical generator combined with equipment for recovering and using the heat produced by that generator. The generator may be a prime mover such as a gas turbine or a reciprocating engine. Alternatively, it may consist of a steam turbine generating power from high-pressure steam produced in a boiler. In some cases, a CHP may be a combination of prime mover, boilers and steam turbines.

The CHP-scheme will include one or more prime movers (e.g. gas turbine or reciprocating engine) driving electrical generators or mechanical loads and some means of recovering waste heat, which would otherwise be released to the environment, for a useful purpose.

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<sup>10</sup> These rules have been published at <https://www.gov.uk/government/publications/energy-bill-relief-scheme-ebrs-scheme-documents>

Rule 3 applies to all CHPs regardless of whether or not they are certified under the Combined Heat and Power Quality Assurance (CHPQA) Programme<sup>11</sup>.

### ***CHPs equal to or under 5MWe generation capacity***

As set out above, regulation 42(2)(c) sets out that the Chapter 2 provisions do not apply where the application of the chapter would be disproportionate having regard to the complexity of determining ineligible quantities of gas or electricity. Rule 3 specifies, in particular, that the provisions in Chapter 2 do not apply where a Customer has a CHP-scheme with installed electrical generation capacity of 5MWe or less. As a result, the full amount of gas used by that CHP-scheme would typically be eligible for Discounts under the Schemes, regardless of whether or not any electricity is Grid-Delivered.

This threshold applies on a CHP-scheme by CHP-scheme basis, according to the above definition of CHP-scheme. For example, if a site has two separate CHP-schemes with capacity of 3MWe each, then the exclusion under Chapter 2 will not apply.

### ***CHPs over 5 MWe Generation Capacity***

If a Customer has a CHP-scheme with installed electrical generation capacity of more than 5MWe then the provisions in Chapter 2 need to be applied.

In cases where the Customer who operates the CHP-scheme does not generate any electricity to be Grid-Delivered, then no restriction would be necessary under Chapter 2.

In cases where the Customer who operates the CHP-scheme does generate electricity to be Grid-Delivered, an attribution of the amount of gas that is used by the CHP-scheme is needed.

In particular, gas used by the CHP-scheme that is attributable to the electricity that is Grid-Delivered will be ineligible for Discounts under the EBRs Schemes.

Gas that is not attributable to electricity to be Grid-Delivered will be eligible for Discounts under the EBRs Schemes. This will include gas that is used which is attributable to:

- Electricity that is not Grid-Delivered (whether used onsite by the Customer or sold through a private wire).

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<sup>11</sup> The CHP Quality Assurance (CHPQA) Programme is a government initiative providing a practical, determinate method for assessing all types and sizes of Combined Heat and Power (CHP) schemes throughout the UK. <https://www.gov.uk/guidance/combined-heat-power-quality-assurance-programme>

- Heat output from the plant (whether used onsite or sold to a third party) defined as ‘Quality Heat Output’ in the CHPQA Standard<sup>12</sup>.

The CHPQA Standard underpins the CHPQA Programme and is, in this guidance, intended to ensure recognised definitions, criteria and methodologies for the operation of the programme are met while following the rules of the EBRs schemes.

A CHP-scheme that is not accredited by the CHPQA Programme and current Standard may still be eligible for Discounts and should perform a similar calculation to those CHP-schemes that are accredited. They may wish, however, to apply for CHPQA certification for financial year 2021/2022 (next yearly cycle for submissions). Further information can be obtained by contacting [chpqainfo@chpqa.com](mailto:chpqainfo@chpqa.com).

### **CHPs – How to calculate eligible fuel?**

To calculate the proportion of the gas that is eligible for Discount, the Customer who operates a CHP-scheme should calculate the gas used that is attributable to the electricity that is Grid-Delivered and subtract that from total fuel use. For this calculation, the Customer should perform fuel eligibility calculations.

The calculations below have been developed by BEIS in consultation with Ricardo and stakeholders, to provide a standardised way for calculating the Discount that Customers who operate a CHP scheme are entitled to from their electricity and gas costs. This calculation has been adapted from an existing CHPQA approved process to calculate Carbon Price Support liability.

We would expect these calculations to be performed as set out below.

Similar calculation should be completed for CHPs that use multiple fuel types or are not CHPQA-certified, with any modifications necessary to identify the amount of gas attributable to the electricity that is Grid-Delivered.

#### *Step 1 – Calculate the fuel attributable to heat production*

Take a reading of the CHP generator’s qualifying heat output (QHO) which refers to useful heat deployed for a particular use. This should be in gross calorific value. QHO should then be divided by the typical boiler efficiency of 81% ( $\eta_{h,ref}$ ), which represents the proportion of energy from the fuel that is converted into useful heat for a typical CHP-scheme (HQ).

The fuel attributable to the production of useful heat is therefore calculated as:

$$HQ = \left( \frac{QHO}{\eta_{h,ref}} \right)$$

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<sup>12</sup> The CHPQA Standard sets out definitions, criteria and methodologies for the operation of the programme. CHPQA Standard Issue 8: <https://www.gov.uk/government/publications/chpqa-standard#:~:text=CHPQA%20Standard%20%E2%80%93%20Issue%208%3A%20March%202021&text=Such%20Schemes%20will%20be%20recertified,Easement%20in%20Guidance%20Note%2060>

*Step 2 – Calculate the fuel attributable to all electricity*

A reading should be taken of the total fuel input (TFI) that feeds into the CHP. To calculate the amount of fuel that is attributable to non-heat energy output, fuel attributed to qualifying heat output (HQ) should be subtracted from the CHP generator's total fuel input (TFI).

A further adjustment is needed if fuel input is used for mechanical power (where fuel is converted into physical movement as opposed to electricity or heat). The proportion of the fuel used for non-heat energy output that is attributed to mechanical output should be calculated by dividing the mechanical power output (MO) by the total power output (TPO).

The fuel attributable to the production of all electricity should then be calculated by the following formula:

$$Q = (TFI - HQ) \times \left(1 - \frac{MO}{TPO}\right)$$

*Step 3 – calculate the fuel attributable to electricity exported*

To calculate electricity used on-site and for direct supply (ES), take a reading of the amount of electricity that is exported to the grid by the CHP (EX) and subtract from the TPO.

$$ES = TPO - EX$$

*Step 4: calculate the fuel attributed for electricity exported to the grid*

Using the electricity used on site in step 3, divide it by (TPO less MO) to calculate the amount of electricity supplied on-site and for direct supply (ES) as a proportion of total electricity output (i.e. excluding any mechanical output).

Then take this proportion away from one, to determine the amount of electricity that is exported as a proportion of electricity output (less MO if relevant).

To calculate ineligible fuel (IF) (fuel attributable for electricity that is Grid-Delivered, multiply this proportion by the fuel associated with electricity production in step 2 (Q).

The fuel attributable to the electricity that is Grid-Delivered should therefore be calculated by the following formula:

$$IF = Q \times \left(1 - \frac{ES}{TPO - MO}\right)$$

*Step 5: calculate the eligible fuel*

Finally, to determine the amount of fuel that is eligible for the Discount, subtract the ineligible fuel by the TFI, applying the following formula:

$$\text{Eligible fuel} = TFI - IF$$

For CHP plants that use multiple fuels for generating electricity to be Grid-Delivered, one of which being gas, the proportion of gas attributable to the exported electricity needs to be calculated. This follows steps 1 to 4, with an additional step at the end. To calculate the proportion of gas use to TFI, divide the amount of gas used by the TFI.

Then, multiply this gas proportion by the current amount of 'eligible fuel' (which up to this step assumes all fuel is eligible), to calculate the eligible fuel attributed to gas use. For CHP plants using multiple fuels that can only attribute the use of gas for electricity exports to the grid, the calculations are the same as step 1 to 4, except parameters inputted into the calculations should all discount the non-gas proportion, except the electricity exported to the grid since it is only generated through gas usage (i.e. apply the proportion of gas use to TFI, QHO and TPO – and MO if relevant). To calculate the gas only proportions, divide gas used by the TFI, then multiply this gas proportion on the relevant inputs.

To calculate eligible fuel for a CHP generator that is:

- not CHPQA-certified and not applying for CHPQA certification for financial year 21/22, and
- not submitting full monthly metering data via the CHPQA online submission portal,

the same formulae should be used based on inputs calculated on a similar basis to those in the CHPQA process.

Further information and support can be obtained by contacting [chpqainfo@chpga.com](mailto:chpqainfo@chpga.com).

This calculation should be performed at the end of each period as requested by the Supplier, and provided to the Supplier to be used in the calculation of the Discount to be applied (if relevant).

The Supplier and the Customer may initially agree to an estimate of the proportion of the gas that is attributable to the electricity that is Grid-Delivered, and is therefore ineligible for Discount under the EBRs Schemes. Where this applies, estimates must be reconciled against actual figures of usage.

Where the CHP-scheme is in NI and supplies heat or power outside of NI, then an adjustment may be needed to limit the gas which is attributable to that element. See section 9 for further details.

### 7.3 Other generators

For non-CHP gas generators and for electricity storage plants, the calculation for determining the amount of gas or electricity that is attributable to electricity that is Grid-Delivered is set out below.

If the generator or storage plant does not generate electricity to be Grid-Delivered, the Customer is not excluded from eligibility for Discounts under the EBRs Schemes by the operation of Chapter 2.

If the generator or storage plant only sell to the grid, none of the gas (for a gas generator) or electricity (for an electricity storage plant) would be eligible for Discounts under the EBRS schemes.

If the generator or storage plant is used partly for export to the grid and partly for other purposes (own use and private wire), the gas attributed to the export of electricity to the grid would be ineligible for Discounts under the EBRS Schemes.

The proportion of the gas or electricity consumed that is attributable to the export of electricity to the grid (and therefore ineligible for Discounts) should be determined with the formula:

$$\left( \frac{\textit{Electricity exported to the grid}}{\textit{Total electricity output}} \right)$$

The remainder of the gas or electricity would be attributable to own use or private wire, and would therefore be eligible for Discounts under the EBRS Schemes.

Where the generator or storage plant is in NI and supplies power outside of NI, then an adjustment may be needed to limit the gas or electricity which is attributable to that element. See section 9 for further details.

## 7.4 Administration

The administration rules for Chapter 2 closely follow the requirements for Chapter 1.

In particular, where a Customer determines that the provisions of Chapter 2, apply to them, they are required to disclose this to the Supplier as soon as practicable and in any event within 21 days of the 'initial declaration date' (regulation 43(1)). The initial declaration date is the later of (i) the date they entered into the arrangements being already a party to the Supply Contract, (ii) the date they entered into the Supply Contract, having already made an arrangement meeting the conditions in Chapter 2, or (iii) the Scheme Commencement Date.

The Supplier is then required, as soon as practicable, to provide the Customer with each periodic declaration date and declaration period (regulation 44(2)(a)).

The Customer must, as soon as practicable and within 14 days after each periodic declaration date, send the Supplier a declaration of the amount of the ineligible quantity of energy in respect of the relevant declaration period (regulation 44(2)(b)).

In addition, the Supplier has certain obligations under regulation 43(2) to bring the Chapter 2 provisions to the attention of Customers that fall above the minimum thresholds in regulation 42(1).



## 7.5 Pass-through of EBRS scheme benefits

Where gas power stations (including a CHP plant) or electricity storage plant, acting as an intermediary, receives Discounts under the GB Scheme, they are required to follow regulations set out in in the Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022 (or to the extent that they fall within the definition of 'intermediary' set out therein, the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022).

Equivalent rules in respect of the NI Scheme are expected to be introduced very soon.

For guidance on the pass-through provisions, see:

[www.gov.uk/government/publications/pass-through-requirements-for-energy-price-support-provided-to-intermediaries](https://www.gov.uk/government/publications/pass-through-requirements-for-energy-price-support-provided-to-intermediaries)

## 8 Chapter 3 of Part 4 – Abusive arrangements (GB and NI Schemes)

### 8.1 Introduction

The EBRS Schemes are designed to provide energy bill relief for non-domestic Customers. The Discounts available under the EBRS Schemes are automatic, and they are potentially available for Customers on all types of contract – Fixed Price Contracts, Flexible Price Contracts, DAI Price Contracts (NI only) and Variable Price Contracts.

The amount of the Discount depends on the Reference Wholesale Price of the contract, and it is intended that Customers with contracts that reflect a high wholesale energy price receive a larger Discount than those Customers that have contracts that reflect a lower wholesale energy price.

It is intended that Customers continue to manage their energy costs in a commercial manner, and are not driven to take steps with the aim of exploiting the scheme by increasing the total amount of Discounts available to them.

Chapter 3 of Part 4 (regulations 46 to 49) therefore sets out provisions to address arrangements that seek to abuse the scheme.

### 8.2 Abusive arrangements

The anti-abuse provisions applies to “abusive arrangements” where the purpose or main purpose of the arrangements is to achieve an increase in the benefits of the scheme (regulation 47(1)).

Where the Customer or Supplier is party to an abusive arrangement, the Discount is reduced so to ensure that the benefit of the scheme is not increased by that arrangement (regulation 48(a)).

The question of whether the purpose or main purpose of arrangements is to obtain an increase in scheme benefits is derived from the intentions and acts of the parties.

The reference to a ‘main’ purpose has a connotation of importance and should represent more than an incidental benefit or ‘icing on the cake’ arising from the arrangements.

Where Suppliers and Customers are acting commercially, and the obtaining of the benefits of the EBRS Schemes is incidental to the steps undertaken, the anti-abuse provisions are unlikely to apply. However, where the key aim of the arrangements is to

obtain an advantage through increased benefits under the scheme, then the anti-abuse provisions can be expected to be engaged.

The reference to arrangements includes any agreement, understanding, scheme transaction or series of transactions (whether or not legally enforceable).

## 8.3 Examples where the anti-abuse provisions are expected to be engaged

The following cases are situations where the anti-abuse provisions are expected to apply. Please note they do not represent all potential situations that Chapter 3 may apply to.

### ***Example 1: Splitting out of a variable component from a Flexible Price Contract***

*A Customer has a Flexible Price Contract under which they have elected to fix a set volume of energy at a set price which is below the Government Supported Price. However, this only covers a proportion of the Customer's energy requirements. The remaining volumes will be costed based on the day-ahead prices which are expected to be above the Government Supported Price.*

*The Customer's weighted average price under the contract is driven down by the fixed component of the Flexible Price Contract, and as result is expected to be below the Government Supported Price.*

*The Customer asks the Supplier to enter a separate contract to cover the remaining volumes that are not covered by the fix volume under the existing contract. They do this in an attempt to claim a Discount of this component of its energy requirements. There is no commercial reason for splitting out the volumes into a separate contract in this way.*

*In this case, it would follow that the main purpose behind restructuring is to obtain increased Discounts under the scheme. As such, any Discounts that would otherwise arise would be reduced by the anti-abuse provisions. In this case, the Discounts would be expected to be reduced to the level that they would have been absent the scheme. Which on the facts as outlined above, would be to reduce the Discounts to zero.*

### ***Example 2: Uncommercial arrangements***

*A Customer has a Flexible Price Contract under which they elect to purchase a set volume electricity for winter 2022/2023 at 25p/kWh. The Supplier and the Customer*

*subsequently agree to cancel the existing election and replace it with a new fix over the same volume at a price of 35p/kWh. The Customer has no commercial reason to agree to the higher price and will, absent the benefits under the EBRIS Schemes, be commercially worse off. However, the Customer seeks to rely on increased scheme benefits to compensate them for the increase energy prices.*

*In this case, it would follow that the main purpose behind the restructuring is to obtain increased Discounts under the scheme. As such, any Discounts that would otherwise arise would be reduced by the anti-abuse provisions. In this case, the Discounts would be expected to be reduced to the level that they would have been absent the scheme. Which on the facts as outlined above, would be the Discounts that would have been available based on the original fix of 25p/kWh for the volume that it covered.*

## 8.4 Examples where the anti-abuse provisions are not expected to apply

### **Example 3: Switching from a Variable Price Contract into Fixed Price Contract**

*A Customer has a variable rate contract. Under this contract they expect to receive a Discount under the EBRIS Schemes. The Customer is exposed to fluctuations in energy prices, and may be required to pay a high unit price for energy if the prices peak over winter 2022/2023. They are aware that should energy prices increase, the Discount will not increase above the Maximum Discount set by the Government under regulation 18.*

*Their Supplier offers them a Fixed Price Contract to cover winter 2022/2023. The Customer considers the Fixed Price Contract to be a good deal and takes away its exposure if energy prices were to increase. They are aware that the Discounts available to them under the Fixed Price Contract are higher than the Discounts currently available to variable rate contracts. However, that is not the main driver behind them accepting the Fixed Price Contract.*

*Where a Customer simply switches from a Variable Price Contract to a Fixed Price Contract the anti-abuse provisions are unlikely to apply. The Customer is entitled to switch from a Variable Price Contract to a Fixed Price Contract without this reducing the scheme benefits available to them under the new contract.*

### **Example 4: Choice between private wire v electricity grid**

*A Customer has the choice between purchasing electricity from a nearby energy for waste (EfW) generator through a private wire or purchasing electricity from the electricity grid through a licensed supplier. Electricity purchased from the licensed*

*supplier will attract Discounts under the EBRS Schemes whereas electricity purchased under the private wire will not attract any Discounts under the scheme directly. Even though the consumption from the electricity grid will incur additional costs such as network charges, it still works out cheaper, taking account the Discount, than purchasing electricity from the private wire.*

*Where a Customer purchases electricity or gas from a licensed supplier within the scope of Discounts under the scheme as opposed to purchasing energy that is outside the scope of the EBRS Schemes, then it is unlikely that the anti-abuse provisions will apply.*

## 8.5 Administration

The administration for Chapter 3 is slightly different than with Chapters 1 and 2 of Part 4, to reflect that both the Supplier and the Customer have certain obligations to notify the other of any abusive arrangements within Chapter 3.

In particular, here a Supplier or a Customer enters into an abusive arrangement, then they are required to disclose this to the other party as soon as practicable and, in any case, within 21 days of the declaration date (regulation 47(2)). The declaration date is either the date they entered into the arrangements or, if later, the Scheme Commencement Date.

The Customer or Supplier (whoever is the relevant party) must promptly and as frequently as required, determine the reduction in the Discount required and give notice of the reduction to the other party (regulation 48(b)).

## 9 Northern Ireland specific guidance including differences into the classification of contracts (NI Scheme only)

### 9.1 Introduction

The following section contains guidance to issues specific to the NI Scheme that differ from the GB scheme:

- Section 9.2 explains the different classification of contracts.
- Section 9.3 explains the provisions in Chapter 4 of Part 4 of the EBRS NI Regulations which limit the discount available under the NI Scheme where a Customer in NI is passing on the supply to end users located outside NI.

For all other aspects, the NI Scheme is expected to operate identically to the way the GB Scheme operates in GB. As such, the guidance found above should be relevant to the NI Scheme unless otherwise specified.

Regulation numbers referred to in the guidance above in respect of the EBRS GB Regulations also, in nearly every case, apply to equivalent regulation in the EBRS NI Regulations. The regulation dealing with dispute resolutions is, however, regulation 68 in the EBRS NI Regulations.

As set out in section 1, intermediaries are precluded from opting out of the GB Scheme by regulation 3(1) of the Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022. A similar preclusion will shortly be introduced for the NI Scheme which should follow the same principles as for the GB Scheme.

### 9.2 Classification of contracts

EBRS NI Regulations follows a slightly different contract classification from EBRS GB Regulations. Contracts are classified into four categories – Fixed Price Contracts, Variable Price Contracts, DAI price contracts and Flexible Price Contracts. The category of DAI price contracts is specific to the EBRS NI Regulations and does not exist in the EBRS GB Regulations.

The EBRS NI Regulations provide the following definitions for the four different types of contract:

**“Fixed price contract”** means a supply contract under which, at the time the contract is entered into, the contracted wholesale price is fixed for the term of the contract (including where it is fixed on the basis of different prices applying, for example, at different times of day, or in different seasons in the term of the contract).

**“Variable price contract”** is 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.

**“DAI price contract”** means an electricity supply contract under which the contracted wholesale price is determined solely by reference to a day-ahead index of the wholesale price for electricity.

**“Flexible price contract”** means a supply contract, which is not a DAI price 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

Regulation 2(1)

Different provisions operate under the scheme in respect of each type of contract which determine how the Discount is calculated. It is therefore important to ensure that contracts are correctly classified.

Contracts should be classified to the category which closest fits the contract in question. Where, however, a contract is not a close fit to either a Fixed Price Contract, a Variable Price Contract or a DAI price contract, then it should be treated as a Flexible Price Contract.

This section should be read in conjunction with section 4 (Fixed Price Contracts) and section 5 (Flexible Price Contracts) of the guidance which sets out details of the particular circumstances involving these types of contract.

The examples of types of contract to aid classification set out in section 3.2 of the guidance apply re the NI scheme – the exception being those tracker contracts where the index is solely linked to day-ahead wholesale prices. For the EBRS NI Scheme such contracts fall under the DAI price contract classification and are not to be classified as Flexible Price Contracts – see below.

### ***DAI Price Contract example***

*A Customer has a contract under which the price of the energy is tracked solely by reference to a day-ahead index of the wholesale price for electricity. This would be a DAI price contract for the purposes of the NI Scheme.*

#### *Reference Wholesale Price for DAI Price Contracts*

Where a Customer has a DAI Price Contract, the Reference Wholesale Price will be determined by the Secretary of State's published methodology, as with Fixed Price Contracts and Variable Price Contracts as set out in regulation 10 of the EBRS NI Regulations. In relation to DAI Price Contracts, the methodology may also provide for different wholesale prices to apply in different time periods.

#### *Administration*

A Supplier must determine whether a Supply Contract is a Fixed Price Contract, a Flexible Price Contract, a DAI Price Contract or a Variable Price Contract (regulation 14(1)(b) of the EBRS NI Regulations).

In terms of timings by which the Supplier must notify the Customer of this determination:

- Where the contract was in force at the Scheme Introduction Date, the Supplier must notify the Customer of this determination as soon as practicable after that date and no later than 45 days after the Scheme Introduction Date (regulation 15(a)).
- Where the contract was entered into after the Scheme Introduction Date, the Supplier must notify the Customer time at which the Supply Contract is entered into, or within 45 days after the Scheme Introduction Date if later, whatever is later (regulation 15(b)).

Where a Customer disagrees with this determination, then the Customer should notify the Supplier of this within a reasonable time. In most cases it is expected that the Supplier and the Customer will be able to resolve the disagreement and the Supplier should, if the resolution so requires, redetermine the matter in question. If the disagreement is not resolved within a reasonable time, the Supplier or the Customer may refer the matter to BEIS. See regulation 68 of the EBRS NI Regulations for further details of this.

## **9.3 Adjustment of Discount – supply outside of NI**

Where energy supplied to a Customer in NI is used in premises located outside NI or used to make available electricity or heating etc. to end-users at premises located outside NI (i.e. in the Republic of Ireland), then that part of the energy supplied will not



qualify for Discounts under the NI scheme - as set out in Chapter 4 of Part 4 of the EBRS NI Regulations.

The provisions in Chapter 4 are engaged where it may reasonably be expected that either:

- the energy supplied to the Customer at the premises to which the Supply Contract relates in the 12-month period starting from 1 October 2022 will exceed 0.5 gigawatt hours, or
- the maximum rate at which energy is supplied under the contract at any time will exceed 0.5 megawatts.

There are two scenarios where the Chapter 4 provisions would be engaged. Where:

- energy supplied to the Customer under the Supply Contract may be made available to an end-user at premises located outside NI; or
- heating, cooling, hot water or electricity may be made available, using energy supplied under the Supply Contract, to an end user at premises located outside NI.

The Supplier must determine the amount of electricity or gas to which the discounted price properly applies and redetermine its charges for energy supplied accordingly.

Where the Customer operates a CHP-scheme, where some of the electricity is supplied to an end user outside of NI then a similar calculation to those set out in section 7 will be needed to determine the ineligible amount of gas supplied.

Likewise, a similar calculation will be needed if a CHP-scheme supplies heat to an end user outside of NI.

### ***Example: Supply to an end user outside NI***

*A Customer purchases gas from a NI Supplier. They use that gas to operate a CHP-scheme. The Customer then sells the electricity generated by the CHP-scheme through private wire or sells heat or hot water generated to premises in the Republic of Ireland.*

*As the electricity is not Grid-Delivered but sold through private wire the Customer is not caught by the provisions in Chapter 2 of Part 4 of the ERBS NI Regulations. Neither do those provisions apply to the supply of hot water or heat over the border. However, as gas from the Supplier has been used to export heat, hot water or electricity to premises outside of NI they are caught by Chapter 4 as a relevant arrangement and the provisions in that chapter apply.*

*Under those provisions, the quantity of gas supplied to the Customer's CHP generator used for the purposes above would not benefit under the EBRS NI Scheme. The Discount would therefore need to be reduced by the Supplier to reflect this.*

### *Administration*

Where a Customer is in a relevant arrangement that is caught by Chapter 4, then under regulation 52(1) of the EBRS NI Regulations, they are required to disclose this to the Supplier within 21 days of the 'initial declaration date'. This is the later of the date they entered into the arrangements and the Scheme Introduction Date.

Under regulation 53 the Supplier is then required, as soon as practicable, to provide the Customer with each periodic declaration date and declaration period.

The Customer must, as soon as practicable and within 14 days after each periodic declaration date, determine and send the Supplier a declaration of the amount of the ineligible gas or electricity in respect of the relevant declaration period. The Supplier must then adjust the Discount to the Customer based on the non-qualifying ineligible quantity declared by the Customer.

Under regulation 52(2), Suppliers are also required to identify whether the Supply Contract they enter into after the Scheme Introduction Date is a relevant arrangement that is caught by Chapter 4. Furthermore, within 45 days of the scheme's introduction date, the Supplier must identify whether any of its existing Supply Contracts would be relevant arrangements caught by this chapter.

If the Supplier determines that Chapter 4 applies, they must give the Customer notice of that determination and draw their attention to Chapter 4 of the EBRS NI Regulations, unless the Customer has already disclosed this.

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