

*Draft Regulations laid before Parliament under section 31(2) of the Energy Act 2010, for approval
by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2011 No.

**ELECTRICITY
GAS**

The Warm Home Discount Regulations 2011

*Made - - - - 2011
in accordance with
Coming into force - - regulation 1*

The Secretary of State makes these Regulations with the consent of the Treasury⁽¹⁾ in exercise of the powers conferred by sections 9, 10, 14(4) and 31(5) and (6) of the Energy Act 2010⁽²⁾.

The Secretary of State has consulted the Gas and Electricity Markets Authority, licensed electricity suppliers, licensed gas suppliers and such other persons as the Secretary of State thinks appropriate.

In accordance with section 31(2) of the Energy Act 2010 a draft of these Regulations has been laid before and approved by resolution of each House of Parliament.

PART 1

Introduction

Title and commencement

- 1.—(1) These Regulations may be cited as the Warm Home Discount Regulations 2011.
- (2) These Regulations come into force on the day after the day on which they are made.

Interpretation

- 2.—(1) In these Regulations—
 - “broader group customer” is to be interpreted in accordance with regulation 18(1);
 - “commencement date” means the date on which these Regulations come into force;
 - “compulsory scheme electricity supplier” has the meaning given in regulation 5(1);

(1) The consent of the Treasury is required by section 14(3) of the Energy Act 2010 (c. 27).
(2) 2010 c. 27.

“core group customer” has the meaning given in regulation 7(2);

“couple” means—

- (a) a man and a woman who are married to each other and are members of the same household;
- (b) a man and a woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of sub-paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

“domestic customer” means an owner or occupier of domestic premises in Great Britain who is supplied with electricity or gas at those premises wholly or mainly for domestic purposes;

“dual fuel” means electricity and gas, where both are supplied to a domestic customer at the same domestic premises, by a person who is both a licensed electricity supplier and a licensed gas supplier;

“group of companies” means a holding company and the wholly-owned subsidiaries of that holding company; and “holding company” and “wholly-owned subsidiary” have the same meanings as in section 1159 of the Companies Act 2006(3);

“industry initiative” has the meaning given in regulation 26(1);

“legacy spending”, and references to the amount of legacy spending incurred by a relevant supplier, are to be interpreted in accordance with regulation 21(2);

“non-core spending obligation” is to be interpreted in accordance with regulation 13;

“partner” means a member of a couple;

“the prescribed rebate” means a rebate of—

- (a) in scheme year 1, £120;
- (b) in scheme year 2, £130;
- (c) in scheme year 3, £135; and
- (d) in scheme year 4, £140;

“relevant supplier” means a compulsory scheme electricity supplier, or a scheme gas supplier which is connected to a compulsory scheme electricity supplier, which—

- (a) made a voluntary commitment; and
- (b) under that commitment, provided financial benefits to domestic customers in the period from 1st April 2010 to 31st March 2011;

“scheme electricity supplier” means a compulsory scheme electricity supplier or a voluntary scheme electricity supplier;

“scheme gas supplier” has the meaning given in regulation 5(5);

“scheme supplier” means a scheme electricity supplier or a scheme gas supplier;

“scheme year” means a period—

- (a) from the commencement date to 31st March 2012; or

(b) of 12 months commencing on 1st April in any of the years 2012 to 2014, and “scheme year” followed by a number from 1 to 4 means the scheme year commencing in 2011, 2012, 2013 or 2014 as the case may be;

“state pension credit” has the meaning given by section 1 of the State Pension Credit Act 2002(4);

“voluntary commitment” means a commitment made by a licensed electricity supplier or a licensed gas supplier to the Secretary of State, in respect of the period from 1st April 2008 to 31st March 2011, to provide financial benefits to customers and carry out other initiatives, for the purpose of assisting persons in fuel poverty or in fuel poverty risk groups; and

“voluntary scheme electricity supplier” has the meaning given in regulation 5(4).

(2) For the purposes of these Regulations, an electricity supplier or gas supplier (A) is connected to an electricity supplier or gas supplier (B) if A and B are companies belonging to the same group of companies.

PART 2

The Scheme

Name and duration of scheme

3.—(1) These Regulations establish a scheme for reducing fuel poverty, to be known as the Warm Home Discount scheme.

(2) The scheme has effect during the period from the commencement date to 31st March 2015 (“the scheme period”).

(3) The following duties and powers continue to apply after the end of the scheme period—

- (a) the duties of scheme suppliers under regulations 9(5) and (6), 24(2) and 30(3) and Part 1 of Schedule 3;
- (b) the duty of the Secretary of State under regulation 10;
- (c) the duties of the Authority under regulations 23 and 29 and Part 2 of Schedule 3; and
- (d) the powers of the Authority under regulations 24(3) and 30(1) and (2).

Notification by suppliers

4.—(1) Paragraph (2) applies to every—

- (a) licensed electricity supplier; and
- (b) licensed gas supplier which is connected to a licensed electricity supplier.

(2) A supplier to which this paragraph applies must notify the Authority by—

- (a) 14 days after the commencement date; and
- (b) 14th February in each of the years 2012, 2013 and 2014,

of the number of that supplier’s domestic customers on the preceding 31st December.

(3) If, before the commencement of these Regulations, a supplier has notified the Authority of the number of that supplier’s domestic customers on 31st December 2010, the Authority shall treat that as the supplier’s notification for the purposes of paragraph (2)(a).

(4) If a supplier does not notify the Authority in accordance with paragraph (2), the Authority shall determine the number of that supplier's domestic customers on the preceding 31st December.

(5) For the purposes of this regulation, a supplier's number of domestic customers is the number of domestic customers to whom it supplies—

- (a) electricity (other than as part of a supply of dual fuel);
- (b) gas (other than as part of a supply of dual fuel); or
- (c) dual fuel,

with a supply of dual fuel being treated as a supply to two domestic customers.

(6) For the purposes of the following regulations, a supplier's number of domestic customers is the number notified or determined under this regulation.

Scheme suppliers

5.—(1) In relation to any scheme year, a person is a compulsory scheme electricity supplier if—

- (a) that person—
 - (i) is a licensed electricity supplier; and
 - (ii) supplied electricity to domestic customers on the 31st December preceding the start of the scheme year; and
- (b) one of the following conditions is satisfied.

(2) Condition 1 is that the supplier had at least 250,000 domestic customers on the 31st December preceding the start of the scheme year.

(3) Condition 2 is that—

- (a) the supplier; and
- (b) any licensed electricity suppliers and licensed gas suppliers which were connected to it on the 31st December preceding the start of the scheme year,

together had at least 250,000 domestic customers on that date.

(4) In relation to any scheme year, a licensed electricity supplier which is not a compulsory scheme electricity supplier is a voluntary scheme electricity supplier if the supplier gives notice to the Authority—

- (a) in relation to scheme year 1, by 14 days after the commencement date;
- (b) in relation to scheme years 2, 3 and 4, by 14th February preceding the start of the scheme year,

that the supplier wishes Part 3 of these Regulations to apply to it.

(5) In relation to any scheme year, a person is a scheme gas supplier if that person—

- (a) is a licensed gas supplier;
- (b) supplied gas to domestic customers on the 31st December preceding the start of the scheme year; and
- (c) was, on the 31st December preceding the start of the scheme year, connected to a licensed electricity supplier which in the scheme year is a scheme electricity supplier.

PART 3

The core group

Determination of scheme customers by the Secretary of State

6.—(1) The Secretary of State may in any scheme year give one or more notices to a scheme electricity supplier specifying persons to whom, subject to regulations 7 and 8, the supplier must provide the prescribed rebate.

(2) A person may not be specified in a notice unless it appears to the Secretary of State that—

- (a) the person is a domestic customer of the scheme electricity supplier; and
- (b) the person, or the person's partner, is in receipt of state pension credit.

(3) A notice containing information relating to state pension credit recipients may only be given if—

- (a) the information is given with the consent of the persons to whom it relates; or
- (b) regulations are in force under section 142 of the Pensions Act 2008 (disclosure of information relating to state pension credit recipients)⁽⁵⁾, and those regulations authorise the Secretary of State to provide an electricity supplier with the information about state pension credit recipients contained in the notice.

(4) In scheme year 4, a notice may not be given after 1st March 2015.

Provision of rebate to core group customers

7.—(1) A scheme electricity supplier which is given a notice under regulation 6(1) must, subject to regulation 8, provide the prescribed rebate in accordance with this regulation to each person specified in the notice who—

- (a) is a domestic customer of the supplier; or
- (b) has previously been a domestic customer of the supplier, if during the scheme year in which the notice is given the supplier has informed the Secretary of State that the person is a domestic customer of the supplier.

(2) A “core group customer”, in relation to a scheme electricity supplier, is a person specified in a notice given to that supplier under regulation 6(1) who falls within sub-paragraph (a) or (b) of paragraph (1).

(3) A scheme electricity supplier must provide the prescribed rebate to a core group customer by—

- (a) crediting to the customer's electricity account an amount as a result of which the amount (including Value Added Tax) charged to the customer is reduced by the amount of the prescribed rebate;
- (b) tendering payment of the amount of the prescribed rebate to the customer; or
- (c) providing a customer who pre-pays for electricity with credit in the amount of the prescribed rebate against the cost (including Value Added Tax) of future electricity use.

(4) The date on which the prescribed rebate is provided to a core group customer is the date on which the scheme electricity supplier complies with paragraph (3).

(5) A scheme electricity supplier which provides the prescribed rebate to a core group customer must—

(5) 2008 c. 30.

- (a) specify on the customer's bill; or
- (b) otherwise notify the customer in writing,

that the customer has been given a rebate under the Warm Home Discount scheme.

(6) If a notice under regulation 6(1) is given to a scheme electricity supplier on or before 1st March in a scheme year, the scheme electricity supplier must provide the prescribed rebate to the core group customers specified in the notice by 31st March in that scheme year.

(7) If a notice is given after 1st March in a scheme year—

- (a) the scheme electricity supplier must provide the prescribed rebate to the core group customers specified in the notice within 30 days; and
- (b) the prescribed rebate is to be treated as being provided in the scheme year in which the notice is given.

Exceptions

8. If the Secretary of State is satisfied that there are circumstances in which it would not be reasonably practicable for scheme electricity suppliers to provide the prescribed rebate to core group customers, the Secretary of State may determine that regulation 7 does not apply in those circumstances.

Provision of information by suppliers

9.—(1) Subject to paragraphs (2) and (3), the Secretary of State may direct scheme electricity suppliers to provide information to the Secretary of State about their domestic customers for the purpose of facilitating the exercise of the power in regulation 6(1).

(2) If a direction is given, it—

- (a) must be given to all scheme electricity suppliers;
- (b) must specify the information to be provided;
- (c) may specify a date on which, or by which, the information is to be provided;
- (d) may specify the form in which the information is to be provided.

(3) A direction may only be given if—

- (a) regulations are in force under section 142 of the Pensions Act 2008; and
- (b) those regulations authorise electricity suppliers to disclose to the Secretary of State the information about customers specified in the direction.

(4) A scheme electricity supplier must comply with a direction under paragraph (1).

(5) If a notice given to a scheme electricity supplier under regulation 6(1) specifies a person who is not a core group customer, or whom the supplier is unable to identify as a core group customer, the supplier must notify the Secretary of State within 30 days after receiving the notice.

(6) If, in relation to a scheme year, a scheme electricity supplier does not provide the prescribed rebate to one or more core group customers, the supplier must notify the Authority of—

- (a) the number of core group customers to whom the supplier has not provided the prescribed rebate;
- (b) the reasons why the supplier has not provided the prescribed rebate to those persons; and
- (c) any steps taken by the supplier to attempt to provide the prescribed rebate to those persons.

Provision of information by the Secretary of State

10. The Secretary of State must, in respect of each scheme electricity supplier, notify the Authority as soon as reasonably practicable after the end of each scheme year of—

- (a) the number of persons specified in notices given to that supplier under regulation 6(1) during the scheme year; and
- (b) the number of those persons in respect of which the supplier has given a notification under regulation 9(5).

Part 3: Interpretation

11. References in this Part to the Secretary of State, except in regulation 8 and the first reference in regulation 9(1), include a person providing services to the Secretary of State.

PART 4

Non-core spending

CHAPTER 1

General

Determination and notification of non-core spending obligation

12.—(1) The Secretary of State must—

- (a) for scheme year 1, by 7 days after the commencement date, and
- (b) for scheme years 2, 3 and 4, by 14th February preceding the start of the scheme year,

determine and notify to the Authority the aggregate non-core spending obligation.

(2) Schedule 1 makes provision about the determination of the aggregate non-core spending obligation.

(3) The Authority must—

- (a) for scheme year 1, by 28 days after the commencement date, and
- (b) for scheme years 2, 3 and 4, by 14th March preceding the start of the scheme year,

calculate for each compulsory scheme electricity supplier, and notify to that supplier, the amounts specified in paragraph (4).

(4) The amounts are—

- (a) the supplier's non-core spending obligation (subject to any later adjustment under regulation 14); and
- (b) the maximum amounts of spending which the supplier may count towards meeting its non-core spending obligation under—
 - (i) Chapter 3 (legacy spending);
 - (ii) Chapter 4 (industry initiatives); and
 - (iii) Chapters 3 and 4 combined.

Calculation of non-core spending obligation

13.—(1) The non-core spending obligation of a compulsory scheme electricity supplier for a scheme year (subject to any adjustment under regulation 14) is the relevant percentage of the aggregate non-core spending obligation for that scheme year.

(2) The relevant percentage, in relation to a compulsory scheme electricity supplier (“C”) and a

$$\frac{X \times 100}{Y}$$

scheme year, is $\frac{X \times 100}{Y}$ % where—

- (a) X is C’s number of domestic customers, unless sub-paragraph (b) or (c) applies;
- (b) if C is connected to one or more scheme gas suppliers but not to any other compulsory scheme electricity suppliers, X is the combined number of domestic customers of C and its connected scheme gas suppliers;
- (c) if C is connected to one or more scheme gas suppliers and to one or more other compulsory scheme electricity suppliers, X is a number equal to Z% of the combined number of domestic customers of C and its connected scheme gas suppliers and connected compulsory scheme electricity suppliers; and
- (d) Y is the total number of domestic customers of all—
 - (i) compulsory scheme electricity suppliers; and
 - (ii) scheme gas suppliers which are connected to a compulsory scheme electricity supplier.

(3) In paragraph (2)(c), “Z%” is C’s number of domestic customers as a percentage of the combined number of domestic customers of C and its connected compulsory scheme electricity suppliers.

(4) In paragraphs (2) and (3)—

- (a) references to a supplier’s number of domestic customers are to the supplier’s number of domestic customers on the 31st December preceding the start of the scheme year; and
- (b) a supplier is to be treated as connected to another supplier if those suppliers were connected on the 31st December preceding the start of the scheme year (but not otherwise).

Adjustments for banking and borrowing

14.—(1) In scheme years 2, 3 and 4, if the amount of spending incurred under this Part (as determined by the Authority in accordance with regulation 29(d)) by a compulsory scheme electricity supplier in the preceding scheme year (“D_{t-1}”) is greater or less than the supplier’s non-core spending obligation for the preceding scheme year (“S_{t-1}”), the Authority must adjust the supplier’s non-core spending obligation for the current scheme year (“S”) in accordance with paragraphs (2) and (3).

(2) If D_{t-1} is less than S_{t-1}, S is to be adjusted by adding (S_{t-1} – D_{t-1}).

(3) If D_{t-1} is greater than S_{t-1}, S is to be adjusted by subtracting—

- (a) (D_{t-1} – S_{t-1}), unless sub-paragraph (b) applies ; or
- (b) 1% of S_{t-1}, if the amount determined under sub-paragraph (a) is greater than 1% of S_{t-1}.

(4) The Authority must notify each compulsory scheme electricity supplier by 30th September in scheme years 2, 3 and 4—

- (a) whether any adjustment has been made under this regulation to its non-core spending obligation for that scheme year; and
- (b) if so, the adjusted amount of the supplier’s non-core spending obligation.

Types and amounts of spending

15.—(1) In each scheme year a compulsory scheme electricity supplier must, subject to paragraph (2), incur spending under this Part to the amount of its non-core spending obligation.

(2) In relation to scheme year 1, 2 or 3, a compulsory scheme electricity supplier is not in breach of paragraph (1) if the amount of spending incurred by the supplier under this Part (as determined by the Authority in accordance with regulation 29(d)) is equal to or greater than 99% of its non-core spending obligation.

(3) The spending to be incurred by a compulsory scheme electricity supplier under this Part—

- (a) must, in each scheme year, include the provision of rebates to broader group customers under Chapter 2;
- (b) if the supplier is a relevant supplier, may in scheme years 1, 2 and 3 include legacy spending under Chapter 3, subject to the limits in paragraph (4)(a) and (c); and
- (c) may include spending on industry initiatives under Chapter 4, subject to the limits in paragraph (4)(b) and (c).

(4) The maximum amount of spending that a compulsory scheme electricity supplier may count towards its non-core spending obligation—

- (a) under Chapter 3, is the relevant percentage of—
 - (i) £140 million in scheme year 1;
 - (ii) £70 million in scheme year 2; and
 - (iii) £35 million in scheme year 3;
- (b) under Chapter 4, in any scheme year, is the relevant percentage of £30 million; and
- (c) under Chapters 3 and 4 combined, is the relevant percentage of—
 - (i) £150 million in scheme year 1;
 - (ii) £85 million in scheme year 2; and
 - (iii) £53 million in scheme year 3.

(5) In paragraph (4), “the relevant percentage” means the percentage determined under regulation 13(2).

Spending by connected scheme suppliers

16.—(1) Paragraph (2) applies if a compulsory scheme electricity supplier (“C”) is connected to one or more scheme gas suppliers, but is not connected to another compulsory scheme electricity supplier.

(2) C may treat the amount of any spending incurred under Chapter 3 or Chapter 4 by a connected scheme gas supplier as an amount of spending incurred by C.

(3) Paragraph (4) applies if C is connected to one or more scheme gas suppliers and to one or more compulsory scheme electricity suppliers.

(4) C may treat Z% of the amount of any spending incurred under Chapter 3 or Chapter 4 by a connected scheme gas supplier as an amount of spending incurred by C.

(5) In paragraph (4), “Z%” is C’s number of domestic customers as a percentage of the combined number of domestic customers of C and its connected compulsory scheme electricity suppliers.

Spending incurred before commencement date

17.—(1) Paragraph (2) applies if these Regulations come into force after 1st April 2011.

(2) In scheme year 1, a compulsory scheme electricity supplier may treat as an amount of spending incurred under Chapter 3 or Chapter 4 any spending which—

- (a) was incurred between 1st April 2011 and the commencement date; and
- (b) would have counted towards its non-core spending obligation by virtue of Chapter 3 or Chapter 4, if these Regulations had come into force on 1st April 2011.

CHAPTER 2

The broader group

Broader group customers

18.—(1) A compulsory scheme electricity supplier must, in each scheme year, provide the prescribed rebate to domestic customers selected by the supplier (“broader group customers”), who appear to the supplier to meet eligibility criteria determined by the supplier and approved by the Authority in accordance with this Chapter.

(2) Paragraph (1) does not require a compulsory scheme electricity supplier to provide the prescribed rebate to every domestic customer meeting its eligibility criteria.

(3) A compulsory scheme electricity supplier may not treat a rebate as being provided under this Chapter if it is provided to a core group customer pursuant to a notice under regulation 6.

Eligibility criteria and verification measures

19.—(1) A compulsory scheme electricity supplier must determine, and notify to the Authority—

- (a) eligibility criteria which the supplier proposes to apply in selecting broader group customers; and
- (b) measures (“verification measures”) to be taken before providing the prescribed rebate to a broader group customer, for the purpose of verifying so far as reasonably practicable that the customer meets the supplier’s eligibility criteria.

(2) A supplier may make—

- (a) a notification for the purposes of one or more scheme years; and
- (b) more than one notification in respect of a scheme year.

(3) When the Authority receives a notification, it must decide whether to approve—

- (a) the eligibility criteria; and
- (b) the verification measures.

(4) The Authority must approve a supplier’s eligibility criteria if, but only if—

- (a) they satisfy Condition 1; and
- (b) in the case of eligibility criteria notified for the purposes of any of scheme years 2, 3 and 4, they also satisfy Condition 2.

(5) Condition 1 is that either—

- (a) the eligibility criteria consist of—
 - (i) one or more of the descriptions of persons in Part 1 of Schedule 2; or
 - (ii) a description, or descriptions, of persons, all the members of which fall within one or more of the descriptions of persons in Part 1 of Schedule 2; or
- (b) the Authority is satisfied that customers meeting the criteria will wholly or mainly be persons in fuel poverty, or in a fuel poverty risk group.

(6) Condition 2 is that the criteria are such as to ensure that in scheme years 2, 3 and 4, customers meeting the criteria will wholly or mainly be persons who were not core group customers in the previous scheme year.

- (7) The Authority must approve a supplier's proposed verification measures if, but only if—
- (a) they include all the measures specified in Part 2 of Schedule 2; or
 - (b) the Authority is satisfied that the measures will be at least as effective as those specified in Part 2 of Schedule 2 for the purpose of verifying so far as reasonably practicable that customers provided with the prescribed rebate under this Chapter meet the supplier's eligibility criteria.

Provision of rebate to broader group customers

20.—(1) Where a compulsory scheme electricity supplier provides the prescribed rebate to a domestic customer, that rebate is only to be treated as being provided under this Chapter if—

- (a) the supplier has notified eligibility criteria and verification measures to the Authority;
- (b) either—
 - (i) the rebate is provided after the Authority has approved the eligibility criteria and verification measures; or
 - (ii) in scheme year 1, the rebate is provided before the Authority has decided whether to approve the eligibility criteria and verification measures, and the Authority subsequently approves them;
- (c) the supplier applies its verification measures; and
- (d) it appears to the supplier that the customer meets its eligibility criteria.

(2) A compulsory scheme electricity supplier must provide the prescribed rebate to a broader group customer by—

- (a) crediting to the customer's electricity account an amount as a result of which the amount (including Value Added Tax) charged to the customer is reduced by the amount of the prescribed rebate;
- (b) tendering payment of the amount of the prescribed rebate to the customer; or
- (c) providing a customer who pre-pays for electricity with credit in the amount of the prescribed rebate against the cost (including Value Added Tax) of future electricity use.

(3) The date on which a compulsory scheme electricity supplier provides the prescribed rebate to a customer is the date on which the supplier complies with paragraph (2).

(4) Where a compulsory scheme electricity supplier provides the prescribed rebate to a domestic customer under this Chapter, it must—

- (a) specify on the customer's bill; or
- (b) otherwise notify the customer in writing,

that the customer has been given a rebate under the Warm Home Discount scheme.

CHAPTER 3

Legacy spending

Legacy spending

21.—(1) Subject to regulation 15(4) and to paragraph (3), a compulsory scheme electricity supplier which is a relevant supplier may count towards its non-core spending obligation for a scheme year—

- (a) the amount of any legacy spending incurred by the compulsory scheme electricity supplier in the scheme year; and
 - (b) if the compulsory scheme electricity supplier is connected to a scheme gas supplier which is a relevant supplier, the amount of any legacy spending incurred by the scheme gas supplier, to the extent permitted by regulation 16.
- (2) The amount of legacy spending incurred by a relevant supplier in a scheme year is the sum of—
- (a) the amount (excluding Value Added Tax) of relevant benefits in the form of rebates; and
 - (b) the value of relevant benefits in the form of discounted tariffs (excluding any reduction in the amount of Value Added Tax paid by eligible customers as a result of the provision of those tariffs),
- provided to eligible customers by that supplier in the scheme year.
- (3) A compulsory scheme electricity supplier may not in any scheme year count towards its non-core spending obligation the amount or value of relevant benefits provided to a number of eligible customers exceeding the number specified in paragraph (4).
- (4) The number referred to in paragraph (3) is the number of eligible customers who were provided with a financial benefit in the period 1st April 2010 to 31st March 2011 under a voluntary commitment by—
- (a) the compulsory scheme electricity supplier; or
 - (b) a connected scheme gas supplier.

Provision of rebates

- 22.**—(1) A rebate to an eligible customer under this Chapter must be provided by—
- (a) crediting the rebate to the customer’s account;
 - (b) tendering payment to the customer; or
 - (c) providing a customer who pre-pays for a fuel type with credit against future use of that fuel type.
- (2) The date on which a relevant supplier provides a rebate to an eligible customer is the date on which the supplier complies with paragraph (1).

Reference tariffs

- 23.**—(1) For each scheme year the Authority must, in relation to each relevant supplier, for each combination of—
- (a) fuel type supplied by the supplier; and
 - (b) payment method accepted by the supplier,
- designate a tariff offered by the supplier as a reference tariff for the purpose of determining the value of discounted tariffs provided by the supplier.
- (2) In designating a tariff as a reference tariff, the Authority must take account of the desirability of a reference tariff meeting as many as possible of the criteria specified in paragraph (3).
- (3) The criteria referred to in paragraph (2) are that the tariff—
- (a) is available to all domestic customers;
 - (b) is an enduring tariff; and
 - (c) is not offered with an incentive (such as cashback, or discounts on other products).

(4) The Authority must consult a relevant supplier before designating a tariff offered by that supplier as a reference tariff.

(5) In paragraph (3)(b), “enduring tariff” means a tariff which—

- (a) has been continuously available to new customers for a period of not less than one year; or
- (b) the Authority is satisfied that the supplier intends to make continuously available to new customers for a period of not less than one year.

Calculation of legacy spending

24.—(1) Each relevant supplier must provide to the Authority, within 8 weeks after the commencement date, details of—

- (a) the criteria which the supplier applied in the period from 1st April 2010 to 31st March 2011 to determine eligibility of domestic customers for relevant benefits provided by the supplier under its voluntary commitment; and
- (b) the number of domestic customers to whom the supplier provided a relevant benefit in the period from 1st April 2010 to 31st March 2011 under its voluntary commitment.

(2) Each relevant supplier must provide to the Authority, within 8 weeks after the end of each scheme year, the information specified in Part 1 of Schedule 3.

(3) The Authority may extend the time limits in paragraphs (1) and (2).

(4) Part 2 of Schedule 3 specifies the method to be used by the Authority to determine, under regulation 29, the amount of legacy spending incurred by a relevant supplier under this Chapter through the provision of discounted tariffs.

(5) Paragraphs (1) and (2) are without prejudice to the Authority’s power to request information under regulation 30.

Chapter 3: Interpretation

25. In this Chapter, and in Schedule 3—

“discounted tariff” means a relevant supplier’s tariff for the supply of a fuel type to domestic customers paying by a particular payment method, which is cheaper than that supplier’s reference tariff for the supply of that fuel type with that payment method;

“eligible customer”, in relation to a relevant supplier, means a domestic customer appearing to the supplier to meet criteria which were applied by the supplier in the period from 1st April 2010 to 31st March 2011 to determine eligibility for a financial benefit provided by the supplier under a voluntary commitment;

“fuel type” means—

- (a) electricity (other than as part of a supply of dual fuel);
- (b) gas (other than as part of a supply of dual fuel); or
- (c) dual fuel;

“payment method” means—

- (a) standard credit;
- (b) direct debit; or
- (c) pre-payment;

“reference tariff” means a tariff designated by the Authority under regulation 23(1);

“relevant benefit” means—

- (a) a discounted tariff; or

- (b) a rebate (of any amount), other than one provided under Part 3 or under Chapter 2 of this Part; and

“standard credit” means a payment method whereby payment—

- (a) is not made by direct debit; and
- (b) falls due periodically on or following the issue of a bill.

CHAPTER 4

Industry initiatives

Industry initiatives

26.—(1) Subject to regulation 15(4) and to paragraphs (2) and (3), a compulsory scheme electricity supplier may in respect of any scheme year count towards its non-core spending obligation spending (excluding Value Added Tax) incurred in that scheme year on an activity of a kind listed in the first column of the table in Schedule 4 (an “industry initiative”) by—

- (a) that supplier; or
- (b) any connected scheme gas supplier, to the extent permitted by regulation 16.

(2) Spending on industry initiatives may not count towards a compulsory scheme electricity supplier’s non-core spending obligation if it—

- (a) is incurred pursuant to a requirement in any other enactment, or in an electricity supply or gas supply licence;
- (b) is counted by a scheme supplier towards a spending obligation or target imposed by any other enactment, or by an electricity supply or gas supply licence; or
- (c) falls within an exception in the second column of the table in Schedule 4.

(3) Paragraph (1) only applies in relation to spending on an industry initiative if—

- (a) the industry initiative has been notified to the Authority under regulation 27; and
- (b) either—
 - (i) the spending is incurred after the Authority has approved the industry initiative; or
 - (ii) in scheme year 1, the spending is incurred before the Authority has decided whether to approve the industry initiative, and the Authority subsequently approves it.

Approval of industry initiatives

27.—(1) A compulsory scheme electricity supplier that wishes to count spending on industry initiatives towards its non-core spending obligation must notify the Authority of the industry initiatives which it, or any connected scheme gas supplier, proposes to carry out.

(2) A supplier may make—

- (a) a notification for the purposes of one scheme year, or for the purposes of more than one scheme year; and
- (b) more than one notification in respect of a scheme year.

(3) The Authority must approve a supplier’s notification if, but only if, it is satisfied that the supplier’s proposed industry initiatives—

- (a) meet the criteria specified in an entry in the first column of the table in Schedule 4, and do not fall within an exception specified in a corresponding entry in the second column of the table;

- (b) include adequate measures to ensure, so far as reasonably practicable, that benefits provided under the initiatives are provided wholly or mainly to persons in fuel poverty or in a fuel poverty risk group; and
- (c) will provide value for money.

PART 5

Supplementary

Approvals by the Authority: procedure

28.—(1) This regulation applies to notifications to the Authority under regulation 19 or regulation 27.

(2) A notification must be in such form, and contain such information, as the Authority requires.

(3) The Authority must, within the period specified in paragraph (4)—

- (a) notify the supplier of its decision; or
- (b) if the Authority requires further information from the supplier before determining the notification, request that information from the supplier.

(4) The period referred to in paragraph (3) is—

- (a) 28 days after receipt of the notification, except where sub-paragraph (b) applies;
- (b) 12 weeks after the commencement date, if the notification is received by the Authority within 8 weeks after the commencement date.

(5) When a supplier replies to a request for further information, the Authority must within 28 days after receiving the reply—

- (a) notify the supplier of its decision; or
- (b) if the Authority still requires further information before determining the notification, request that information from the supplier.

(6) If the Authority refuses to approve a supplier's notification, or part of a notification, the Authority must give reasons for its refusal.

Determination of amounts spent by scheme suppliers

29.—(1) The Authority must, in respect of each scheme year, determine as soon as reasonably practicable after the end of the scheme year—

- (a) the total amount of rebates provided in the scheme year, or treated as being provided in the scheme year, by each scheme electricity supplier under Part 3;
- (b) the total amount of rebates provided in the scheme year by each compulsory scheme electricity supplier under Chapter 2 of Part 4; and
- (c) the total amounts of—
 - (i) legacy spending under Chapter 3 of Part 4; and
 - (ii) spending on industry initiatives under Chapter 4 of Part 4,incurred by, or treated as being incurred by, each compulsory scheme electricity supplier which that supplier may count towards its non-core spending obligation for the scheme year; and

(d) the total amount of spending incurred by, or treated as being incurred by, each compulsory scheme electricity supplier (being the sum of the amounts determined for that supplier

under sub-paragraphs (b) and (c)) which that supplier may count towards its non-core spending obligation for the scheme year.

Provision of information to the Authority

30.—(1) The Authority may request from a scheme supplier such information as the Authority requires for the purpose of carrying out any of its functions in relation to the Warm Home Discount scheme.

- (2) A request under paragraph (1) may specify—
 - (a) the date by which the information is to be provided; and
 - (b) the form in which the information is to be provided.
- (3) A scheme supplier must comply with a request under paragraph (1).

Reviews of the scheme

- 31.** The Secretary of State must conduct a review—
- (a) of the scheme, if the Secretary of State is satisfied that a review would be desirable because of a significant change in circumstances since the commencement of the scheme;
 - (b) of any aspect of the operation of the scheme, if the Secretary of State is satisfied that a review would be desirable because that aspect of the scheme is not, or may not be, operating effectively or its effectiveness could be improved.

Date *Name*
Minister of State
Department of Energy and Climate Change

We consent.

Date *Name*
Name
Two of the Lords Commissioners of Her
Majesty’s Treasury

SCHEDULE 1

Regulation 12(2)

Aggregate non-core spending obligation

Determination of aggregate non-core spending obligation

1. Before determining the amount of the aggregate non-core spending obligation for a scheme year, the Secretary of State must estimate the aggregate amount of benefits (if any) to be provided by scheme suppliers under Part 3 in that scheme year (“the core group spending estimate”).

2. The amount of the aggregate non-core spending obligation for a scheme year (“year t”) is to be $T - E$ where—

T is the overall spending target for year t; and

E is the core group spending estimate for year t.

3. The overall spending target is—

(a) £250 million for scheme year 1; and

(b) subject to any adjustments under paragraphs 4 to 6, £275 million for scheme year 2;

(c) subject to any adjustments under paragraphs 4 to 9—

(i) £300 million for scheme year 3; and

(ii) £310 million for scheme year 4.

4. Before determining the amount of the aggregate non-core spending obligation for scheme year 2, 3 or 4, (“year t”), the Secretary of State must—

(a) review the core group spending estimate for year t-1; and

(b) increase or reduce that estimate, if it appears to the Secretary of State that the aggregate amount of benefits provided under Part 3 in year t-1 will be greater or less than the estimate.

5. If the Secretary of State increases the core group spending estimate for year t-1, the overall spending target for year t is to be reduced by a corresponding amount.

6. If the Secretary of State reduces the core group spending estimate for year t-1, the Secretary of State may increase the overall spending target for year t by an amount not exceeding the amount of that reduction.

7. Before determining the amount of the obligation for scheme year 3 or 4 (“year t”), the Secretary of State must (in addition to the steps in paragraph 4 to 6) calculate the difference between—

(a) the aggregate amount of benefits provided under Part 3 in year t-2 (“ A_{t-2} ”); and

(b) the core group spending estimate (with any increase or reduction previously made to it) for year t-2 (“ E_{t-2} ”).

8. If A_{t-2} is greater than E_{t-2} , the overall spending target for year t is to be reduced by an amount corresponding to the difference between A_{t-2} and E_{t-2} .

9. If A_{t-2} is less than E_{t-2} , the Secretary of State may increase the overall spending target for year t by an amount not exceeding the difference between A_{t-2} and E_{t-2} .

Interpretation

10. In this Schedule—

“year t-1” means the scheme year preceding the scheme year for which the amount of the obligation is being determined; and

“year t-2” means the scheme year before year t-1.

SCHEDULE 2

Regulation 19(5) and (7)

Broader group

PART 1

Eligibility criteria: descriptions of persons satisfying Condition 1

1. A person who is in receipt of income support and—
 - (a) has parental responsibility for a child under the age of 5 who ordinarily resides with that person; or
 - (b) is in receipt of a qualifying component.
2. A person who is in receipt of income-related employment and support allowance which includes a work-related activity or support component and—
 - (a) has parental responsibility for a child under the age of 5 who ordinarily resides with that person; or
 - (b) is in receipt of a qualifying component.
3. A person who is in receipt of income-based job seeker’s allowance and—
 - (a) has parental responsibility for a child under the age of 5 who ordinarily resides with that person; or
 - (b) is in receipt of a qualifying component.
4. A person who is in receipt of state pension credit.

PART 2

Verification measures referred to in regulation 20(7)(a)

1. Obtaining from each customer, orally or in writing—
 - (a) the customer’s name, address and telephone number;
 - (b) a declaration that the customer meets the supplier’s eligibility criteria; and
 - (c) an explanation of how the customer meets those criteria.
2. Explaining to each customer that the customer may be asked to provide further evidence of eligibility before receiving a rebate under the Warm Home Discount scheme.
3. In relation to at least 5% of the number of customers which the compulsory scheme electricity supplier provides with the prescribed rebate in a scheme year, obtaining documentary evidence before providing the prescribed rebate that the customer meets the supplier’s eligibility criteria.

PART 3

Interpretation

In this Schedule—

“documentary evidence” includes copies of documents;

“qualifying component” means—

- (a) child tax credit which includes a disability or severe disability element;
- (b) a disabled child premium;
- (c) a disability premium, enhanced disability premium or severe disability premium;
- (d) a pensioner premium, higher pensioner premium or enhanced pensioner premium.

SCHEDULE 3

Regulation 24(2) and (4)

Determination of legacy spending

PART 1

Information to be provided by relevant suppliers to the Authority

1. The mean annual household electricity consumption in the scheme year of all domestic customers supplied by the relevant supplier with electricity at a discounted tariff.
2. The mean annual household gas consumption in the scheme year of all domestic customers supplied by the relevant supplier with gas at a discounted tariff.
3. For each combination of fuel type and payment method—
 - (a) the number of customers supplied at a discounted tariff (“discounted tariff customers”) on the last day of each month in the scheme year;
 - (b) unless sub-paragraph (d) applies, the price of the discounted tariff on the last day of each month in the scheme year;
 - (c) unless sub-paragraph (e) applies, the price of the reference tariff on the last day of each month in the scheme year;
 - (d) if the supplier charges different prices in different regions for the discounted tariff, the mean, on the last day of each month in the scheme year, of the prices of the discounted tariff in each region in which the supplier has customers on that tariff, and
 - (e) if the supplier charges different prices in different regions for the reference tariff, the mean, on the last day of each month in the scheme year, of the prices of the reference tariff in each region in which the supplier has customers on that tariff.
4. For each combination of fuel type, payment method and month—
 - (a) the total annual cost of fuel for a discounted tariff customer (“D”), and
 - (b) the total annual cost of fuel for a customer paying a reference tariff (“R”),on the assumptions that (in each case)—
 - (i) the customer’s rate of consumption of each fuel supplied to that customer is the mean rate of consumption of all the supplier’s discounted tariff customers;
 - (ii) the customer remains on that tariff for a year;
 - (iii) the price of the tariff on the last day of that month remains unchanged for that year;and

- (iv) if the supplier charges different prices in different regions for the tariff, the price paid by the customer is the mean of the prices charged in each region in which the supplier has customers on that tariff.
5. The amount of each rebate provided by the supplier under Chapter 3 of Part 4, and the number of customers provided with a rebate of that amount.

PART 2

Method to be used by the Authority to calculate the value of discounted tariffs provided by a relevant supplier

1. In relation to each month in a scheme year—
 - (a) for each combination of fuel type and payment method, (R – D) is to be multiplied by the relevant supplier’s number of discounted tariff customers on the last day of the month; and
 - (b) for each fuel type, the amounts calculated under sub-paragraph (a) for different payment methods are to be added together.
2. For each fuel type—
 - (a) in relation to each quarter, the mean of the amounts calculated under paragraph 1(b) for the months in that quarter is to be multiplied by the relevant weighting; and
 - (b) the amounts calculated under sub-paragraph (a) for each quarter in the scheme year are to be added together.
3. The amounts calculated under paragraph 2(b) for each fuel type are to be added together.

PART 3

Supplementary

1. For the purposes of Part 1, all prices, costs and amounts are to be notified excluding Value Added Tax.
2. In this Schedule—

“quarter” means—

 - (a) 1st April to 30th June;
 - (b) 1st July to 30th September;
 - (c) 1st October to 31st December; or
 - (d) 1st January to 31st March;

“relevant weighting”, for a fuel type and a quarter, means the percentage specified in the following table—

<i>Quarter</i>	<i>Electricity</i>	<i>Gas</i>	<i>Dual fuel</i>
1st April to 30th June	20%	15%	20%
1st July to 30th September	20%	10%	15%
1st October to 31st December	30%	35%	30%
1st January to 31st March	30%	40%	35%

SCHEDULE 4

Regulation 26(1) and (2)

Industry initiatives

<i>Type of initiative</i>	<i>Exceptions</i>
<p>Payments to organisations which refer to electricity or gas suppliers, or facilitate the referral of, customers who—</p> <ul style="list-style-type: none"> (a) are in fuel poverty or in a fuel poverty risk group; and (b) are, or may be, eligible for a benefit under these Regulations or for any other assistance from the supplier. <p>Providing, or funding the provision by other persons of—</p> <ul style="list-style-type: none"> (a) benefit entitlement checks; or (b) benefit entitlement checks and assistance in claiming benefits. <p>Providing to domestic energy users, or funding the provision by other persons to domestic energy consumers of—</p> <ul style="list-style-type: none"> (a) energy efficiency measures; (b) thermal efficiency measures; (c) energy efficient appliances; or (d) microgeneration. <p>Providing, or funding the provision by other persons of, energy advice to domestic consumers.</p> <p>Training persons, or funding the training of persons, to provide energy advice to domestic consumers.</p> <p>Providing assistance, or funding the provision by other persons of assistance, to reduce or cancel debts for household electricity or gas supply, where such assistance is provided as part of a package of measures aimed at providing customers with long-term relief from fuel poverty.</p>	<p>A supplier may not count costs of training its own employees or contractors, or the employees or contractors of a company in the same group of companies as the supplier.</p> <p>A supplier may not count costs arising from a billing error by the supplier.</p>

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish a scheme for reducing fuel poverty, to be known as the Warm Home Discount scheme (“the Scheme”). The Scheme is administered and enforced by the Office for Gas and Electricity Markets (“the Authority”).

The Scheme has effect until 31st March 2015, and places obligations on electricity suppliers who have 250,000 or more domestic customers, or who are part of a group of electricity or gas supply companies which together have 250,000 or more domestic customers (“compulsory scheme electricity suppliers”), to incur spending in each scheme year (as defined in regulation 2) on the provision of benefits to customers in or at risk of fuel poverty.

Part 3 requires compulsory scheme electricity suppliers, and other licensed electricity suppliers who opt in to this Part, to provide rebates of an amount increasing annually from £120 in 2011/12 to £140 in 2014/15, to customers specified by the Secretary of State (“core group customers”). A person who is so specified must appear to the Secretary of State to be a domestic customer of the electricity supplier required to provide the rebate, and to be, or to be the partner of, a person in receipt of state pension credit.

Part 4 requires compulsory scheme electricity suppliers to incur other spending (“non-core spending”) for the purpose of reducing fuel poverty. Chapter 1 makes general provision and Chapters 2, 3 and 4 provide for the three components of non-core spending: rebates to broader group customers, legacy spending and industry initiatives.

Regulation 13 provides for the Authority to calculate the amount of non-core spending which each electricity supplier is required to incur in a scheme year. Regulation 14 provides for adjustments to be made to a supplier’s obligation if it spent more or less than its obligation in the previous scheme year. Regulation 15 specifies maximum amounts of legacy spending or spending on industry initiatives which a supplier may count towards its obligation. Where an electricity supplier and a gas supplier are part of the same group of companies, regulation 16 allows legacy spending or spending on industry initiatives by the gas supplier to be counted towards the electricity supplier’s obligation.

Chapter 2 requires electricity suppliers to provide rebates, of the same amount as those provided to core group customers, to domestic customers meeting eligibility criteria determined by the supplier and approved by the Authority (“broader group customers”).

Chapter 3 allows a supplier which previously provided benefits to customers under a voluntary commitment (as defined in regulation 2) to count “legacy spending” towards its obligation. This consists of the amount of rebates (if not counted under other provisions of the scheme) and the value of discounted tariffs provided by the supplier to customers who meet criteria which it previously applied under its voluntary commitment. Regulations 23 and 24 and Schedule 3 provide for the valuation of discounted tariffs.

Chapter 4 allows a supplier to count towards its obligation spending on activities specified in Schedule 4 (“industry initiatives”). These include providing, or funding the provision by other persons of, certain types of non-financial benefits targeted at persons in fuel poverty or a fuel poverty risk group. They also include debt relief measures.

Part 5 contains supplementary provisions about the procedure for matters required to be approved by the Authority (regulation 28), determination by the Authority of amounts spent by suppliers (regulation 29), provision of information by suppliers to the Authority (regulation 30) and reviews of the Scheme (regulation 31).

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Draft Legislation: *This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Warm Home Discount Regulations 2011 No. 1033*

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Fuel Poverty Team, Department of Energy & Climate Change, 3 Whitehall Place, London SW1A 2AW and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.