

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

The Secretary of State makes the following Rules under regulations 52 and 66 of the Energy Bill Relief Scheme Regulations 2022 (SI 2022 / 1100).

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

- 1.1 These rules may be cited as the Energy Bill Relief Scheme (No.2) (Amendment No.2) Rules 2022.
- 1.2 They come into force on 10 November 2022.
- 1.3 In these Rules, "the EBRS Rules" means the Energy Bill Relief Scheme (No.2) Rules 2022.

### **2 Amendments**

- 2.1 The EBRS Rules are amended as follows.
- 2.2 After rule 1.1.2A, insert rule 1.1.2B as follows:  
"1.1.2B Parts 3 and 4 come into force on 10 November 2022."
- 2.3 After rule 1, insert rule 1A as follows:

#### **"1A Interpretation**

In these Rules:

- (a) "the Regulations" means the Energy Bill Relief Scheme Regulations 2022;
  - (b) references to a regulation by number alone are to the regulation so numbered in the Regulations."
- 2.4 After rule 14, insert Part 3, as set out in Schedule 1 to these Rules.
  - 2.5 After rule 18 (as inserted by rule 2.4 of these Rules), insert Part 4, as set out in Schedule 2 to these Rules.



*The Rt Hon Graham Stuart MP*

Minister of State for Climate

9 November 2022

Department for Business, Energy and Industrial Strategy

## Schedule 1: Text to be inserted as Part 3 of the EBR5 Rules

### Part 3 – Rules about decisions and determinations by the Secretary of State

#### 15 General

##### 15.1 Interpretation

###### 15.1.1 In Part 3 of these Rules:

- (a) "referral" means a referral to the Secretary of State under regulation 63(3)(b) in respect of a supplier's determination in respect of a Part 2 or Part 4 matter;
- (b) in relation to a referral:
  - (i) the "referred determination" is the determination of a supplier in respect of which the referral is made;
  - (ii) the "referred determination date" is the date on which the supplier notified or otherwise informed the customer of that determination;
  - (iii) "referring party" means the party which makes the referral;
  - (iv) "other party" means the party which is not the referring party;
- (c) "notice of referral" means a notice of a referral sent under rule 16.1.1;
- (d) "notice of referral response" means a notice of response to a referral sent under rule 16.2.1;
- (e) "Part 2 or 4 review request" means a review request in respect of the determination by the Secretary of State of a Part 2 or Part 4 matter;
- (f) "Part 3 review request" means a review request in respect of a Part 3 decision;
- (g) in relation to a review request, the "relevant decision date" is the date on which the Secretary of State gave notice to the applicant and (where applicable) the other party of the relevant decision;
- (h) "notice of the other party's views" means a notice of the other party's views in respect of a review request sent under rule 17.2.1;
- (i) in relation to a referral or a Part 2 or 4 review request:
  - (i) the "supply contract" is the supply contract in respect of which the referral or request is made;
  - (ii) "party" means each of the supplier and the customer which are parties to the supply contract;
- (j) the "annual contract value" in relation to a supply contract is the aggregate amount payable by way of supply price under the contract over the 12 month period ending on the scheme commencement date, or (if the contract was not in

force for that period) that it is reasonable to expect would have been payable if it were;

- (k) "notice under these Rules" means a notice of referral, notice of referral response, review request, notice of the other party's views, or representations (as defined in rule 18.1(e)).

## **15.2 Applicable threshold – regulation 62(2)(b)**

15.2.1 In relation to a referral or relevant request, the financial consequences referred to in regulation 62(2)(b) are not material if the value of the matter does not exceed the materiality threshold.

15.2.2 The materiality threshold is:

- (a) in the case of a referral or a Part 2 or 4 review request:
  - (i) subject to paragraphs (ii) and (iii), 5% of the annual contract value,
  - (ii) £500, if the amount in paragraph (i) is less than £500, or
  - (iii) £50,000, if the amount in paragraph (i) is more than £50,000;
- (b) in the case of a Part 3 review request, £1,000.

15.2.3 In Part 3 of these Rules a reference to the value of a matter is:

- (a) in relation to a referral or a Part 2 or 4 review request, a reference to the magnitude of the difference between:
  - (i) the charges that would be payable by the customer under the supply contract, over that part of the term of the contract which falls within the scheme period, on the basis of the determination of the matter proposed in the notice of referral or the review request, and
  - (ii) the charges so payable on the basis of the referred determination or relevant decision;
- (b) in relation to a Part 3 review request, a reference to the magnitude of the difference between:
  - (i) the amount which would be or would become payable to the supplier in respect of discount recovery on the basis of the decision or determination proposed in the review request, and
  - (ii) the amount which was so payable or paid to the supplier on the basis of the relevant decision.

## **15.3 Applicable threshold – regulation 62(2)(c)**

A referral or a review request is made within a period which is reasonable for the purposes of regulation 62(2)(c) if the notice of referral or the review request is sent by the specified time.

## **15.4 Specified times**

15.4.1 Subject to rule 15.4.2, the "specified time" is:

- (a) for sending a notice of referral, 45 days after the referred determination date;
- (b) for sending a notice of referral response, 15 days after the date on which the notice of referral was sent;
- (c) for sending a review request, 30 days after the relevant decision date;
- (d) for sending a notice of the other party's views, 15 days after the date on which the review request was sent.

15.4.2 The Secretary of State may extend, by such period as the Secretary of State may decide, the specified time for a person to send a notice or request in a particular case if:

- (a) no later than the time specified in rule 15.4.1, that person requests such extension, and
- (b) the Secretary of State is satisfied that it was not reasonable to expect the notice or request to be sent by the time specified in rule 15.4.1.

## **15.5 Supporting information**

15.5.1 In Part 3 of these Rules "supporting information" means a document or other information sent by a supplier or customer to the Secretary of State as evidence of or otherwise to support anything stated in a notice under these Rules.

15.5.2 Where supporting information is sent to the Secretary of State, the notice under these Rules with which the supporting information is sent must explain clearly how it evidences or supports the statement to which it relates, and direct the Secretary of State to the particular parts of it which do so.

## **15.6 Declaration**

15.6.1 Any notice under these Rules must include a declaration made on behalf of the supplier or customer sending the notice that, to the best of the knowledge of the person signing the declaration:

- (a) all statements of fact contained in the notice are true and not misleading;
- (b) any estimates contained in the notice are made in good faith and after taking reasonable care;
- (c) any supporting information sent as a copy of a document with the notice is a true and accurate copy of the original document.

15.6.2 The declaration must be signed by:

- (a) a named director of the supplier or customer sending the notice, or
- (b) if the supplier or customer is not a company:

- (i) a named person approved by the Secretary of State for the purpose of making such a declaration, or
- (ii) in the case of the customer, the customer itself, if a natural person.

## **16 Referrals in respect of supplier determinations of Part 2 or Part 4 matters (regulation 63)**

### **16.1 Making a referral**

16.1.1 Where the customer or the supplier under a supply contract wishes to make a referral, it must send a notice to the Secretary of State and the other party.

16.1.2 The notice of referral must set out or attach:

- (a) the identity of the referring party and the other party;
- (b) a point of contact for communications with the Secretary of State about the referral;
- (c) a copy of the supply contract;
- (d) details of the matter in respect of which the referral is made, including:
  - (i) the referred determination;
  - (ii) the regulation under which the referred determination was made;
  - (iii) the referred determination date;
- (e) where the customer is the referring party:
  - (i) evidence that the customer gave timely notice to the supplier in accordance with regulation 63(1)(a), and that the customer endeavoured to resolve the matter with the supplier in accordance with regulation 63(1)(b);
  - (ii) the determination which the customer considers should have been made;
  - (iii) the customer's reasons for so considering;
  - (iv) the customer's estimate of the value of the matter, how that estimated value has been calculated, and the customer's estimate of the annual contract value;
- (f) where the supplier is the referring party, the reasons for making a referral;
- (g) any supporting information on which the referring party relies;
- (h) if the notice is not given by the specified time, an explanation of why the notice was not given earlier.

16.1.3 The Secretary of State may decline to accept a referral if the notice of referral does not comply with these Rules.

16.1.4 The referring party may withdraw a notice of referral, by giving notice to the Secretary of State and the other party, at any time before the Secretary of State has given notice of a decision under rule 16.3.2(b).

## **16.2 Response by other party**

16.2.1 Where the other party disagrees with or otherwise wishes to comment on anything in a notice of referral, the other party may respond to the referral by sending a notice to the Secretary of State and the referring party.

16.2.2 The notice of referral response must set out or attach:

- (a) the identity of the other party and the referring party;
- (b) a point of contact for communications with the Secretary of State about the referral;
- (c) the notice of referral in respect of which it is sent;
- (d) what the other party disagrees with in the notice of referral and its reasons for disagreeing, or (as the case may be) the comment it wishes to make;
- (e) if the other party disagrees with the notice of referral, the determination which the other party considers should have been made (which, where the other party is the supplier, may be to confirm the relevant determination);
- (f) any supporting information on which the other party relies.

16.2.3 The Secretary of State may decide the matter subject to the referral without considering a notice of referral response which is sent after the specified time.

## **16.3 Consideration of referral**

16.3.1 Where a notice of referral is sent to the Secretary of State, and the Secretary of State does not decline to accept the referral under regulation 63(4) or rule 16.1.3, and the notice is not withdrawn:

- (a) the Secretary of State must consider the notice and (if sent, and subject to rule 16.2.3) the notice of response;
- (b) the Secretary of State may seek from either party clarification of or further information about anything in either notice;
- (c) the Secretary of State is not required to consider:
  - (i) any other communication received from either party;
  - (ii) any information about the matter which is not included in the notice of referral or notice of response,

unless it was requested by the Secretary of State under paragraph (b);

- (d) if the Secretary of State considers that exceptional circumstances make it appropriate to do so, the Secretary of State may invite both parties (but not one

only of the parties) to a meeting at which the Secretary of State can hear their views or oral evidence on any matter specified by the Secretary of State.

16.3.2 The Secretary of State must:

- (a) decide either:
  - (i) that the referred determination should stand, or
  - (ii) that the referred determination should be replaced by a determination made by the Secretary of State;
- (b) by the required date under rule 16.3.4, give notice of the decision to both parties, setting out the decision and the reasons for the decision.

16.3.3 In a case within rule 16.3.2(a)(ii) the replacement determination of the Secretary of State may be what was proposed in the notice of referral or a notice of referral response or a different determination.

16.3.4 The required date is:

- (a) 45 days after the specified time for sending a notice of referral response, or
- (b) such later date as the Secretary of State may specify by notice to both parties given before:
  - (i) the date in paragraph (a), or
  - (ii) the date specified in an earlier notice given under this paragraph.

## **17 Review requests (regulation 65)**

### **17.1 Making a review request**

17.1.1 Where a supplier or a customer wishes to make a review request, it must send the review request to the Secretary of State and (in the case of a Part 2 or 4 review request) the other party.

17.1.2 The review request must set out or attach:

- (a) the identity of the applicant and (where applicable) the other party;
- (b) a point of contact for communications with the Secretary of State about the request;
- (c) in the case of a Part 2 or 4 review request, a copy of the supply contract;
- (d) the relevant decision in respect of which the request is made;
- (e) the grounds on which the applicant considers the relevant decision should be reviewed;
- (f) the decision or determination which the applicant considers should have been made instead of the relevant decision;

- (g) the reasons for so considering;
- (h) the applicant's estimate of the value of the matter, and how that estimated value has been calculated, and (in the case of a Part 2 or 4 review request) the applicant's estimate of the annual contract value;
- (i) any supporting information on which the applicant relies;
- (j) if the review request is not given by the specified time, an explanation of why the request was not given earlier.

17.1.3 The Secretary of State may decline to accept a review request if the request does not comply with these Rules.

17.1.4 The applicant may withdraw a review request, by giving notice to the Secretary of State and (where applicable) the other party, at any time before the Secretary of State has given notice of a reconsidered decision under regulation 65(4)(c).

## **17.2 Views of other party**

17.2.1 Where, in relation to a Part 2 or 4 review request, the other party wishes to submit views on the matter, the other party may respond to the request by sending a notice to the Secretary of State and the applicant.

17.2.2 The notice of the other party's views must set out or attach:

- (a) the identity of the other party and the applicant;
- (b) a point of contact for communications with the Secretary of State about the request;
- (c) the review request in respect of which it is sent;
- (d) the views of the other party in respect of the matter, and in particular whether it disagrees with the review request and its reasons for disagreeing;
- (e) either confirmation that the other party considers that the relevant decision should stand, or a decision or determination which the other party considers should have been made instead of the relevant decision;
- (f) any supporting information on which the other party relies.

17.2.3 The Secretary of State may decide the matter subject to the review request without considering a notice of the other party's views which is sent after the specified time.

## **17.3 Consideration of referral**

17.3.1 Where a review request is sent to the Secretary of State, and the Secretary of State does not decline to accept the request under regulation 65(3) or rule 17.1.3, and the request is not withdrawn:

- (a) the Secretary of State must consider the request and, in the case of a Part 2 or 4 review request, the notice of response (if sent and subject to rule 17.2.3);



- (b) the Secretary of State may seek from either party clarification of or further information about anything in the request or a notice of the other party's views;
- (c) the Secretary of State is not required to consider:
  - (i) any other communication received from the applicant or (in the case of a Part 2 or 4 review request) the other party;
  - (ii) any information about the matter which is not included in the notice of referral or a notice of the other party's views,
 unless it was requested by the Secretary of State under paragraph (b);
- (d) if the Secretary of State considers that exceptional circumstances make it appropriate to do so, the Secretary of State may invite the applicant or (in the case of a Part 2 or 4 review request) both parties (but not one only of the parties) to a meeting at which the Secretary of State can hear its or their views or oral evidence on any matter specified by the Secretary of State.

17.3.2 Where a Part 3 review request relates to a matter in respect of which the Secretary of State has, before the review request was sent, given to the supplier a provisional conclusions notice under rule 12.2, the Secretary of State may:

- (a) suspend consideration of the review request until the supplier has given a response under rule 12.7 to the provisional conclusions notice addressing those points which relate to the matter in question;
- (b) where the Secretary of State considers that the supplier's response affects the grounds specified in the review request for requesting a review, give notice to the supplier that a revised request must be submitted before the Secretary of State will consider the matter.

17.3.3 The Secretary of State must ensure that none of the officials who are responsible for dealing with a review request was responsible for dealing with the relevant decision.

17.3.4 The reconsidered decision of the Secretary of State must be:

- (a) that the relevant decision should stand, or
- (b) that the relevant decision should be replaced by a decision or determination made by the Secretary of State.

17.3.5 In a case within rule 17.3.4(b), the replacement decision or determination may be what was proposed in the review request or a notice of the other party's views, or a different decision or determination.

17.3.6 Notice of the reconsidered decision must be given by:

- (a) 45 days after:
  - (i) in the case of a Part 2 or 4 review request, the specified time for sending a notice of the other party's views;

- (ii) in the case of a Part 3 review request, the date when the request was sent or (in a case within rule 17.3.2, and subject to rule 17.3.2(b)) the supplier's response to the provisional conclusions notice is given, or
- (b) such later date as the Secretary of State may specify by notice to the applicant and (where applicable) the other party given before:
  - (i) the date in paragraph (a), or
  - (ii) the date specified in an earlier notice given under this paragraph.

## **18 Determinations by Secretary of State (regulation 64)**

18.1 In this rule:

- (a) "proposed determination" means a determination that the Secretary of State proposes to make under regulation 64(2);
- (b) "notice of proposed determination" means the notice to be given by the Secretary of State under regulation 64(3)(a);
- (c) "supply contract" means the supply contract to which the proposed determination relates;
- (d) "contract parties" means the supplier and customer who are parties to the supply contract;
- (e) "representations" means representations made by a contract party in accordance with the notice of proposed determination;
- (f) "final determination" means the determination, if any, which the Secretary of State decides to make following a notice of proposed determination.

18.2 A notice of proposed determination may set out the matter in question by:

- (a) identifying the supply contract to which the proposed determination relates, and
- (b) setting out the provision of Part 2 or Part 4 under which the determination was made or falls to be made.

18.3 If a contract party makes representations, those representations must include:

- (a) whether the party agrees or disagrees with the proposed determination, and with the Secretary of State's reasons for proposing to make that determination;
- (b) if the party disagrees:
  - (i) the reasons for disagreeing;
  - (ii) the determination, if any, which the party considers should be made;
  - (iii) the reasons for so considering;
  - (iv) any supporting information on which the party relies.

- 18.4 A contract party must send a copy of its representations to the other contract party promptly after they are sent to the Secretary of State.
- 18.5 In deciding whether to make a final determination, and (if so) what determination to make following a notice of proposed determination:
- (a) the Secretary of State may seek from either contract party clarification of or further information about anything said in representations;
  - (b) the Secretary of State is not required to consider information about the matter which is not included in the notice of proposed determination or in representations made by a contract party in accordance with the notice, unless it was requested by the Secretary of State under paragraph (a);
  - (c) the Secretary of State need not reconsider any reason given in the notice of proposed determination if neither contract party disagreed with the reason in representations;
  - (d) if the Secretary of State considers that exceptional circumstances make it appropriate to do so, the Secretary of State may invite both contract parties (but not one only of the parties) to a meeting at which the Secretary of State can hear their views or oral evidence on any matter specified by the Secretary of State.
- 18.6 The final determination may be the same as the proposed determination or a different determination.
- 18.7 The Secretary of State must give notice of the final determination, or of a decision not to make a final determination, by:
- (a) 45 days after the date specified for making representations, or
  - (b) such later date as the Secretary of State may specify by notice to the contract parties given before:
    - (i) the date in paragraph (a), or
    - (ii) the date specified in an earlier notice given under this paragraph.

## Schedule 2: Text to be inserted as Part 4 of the EBR5 Rules

### Part 4 – Required reductions

#### 19 Required reductions

19.1 In this rule:

- (a) "credit risk benefit" means the amount by which the supplier, having regard to all relevant considerations, fairly calculates or reasonably estimates that the scheme has reduced, or will reduce, its QFDC risk cost, in particular as a result of:
  - (i) discounts applied under regulation 19(1)(b) reducing the aggregate of qualifying amounts that would (in the absence of the scheme) be payable in respect of the supply of energy to QFDCs in the scheme period; and
  - (ii) the operation of the scheme increasing the frequency, promptness and certainty of payment of that part of those qualifying amounts represented by supply contract recovery amounts;
- (b) "QFDC risk cost" means, in respect of a supplier's QFDCs, the aggregate of the direct and indirect costs that, if the Regulations had not been made, and no other scheme of similar effect had been established for the benefit of suppliers and customers, the supplier fairly calculates or reasonably estimates that it would have been likely to bear, in supplying energy to them during the scheme period, as a result of any of them paying late, or not paying, any qualifying amount in respect of energy supplied in that period;
- (c) "relevant percentage", means, in respect of a supplier, the percentage represented by RP in the formula:

$$RP = \frac{(QRC - CRB)}{QRC} \times 100$$

Where:

"CRB" is the credit risk benefit

"QRC" is the QFDC risk cost

- 19.2 The required reductions that a supplier must apply to the qualifying amounts payable by its QFDCs in respect of their qualifying supply, in addition to any discount applied under regulation 19(1)(b), are those that are necessary to satisfy the conditions in rules 19.3 and 19.4.
- 19.3 The condition is that any qualifying amount that represents, or is associated with, the supplier's QFDC risk costs, is reduced by the relevant percentage.
- 19.4 The condition is that the qualifying amounts payable under QFDCs' supply contracts are reduced by such further amount, if any, as ensures that those amounts are not unduly onerous in the way described in condition 7.4 of the relevant standard conditions (within the meaning of section 10(5) or (9) of the Energy Prices Act 2022).

## **20 Information and publicity**

If the Secretary of State, having exercised the powers under regulation 58 in respect of a supplier's compliance with regulation 53(1)(b), and taken account of any relevant views of GEMA in relation to the supplier's compliance with that regulation, considers that the supplier has not correctly calculated or applied required reductions:

- (a) the Secretary of State must publish what the Secretary of State considers are the required reductions to be applied by the supplier;
- (b) the supplier must apply the required reductions as calculated by the Secretary of State in respect of all its qualifying supplies.