

ENERGY ACT 2010

EXPLANATORY NOTES

PART 2: SCHEMES FOR REDUCING FUEL POVERTY

Commentary on Sections

Section 9: Schemes for reducing fuel poverty

44. This section gives the Secretary of State the power to make regulations to create schemes that will require energy suppliers to give benefits to defined groups of customers for the purpose of reducing fuel poverty (subsections (1) to (3)). Subsection (4) provides that such schemes can apply to suppliers of electricity and/or gas.
45. Subsections (5) and (6) give the Secretary of State the power to specify in a scheme which types of customers would be eligible to receive support through the scheme. A scheme may provide for eligible customers to be identified through membership of a fuel poverty risk group (as defined by the Secretary of State), by energy suppliers or by the Secretary of State directly determining eligibility (for example through a data-matching scheme¹ or by issuing vouchers or letters which confirm that a person is eligible to receive benefits through the scheme). Subsection (6) provides that where eligibility is determined by scheme suppliers, provision may be included setting out requirements about criteria to be applied in determining which customers are eligible.
46. Subsections (7)(a) and (8) give the Secretary of State the power to set the form of benefits and the ways in which benefits are to be given to customers. This could, for example, include a rebate on customers' electricity bills. They also allow for benefits to be provided in the form of goods or services.
47. Subsections (7)(b) and (9) give the Secretary of State power to make provision in a scheme about the amounts of benefits to be provided under the scheme. Subsections (9)(a) and (b) enable this to include provision to set the total value of benefits to be provided by all energy suppliers or the aggregate value of benefits that each individual supplier is required to make available in a specified time period, and the value of the benefit that energy suppliers are required to provide to individual customers.
48. Subsection (9)(c) enables a scheme to make provision as to how any amount is to be determined for the purposes of the scheme: that is to say, either an aggregate amount of benefits provided or to be provided by a scheme supplier, or an amount provided or to be provided to an individual customer. These provisions may in particular be for:
 - determining the amount of any benefit provided under the scheme (paragraph (c)(i));
 - any determination to be made by a scheme supplier (paragraph (c)(ii));

¹ Where personal data owned by Government is compared with a third party's data, and where a match is found a specific action is taken. It is necessary to have primary powers in order to share and match data in this way. An example is the powers taken in the Pensions Act 2008 which gave the Secretary of State for Work and Pensions the power to share data on Pension Credit recipients with energy suppliers for the purpose of offering social assistance. A data-matching process in this case would compare DWP records for a selected subset of Pension Credit recipients with the energy suppliers' customer base data, to identify a particular subset of that customer base to receive assistance in the form of a fixed rebate.

- allowing benefits required to be provided under one scheme to be calculated by reference to benefits provided under another scheme (paragraph (c)(iii));
- treating payments by a supplier (for example, in respect of the costs of identifying which customers are entitled to benefits, or in continuing existing support mechanisms which are being provided under the Voluntary Agreement) as benefits provided under the scheme (paragraph (c)(iv));
- adjustment of amounts of benefits provided by a supplier by reference to payments made or received by the supplier under a reconciliation mechanism (see section 11) (paragraph (c)(v)); and
- making arrangements for allowing energy suppliers certain flexibilities in the time profile of expenditure (paragraph (c)(vi)).

Section 10: Schemes for reducing fuel poverty: supplementary

49. This section makes further provision about how the schemes for reducing fuel poverty may work.
50. Subsection (1) allows a scheme to make provision about arrangements to ensure that customers receive any benefits they may be entitled to. This can include making:
 - arrangements to help suppliers identify eligible customers;
 - arrangements for scheme customers to be made aware that the benefits exist and how to apply for them; and
 - arrangements for how the benefits should be paid or otherwise provided.
51. Subsection (2) allows schemes to make provision for prohibiting discrimination against customers who are within a scheme, or would be within a scheme if they were customers of a scheme supplier. An example of such discrimination would be where a scheme supplier refused to take on, as customers, people who would be eligible for benefits under a scheme.
52. Subsection (3) allows a scheme to provide for the Secretary of State or Ofgem to recover costs related to providing evidence of customer eligibility. This could, for example, include vouchers or letters of eligibility.
53. **Section 10 (4)** explains that a scheme could require different suppliers to use different criteria to identify customers or to give different customers different benefits. Paragraph (c) allows requirements under a scheme to be framed as requirements to continue spending commitments under the Voluntary Agreement. This subsection does not affect the breadth of section 31(5), which will allow a scheme to make different provision for different cases.
54. Subsection (5) allows a scheme to make provision for requiring suppliers to provide information to Ofgem that Ofgem requires in order to carry out its functions in relation to the scheme, including its functions of keeping the scheme under review and monitoring compliance (see section 13(1)).
55. Subsection (6) allows the Secretary of State, in such cases or circumstances as are specified in a scheme, to determine that scheme requirements either do not apply to a certain supplier, or apply subject to modifications. When such a determination is made, amended or revoked, subsection (7) provides that the Secretary of State must lay a memorandum of the determination, amendment or revocation before Parliament.

Section 11: Reconciliation mechanism: regulations

56. It is possible that some suppliers could have a disproportionate number of eligible people in their customer base. Depending on the design of the scheme, this could lead to

an inequitable distribution amongst suppliers of the obligations to provide benefits. If that happens, it is the Government's intention to put in place a mechanism to redistribute some of the costs of the scheme.

57. Subsections (1) and (2) allow the Secretary of State to establish a reconciliation mechanism for the purposes of ensuring the amounts of benefits provided by a scheme for reducing fuel poverty are distributed equitably, as far as reasonably practicable, amongst suppliers. It would be possible for Ofgem to be the operator of the mechanism (see subsection (5)).
58. Subsection (3) provides for the mechanism for balancing payments to be made, by enabling the Secretary of State to require suppliers to make payments to the operator of the reconciliation mechanism or other suppliers and to confer on scheme suppliers entitlements to receive payments from the scheme operator or other suppliers.
59. Subsection (3)(c) allows regulations to provide that the reconciliation mechanism operator can determine the payments required. If such a provision is included, subsection (4) requires the regulations also to include provision for appeals where Ofgem is not the mechanism operator. Where Ofgem is the operator, provision for appeals is not needed because judicial review will be available as a means of challenging its decisions.
60. The regulations may require suppliers to provide such information to the operator of the scheme as the operator might require in order to carry out its functions in relation to the reconciliation mechanism (subsection (6)).

Section 12: Reconciliation mechanism: licence modifications

61. This section provides that the Secretary of State may, for the purposes of creation or operation of a reconciliation mechanism, modify the conditions of transmission licences or supply licences issued under the Electricity Act 1989 or documents or agreements related to such licences, such as codes of practice (subsection (1)). This provides the Government with two possibilities in relation to the implementation of the reconciliation mechanism. The first would allow Government to amend the Balancing and Settlement Code (BSC) to allow the operator of the balancing and settlement mechanism to be the operator of the reconciliation mechanism. To do this it may be necessary to make an initial amendment to National Grid's transmission licence. The second possibility would be to create a new industry code specifically to govern the operation of the reconciliation mechanism.
62. Subsection (2) provides that modifications to licences, or a document or agreement relating to licences, need not relate to the activities authorised by the licence. This means, for example, that if a reconciliation mechanism were to be operated by the current operator of the balancing and settlement mechanism, the Secretary of State may modify the BSC to include detail about the operation of the mechanism (even though that does not relate to the activity of electricity transmission). The Secretary of State would also be able to apply the modifications only to parties to the BSC which are to participate in the reconciliation mechanism.
63. Subsection (3) provides that modifications to a document or agreement relating to licences may make different provision for different cases.
64. Before making modifications, the Secretary of State is required to consult the holders of any licence being modified, Ofgem and any other persons the Secretary of State considers appropriate (subsection (4)). This consultation may occur before or after commencement of this power.

Section 13: Duty of Authority to keep schemes under review

65. This section requires Ofgem to keep schemes made under the powers in this Part, and suppliers' compliance with them, under review.

Section 14: Regulations under Part 2: procedure etc

66. This section sets out further details about any regulations establishing either a scheme to reduce fuel poverty or a reconciliation mechanism under this Part of the Act.
67. Before making regulations under section 9, 11 or 15, the Secretary of State must, under subsection (1), consult Ofgem, licensed gas and electricity suppliers (where schemes or reconciliation mechanisms apply to them), and any other person that the Secretary of State thinks appropriate. This consultation may occur before or after commencement of this power (subsection (2)). The Secretary of State must also obtain Treasury approval for regulations under section 9 (subsection (3)).
68. Subsection (4) requires that when a scheme under section 9 is established it must contain provision stating how long the scheme will run (subsection (4)(a)). It may also, under subsection (4)(b), include provision about when, or under what circumstances the scheme should be reviewed (for example, the Secretary of State may wish to include a power to trigger a review of the scheme if energy prices rise above a certain level). Once the scheme has effect it cannot, according to subsection (5), be amended or revoked except following a review in accordance with provision made under subsection (4)(b). Under subsection (6) a scheme can, however, be renewed through regulations under section 9 at the end of the period specified.

Section 15: Schemes for reducing fuel poverty: interpretation

69. This section sets out the key definitions used in this Part of the Act. Subsection (1) defines a reduction in fuel poverty for the purposes of this Part of the Act. Fuel poverty is reduced if the number of people living in fuel poverty is reduced or the extent to which any person is living in fuel poverty is reduced.
70. Subsection (2)(a) defines for the purposes of this Part what it means for a person to be living in fuel poverty. This is equivalent to the definition of fuel poverty contained in the Warm Homes and Energy Conservation Act 2000. Subsection (2)(b) defines what is a reduction in the extent to which a person is in fuel poverty.
71. Subsection (3) gives the Secretary of State the power to make regulations on what is to be regarded as living in fuel poverty, and what is to be regarded as a reduction in the extent to which a person is living in fuel poverty.
72. Subsection (4) provides that these regulations may specify, for the purposes of subsection (2)(a), what is to be regarded 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, or may amend this section.