Energy Act 2010

2010 CHAPTER 27

PART 2

SCHEMES FOR REDUCING FUEL POVERTY

9 Schemes for reducing fuel poverty

(1) The Secretary of State may by regulations make one or more schemes for the purpose of reducing fuel poverty.

[[F1](1A) In relation to Scotland, that is subject to section 14A (power of the Scottish Ministers to make schemes).**]**

(2) A scheme under this section ("a support scheme") must make provision requiring benefits to be provided by licensed suppliers to whom the scheme applies.

(3) A scheme must provide for the benefits provided under it, taken as a whole, to be provided wholly or mainly to customers determined by or in accordance with the scheme.

(4) A support scheme may apply to—

(a) licensed gas suppliers,

(b) licensed electricity suppliers, or

(c) both licensed gas suppliers and licensed electricity suppliers,

and, in any of those cases, may apply to such suppliers of any description, including any description specified by reference to supplies, whether of gas or electricity, or both, and whether made by the suppliers or by them and associated persons.

(5) A support scheme may in particular provide for scheme customers to be determined in any of the following ways—

(a) by reference to membership of, or to family or other relationship to a member of, a fuel poverty risk group;

(b) by scheme suppliers;

(c) by, or by reference to evidence provided by, the Secretary of State (or a person providing services to the Secretary of State).

(6) Provision included in a support scheme by virtue of subsection (5)(b) may specify requirements about criteria to be applied in determining who are to be scheme customers.

(7) A support scheme may specify—

(a) the form of benefits and ways in which they are to be provided under the scheme;

(b) the amounts of any benefits to be so provided.

(8) Subsection (7)(a) includes, in particular, power to provide for—

(a) payments to be made to or in respect of scheme customers;

(b) charges for supplies of gas or electricity to scheme customers to be lower than charges for comparable supplies to other customers;

(c) benefits to be provided in the form of goods or services.

(9) Subsection (7)(b) includes, in particular, power for a support scheme to make provision—

(a) as to the aggregate amount of benefits to be provided under it (or any part of it) by scheme suppliers, or any scheme supplier, in any period specified in the scheme;

(b) as to the amount of any benefit to be provided under it to any scheme customer;

(c) as to how any amount is to be determined for the purposes of the scheme, including, in particular, provision—

(i) for determining the amount of any benefit provided under the scheme;

(ii) for any determination to be made by a scheme supplier;

(iii) for any amount of a benefit or benefits to be provided under the scheme to be determined by reference to the amount of any benefit or benefits provided or to be provided under any other support scheme;

(iv) for payments by a scheme supplier to be treated as amounts of benefits provided under the scheme;

(v) for amounts of benefits provided by a scheme supplier under the scheme to be adjusted by reference to payments made or received, or to be made or received, by the scheme supplier under a relevant reconciliation mechanism;

(vi) for benefits provided under the scheme in any period specified in the scheme to be treated as having been provided in any other period so specified.

(10) Payments by a scheme supplier within subsection (9)(c)(iv) include, in particular—

(a) the whole, or any part specified in the scheme, of payments in respect of costs incurred for the purposes of determining scheme customers (including to the Secretary of State or the Authority under a requirement imposed under section 10(3));

(b) payments under pre-existing arrangements.

(11) In this section, “relevant reconciliation mechanism”, in relation to a support scheme, means a reconciliation mechanism operated in relation to the scheme (or any part of it) under section 11.

Textual Amendments

F1 S. 9(1A) inserted (1.12.2017 for specified purposes, 1.4.2018 in so far as not already in force) by Scotland Act 2016 (c. 11), **ss. 58(2)**, 72(4)(d) (with s. 58(9)); S.I. 2017/1157, regs. 3(a), 4

10 Schemes for reducing fuel poverty: supplementary

(1) A support scheme may make provision about arrangements to be made by scheme suppliers to ensure that, so far as practicable, scheme customers receive the benefits to be provided under the scheme, which may in particular include provision about—

(a) arrangements for enabling scheme suppliers to identify scheme customers;

(b) arrangements for drawing to the attention of scheme customers—

(i) the fact that benefits are available under the scheme, and

(ii) ways of applying for those benefits;

(c) arrangements for paying or otherwise providing the benefits.

(2) A support scheme may include provision for prohibiting scheme suppliers from discriminating against scheme customers or persons who, if they were customers of scheme suppliers, would be scheme customers.

(3) A support scheme—

(a) may require scheme suppliers to make payments to the Secretary of State or the Authority in respect of costs which either of them incurs for the purposes of the provision of evidence as mentioned in section 9(5)(c) for the purposes of the scheme, and

(b) must make provision for the payment into the Consolidated Fund of any sums so received.

(4) Without prejudice to section 31(5), a support scheme may in particular—

(a) provide for different criteria to be applied for the purpose of identifying scheme customers of different scheme suppliers;

(b) provide for different benefits, or different amounts of benefits, to be provided by different scheme suppliers or to different scheme customers;

(c) impose requirements in relation to scheme suppliers by reference to pre-existing arrangements.

(5) A support scheme may make provision for requiring scheme suppliers to provide to the Authority such information as the Authority may require for the purpose of carrying out its functions in relation to the scheme.

(6) A support scheme may provide that, in such cases or circumstances as may be specified in the scheme, the Secretary of State may determine that any requirement of the scheme—

(a) is not to apply, or

(b) is to apply subject to modifications,

and the support scheme may provide for any such determination to be made subject to such conditions or limitations as the Secretary of State thinks appropriate.

(7) If the Secretary of State makes, amends or revokes, a determination in accordance with provision included in a support scheme by virtue of subsection (6), the Secretary

of State must lay before Parliament a memorandum of the determination, amendment or revocation.

11 Reconciliation mechanism: regulations

(1) The Secretary of State may by regulations make provision for the establishment and operation of a reconciliation mechanism.

(2) In this section and section 12, "reconciliation mechanism" means arrangements for securing that, after adjustment under the arrangements, the amounts of benefits provided by scheme suppliers under a support scheme or schemes (or part of a support scheme) correspond, so far as reasonably practicable, to an equitable distribution between the scheme suppliers in question of the aggregate amount of benefits provided under the scheme or schemes (or that part of a scheme).

(3) Regulations under subsection (1) may—

(a) require scheme suppliers in relation to whom a reconciliation mechanism applies to make payments to the person operating the mechanism ("the operator") or to another scheme supplier in relation to whom it applies;

(b) confer on scheme suppliers in relation to whom a reconciliation mechanism applies entitlements to receive payments from the operator or from another scheme supplier in relation to whom it applies;

(c) make provision—

(i) as to how the amount of any benefits provided under a support scheme is to be determined, and

(ii) as to what constitutes an equitable distribution (as mentioned in subsection (2)),

for the purposes of the mechanism.

(4) Regulations which provide for the amounts of any payments mentioned in subsection (3)(a) or (b) to be determined by the operator must, if the operator is not the Authority, include provision for appeals by scheme suppliers against any such determinations.

(5) Without prejudice to section 31(6), regulations under subsection (1) may confer functions on the Authority, and may, in particular, provide for the Authority to be the operator.

(6) Regulations under subsection (1) may make provision for requiring scheme suppliers in relation to whom a reconciliation mechanism applies to provide to the Authority or the operator such information as the Authority or, as the case may be, the operator may require for the purpose of carrying out its functions in relation to the mechanism.

12 Reconciliation mechanism: licence modifications

(1) The Secretary of State may, for the purpose of enabling or facilitating the establishment or operation of a reconciliation mechanism, modify—

(a) a condition of a particular licence under section 6(1)(b) or (d) of the Electricity Act 1989 (transmission licences and supply licences);

(b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;

(c) a document maintained in accordance with the conditions of licences under section 6(1) of that Act, or an agreement that gives effect to a document so maintained.

(2) Provision included by virtue of the power in subsection (1) in licences, or in a document or agreement relating to licences, need not relate to the activities authorised by the licences.

(3) Without prejudice to section 33(4), provision included by virtue of that power in a document or agreement relating to licences may make different provision for different cases.

(4) Before making a modification under this section, the Secretary of State must consult—
(a) holders of any licence being modified,
(b) the Authority, and
(c) such other persons as the Secretary of State thinks it is appropriate to consult.

13 Duty of Authority to keep schemes under review

The Authority must keep under review—
(a) the operation of any support scheme, and
(b) licensed suppliers' compliance with it.

14 Regulations under Part 2: procedure etc

(1) Before making regulations under section 9, 11 or 15, the Secretary of State must consult—
(a) the Authority,
(b) in the case of a support scheme that applies to licensed gas suppliers, or a reconciliation mechanism that applies in relation to them, licensed gas suppliers,
(c) in the case of a support scheme that applies to licensed electricity suppliers, or a reconciliation mechanism that applies in relation to them, licensed electricity suppliers, and
(d) such other persons as the Secretary of State thinks it is appropriate to consult.

(2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, this section comes into force.

(3) The Secretary of State may not make regulations under section 9 except with the consent of the Treasury.

(4) A support scheme—
(a) must contain provision specifying a period ("the scheme period") at the end of which the scheme is to cease to have effect, and
(b) may provide for the Secretary of State to review the scheme, or any part of it—
(i) after such period, or at such intervals, as may be specified in or determined in accordance with the scheme, or
(ii) when the Secretary of State is satisfied that one or more conditions specified in the scheme is satisfied.

(5) Where a support scheme ("the current scheme") has effect, no regulations may be made under section 9 to—

(a) amend or revoke the current scheme, or

(b) make another support scheme that applies to any of the scheme suppliers to which the current scheme applies,

except following a review of the current scheme conducted in accordance with provision made under subsection (4)(b).

(6) Nothing in subsection (5) is to be taken to prevent a support scheme or any part of it being renewed at the end of the scheme period by regulations under section 9 which provide for it to have effect for a further scheme period.

[F2 14A Power of the Scottish Ministers to make schemes under Part 2

(1) Subject to the following provisions of this section the power under section 9 to make a scheme in relation to Scotland is exercisable by the Secretary of State so as to make only—

(a) provision as to the licensed suppliers to whom the scheme applies,

(b) provision as to the aggregate amount of benefits to be provided under it by scheme suppliers, and

(c) any other provision within section 9(4) or (9)(a) or (c)(v) or (vi).

(2) The power to make other provision under that section for the purposes of the scheme is exercisable by the Scottish Ministers.

(3) For the purposes of the exercise of that power by the Scottish Ministers, this Part applies—

(a) as if references to the Secretary of State in sections 9, 10 and 14(1) and (4) were references to the Scottish Ministers;

(b) as if in section 10(7) "Parliament" were "the Scottish Parliament".

(4) The power of the Scottish Ministers under section 9 does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).

(5) The Scottish Ministers may not make regulations under section 9 unless—

(a) they have consulted the Secretary of State about the proposed regulations, and

(b) the Secretary of State has agreed to the regulations being made.

(6) Subsections (1) and (2) do not prevent the Secretary of State from making any provision under section 9 for the purposes of a scheme in relation to Scotland, or from varying or revoking regulations made by the Scottish Ministers under that section,—

(a) with the agreement of the Scottish Ministers, or

(b) without their agreement, if subsection (7), (9) or (11) applies.

(7) This subsection applies if—

(a) a scheme in relation to England and Wales has been made, or the Secretary of State intends to make such a scheme, and

(b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that a scheme in relation to Scotland is made with a corresponding scheme period, it is necessary for the Secretary of State to make any provision not mentioned in subsection (1)(a) to (c).

(8) In paragraph (b) of subsection (7) a "corresponding scheme period" means a scheme period beginning and ending at the same time as that specified or to be specified in the scheme mentioned in paragraph (a).

(9) This subsection applies if it appears to the Secretary of State that a support scheme made in relation to Scotland is, alone or in conjunction with a scheme made or to be made in relation to England and Wales, likely to—

(a) cause detriment to the United Kingdom, or

(b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency,

and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.

(10) In determining for the purposes of subsection (9) whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made, or to be made, by the Secretary of State and the Scottish Ministers under section 9.

(11) This subsection applies if—

(a) the Secretary of State makes or intends to make changes to a support scheme which would result in a significant change in the costs incurred by suppliers in complying with the scheme, and

(b) the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.

(12) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9) or (11)—

(a) must be in writing;

(b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b), or (as the case may be) to be necessary or expedient in view of the effect mentioned in subsection (11)(a);

(c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.

(13) Section 14(5) does not apply to regulations by which the Secretary of State makes provision by virtue of subsection (6), with or without other provision under section 9.**]**

Textual Amendments

F2 S. 14A inserted (1.12.2017 for specified purposes, 1.4.2018 in so far as not already in force) by Scotland Act 2016 (c. 11), **ss. 58(3)**, 72(4)(d) (with s. 58(9)); S.I. 2017/1157, regs. 3(a), 4

15 Schemes for reducing fuel poverty: interpretation

(1) For the purposes of this Part, fuel poverty is reduced if—

(a) the number of people living in fuel poverty is reduced, or

(b) the extent to which any person is living in fuel poverty is reduced.

Changes to legislation: *There are currently no known outstanding effects for the Energy Act 2010, Part 2. (See end of Document for details)*

(2) For the purposes of this Part—

(a) a person is living in fuel poverty if the person is a member of a household living on a lower income in a home which cannot be kept warm at reasonable cost, and

(b) the extent to which a person is living in fuel poverty is reduced if the difference between the cost of keeping the person's home warm and what would be a reasonable cost for doing so is reduced.

(3) The Secretary of State may by regulations make provision about—

(a) what is to be regarded as living in fuel poverty for the purposes of this Part;

(b) what is to be regarded as a reduction in the extent to which a person is living in fuel poverty for the purposes of this Part.

(4) Provision made under subsection (3) may, in particular—

(a) specify what is to be regarded for the purposes of subsection (2)(a) as a lower income, or a reasonable cost, or the circumstances in which a home is to be regarded for those purposes as being warm;

(b) amend this section.

(5) In this Part—

"fuel poverty risk group" means a category of persons of whom, in the opinion of the Secretary of State, the proportion who are (or, but for a support scheme, would be) living in fuel poverty is higher than the proportion of people in Great Britain who are living in fuel poverty;

"licensed electricity supplier" means the holder of a licence under section 6(1)(d) of the Electricity Act 1989;

"licensed gas supplier" means the holder of a licence under section 7A(1) of the Gas Act 1986;

"licensed supplier" means a licensed electricity supplier or licensed gas supplier;

"pre-existing arrangements", in relation to a scheme supplier, means arrangements made by the supplier before the commencement of section 9 with a view to reducing fuel poverty;

"scheme customer", in relation to a support scheme and a scheme supplier, means a customer of the supplier to whom benefits are, or are to be, provided by the supplier under the scheme;

"scheme supplier", in relation to a support scheme, means a licensed supplier to whom the scheme applies;

"support scheme" has the meaning given by section 9(2).

Changes to legislation:
There are currently no known outstanding effects for the Energy Act 2010, Part 2.