EXPLANATORY MEMORANDUM TO

THE WARM HOME DISCOUNT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2018

2018 No. 909

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Warm Home Discount Regulations 2011 ("the WHD Regulations") established the Warm Home Discount scheme ("the scheme") which required licensed electricity suppliers to incur spending on providing benefits to customers who are in, or are at risk of, fuel poverty. This instrument amends the WHD Regulations to run the scheme from the coming into force of this instrument until 31st March 2021 and makes some amendments to the operation of the scheme. It also makes consequential amendments to the related Warm Home Discount (Reconciliation) Regulations 2011 ("the Reconciliation Regulations").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 The WHD Regulations and the Reconciliation Regulations are two of a suite of three sets of Regulations which together established and regulate the scheme, the third set being the Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011.

4.2 The scheme established by the WHD Regulations most recently ran from 23rd July 2016 until 31st March 2018. In the most recent scheme year (scheme year 7) the scheme was made up of two parts:

- the core group – electricity suppliers participating in the scheme provide a rebate of £140 off electricity bills to their eligible customers in receipt of Pension Credit Guarantee Credit;
- the non-core spending obligation:
    - larger electricity suppliers required to participate in the scheme provide a rebate of £140 off electricity bills to low income and vulnerable customers who meet the supplier's eligibility criteria and successfully apply ("the broader group");

- the suppliers could also incur spending, up to a cap, on a range of activities including debt assistance, benefit entitlement checks, energy efficiency measures and energy advice to domestic customers in or at risk of fuel poverty ("industry initiatives" or "specified activities").

4.3 This instrument amends the WHD Regulations so that the scheme runs for an eighth, ninth and tenth scheme year, from the commencement of this instrument until 31st March 2021.

4.4 The general approach has been to amend the WHD Regulations so that they apply to the new scheme years 8 to 10, in the same way as they applied to scheme year 7, except for certain specific changes:

- increasing the overall spending target in line with inflation;
- for scheme years 9 and 10, reducing the threshold above which a licensed electricity supplier is required to provide rebates to the core group;
- requiring electricity suppliers to place a statement on their website and to inform their core group customers from the previous scheme year if they are no longer participating in the scheme;
- for scheme years 9 and 10, enabling the Secretary of State to change the eligibility criteria for the core group, by consulting and publishing an eligibility statement describing the criteria adopted by the Secretary of State;
- widening the circumstances in which information can be shared between the Secretary of State and electricity suppliers in relation to the core group, to include the disclosure of information under the Digital Economy Act 2017;
- amending the descriptions of persons to be included in a supplier's eligibility criteria for the broader group; and for scheme years 9 and 10, altering the conditions to be met by a supplier's eligibility criteria for the broader group, to avoid overlap with any criteria adopted by the Secretary of State for the core group;
- increasing the limit on non-core spending on industry initiatives or specified activities to £40 million; removing this limit and preventing non-core spending on rebates to the broader group if the aggregate non-core spending obligation is £50 million or less;
- successively reducing the limit on industry initiative spending on debt reduction or cancellation;
- permitting industry initiative or specified activity spending on financial assistance with the gas or electricity bills of domestic customers meeting certain criteria; setting out certain expenditure that may not be counted and setting a limit on this spending under industry initiatives;
- adjusting some of the deadlines for notifications and determinations under the scheme, taking into account notifications of domestic customer numbers made by suppliers before the instrument comes into force and recognising spending on industry initiatives taking place between 1st April 2018 and the coming into force of the instrument;
- amending the list of circumstances in which the Secretary of State must conduct a review of the scheme or of a part of it.

4.5 The instrument also makes consequential amendments to the Reconciliation Regulations.

4.6 Many of the powers to make the scheme in relation to Scotland have been transferred to the Scottish Ministers by section 58 of the Scotland Act 2016. These powers are exercisable by the Secretary of State with the agreement of the Scottish Ministers.

5. Extent and Territorial Application

5.1 The extent of this instrument is England, Wales and Scotland.

5.2 The territorial application of this instrument is England, Wales and Scotland.

6. European Convention on Human Rights

6.1 The Minister of State for Energy and Clean Growth has made the following statement regarding Human Rights:

"In my view the provisions of the Warm Home Discount (Miscellaneous Amendments) Regulations 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The scheme is a key policy in the Government's programme to tackle fuel poverty and the impact of the cost of energy on low income households. The scheme was launched in 2011 and has provided assistance with energy costs to around 2 million low income and vulnerable households in Great Britain each year.

7.2 The fuel poverty strategy "Cutting the cost of keeping warm: a fuel poverty strategy for England" published by the Department of Energy and Climate Change in March 2015, showed that energy bill rebates have a role as part of a cost effective mix of measures to tackle the long-term, structural problem of fuel poverty. The strategy drew attention to the fact that as upgrading the energy efficiency of the housing stock is a gradual process, other interventions (such as bill rebates) are necessary to support those struggling with their energy bills. That is why Government continues to promote a range of measures to tackle fuel poverty, including rebates through the scheme.

7.3 In England, a household is considered to be in fuel poverty if the home has higher than typical energy costs and, were they to spend that amount on energy, they would be left with a residual income below the official poverty line. Fuel poverty is a significant problem which affected approximately 2.5 million households in England in 2015, representing approximately 11% of all English households. Scotland and Wales use variations of the '10%' indicator, whereby a household is considered fuel poor if they need to spend more than 10% of their net income on energy. As there are significant similarities in the characteristics of households considered to be in fuel poverty across Great Britain, the Government has not made variations in the scheme for different parts of Great Britain.

7.4 As part of the spending review, in November 2015 the Government announced that the scheme would be extended to 2020/21 at the level of £320m per year, rising with inflation.

7.5 Under the WHD Regulations, the scheme ended on 31st March 2018. This instrument amends the WHD Regulations to run the scheme for an 8th, 9th and 10th scheme year and to make some improvements to the scheme. The main changes include:

- keeping the core group eligibility the same for scheme year 8, with a mechanism for reforming the core group eligibility for later scheme years. The Government intends to consult on the potential for using the new data matching powers under the Digital Economy Act 2017 to improve the targeting of support and make delivery more efficient through the core group part of the scheme;
- gradually lowering the supplier size threshold for compulsory provision of core group rebates. This is intended to improve accessibility of the rebate, foster competition and improve distributional outcomes of the scheme.
- information requirements to help make customers aware if their electricity supplier leaves the scheme;
- increasing the cap on industry initiatives and specified activities spending from £30m to £40m per scheme year. This should provide more room for more innovative projects to identify fuel poor households and provide the most suitable package of advice and measures;
- continuing to reduce the cap on debt write-off spending under industry initiatives. The Government considers that industry initiatives spending should be mainly focused on supporting households to tackle fuel poverty for the long-term;
- expanding the list of activities allowed under industry initiatives or specified activities to include the provision of financial assistance with energy bills to households that are particularly at risk of fuel poverty, subject to a £5 million cap each scheme year and a £140 limit on any individual payment that can be counted. This will provide support to households that are in particular need but not eligible for rebates from the supplier under the core group or broader group.
- amending the standard eligibility criteria for the broader group to reflect changes to the work-related activity element under income-related employment and support allowance and changes to the limited capability for work element under universal credit;
- amending the standard eligibility criteria for the broader group to include universal credit recipients in work or self-employed with an earned income of up to £1,349 in a recent assessment period, as long as the other eligibility criteria are met (i.e. limited capability for work, receipt of the disabled child element or parental responsibility for a child under 5 living with them).

7.6 There is a reasonable level of public interest from energy suppliers who deliver the scheme, fuel poverty groups and the public in the scheme.

Consolidation

7.7 This is the fourth instrument to amend the WHD Regulations. An informal consolidated text will be published on the gov.uk website. Should more significant amendments be made to the scheme following a review under the circumstances listed in the substituted regulation 31 of the WHD Regulations, a consolidation of the WHD Regulations may be necessary. This instrument is the third to make amendments to the Reconciliation Regulations and a consolidation of those regulations is not considered necessary at present.

8. Consultation outcome

8.1 The consultation on the scheme and draft regulations was launched on 30th March 2018 and closed on 29th April 2018. The length of the consultation was set at 4 weeks as the scheme is well established and the changes proposed were fairly minimal. There were a total of 60 responses to the consultation.

8.2 There was general support for the Government's proposals to: increase the level of spending permitted under industry initiatives from £30m to £40m; introduce a new activity under industry initiatives involving financial assistance on energy bills to households at particular risk of fuel poverty; and to make minimal changes to eligibility for scheme year 8, although for many this support was conditional on more significant reform of eligibility for subsequent scheme years.

8.3 There were mixed views on the proposed reduction to the level of debt write-off allowed as part of industry initiatives spending; and on the shorter length of scheme year 8 with it ending in March 2019. Many respondents expressed concerns with keeping the obligation threshold for electricity suppliers unchanged.

8.4 As such the outcome of the consultation is to implement the consultation proposals, but with the following main changes: a gradual reduction in the supplier size threshold for compulsory provision of rebates to core group customers; and requiring electricity suppliers to place a statement on their website and inform their former core group customers if they are no longer participating in the scheme.

8.5 A formal Government response setting out further details on respondents' views will be published on the gov.uk website.

9. Guidance

9.1 The Gas and Electricity Markets Authority ("the Authority"), which is the scheme administrator, has previously published guidance for suppliers participating in the scheme, and this guidance will be updated by the Authority to reflect the changes made by this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is mainly that participating energy suppliers are likely to recoup their costs of providing support under the scheme and their administration costs through their charges to their domestic customers. Administration costs for participating energy suppliers are estimated to total £6.7m for scheme year 8.

10.2 The impact on the public sector is very small (estimated at £1.7m costs for scheme year 8). The Authority will administer the scheme, monitor compliance and enforce the scheme. The Department of Work and Pensions enable the delivery of the scheme through verifying the eligibility of core group rebate recipients. The Department for Business, Energy and Industrial Strategy is responsible for the design of the scheme and have oversight of its impact and effectiveness.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 Analysis of currently available data suggests that the legislation will not apply to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to exempt electricity suppliers that are likely to be small, based on their number of domestic customer accounts. The exemption is being reduced on a gradual basis. In scheme year 8, the exemption is available for suppliers that have less than 250,000 domestic customer accounts (and are not part of a group of electricity or gas supply companies which together have 250,000 or more domestic customer accounts). In scheme year 9, licensed electricity suppliers with at least 200,000 domestic customer accounts, but less than 250,000 domestic customer accounts will be required to provide rebates to core group customers, but they will not have a non-core spending obligation. In scheme year 10 this lower limit is further reduced to 150,000 domestic customer accounts. Licensed electricity suppliers with numbers of domestic customers below the limit for the scheme year may participate voluntarily, in which case the requirements of the WHD Regulations relating to the provision of rebates to core group customers will apply to the small supplier.

12. Monitoring & review

12.1 The Secretary of State will be under a duty, set out in the substituted regulation 31 of the WHD Regulations, to conduct a review of the scheme or of particular parts of it, if the circumstances set out in that regulation are met.

12.2 The Authority is under a duty, set out in section 13 of the Energy Act 2010, to keep the operation of the scheme under review. For each year of the scheme, energy suppliers who participate in the scheme will be required to demonstrate to the Authority that they have complied with the requirements of the scheme. The Authority will publish an annual report on the scheme.

12.3 The instrument provides for the scheme to run until 31st March 2021. Consultation with the Authority, electricity and gas suppliers and other appropriate persons and new regulations requiring the approval of Parliament will be needed to extend the scheme beyond that date.

13. Contact

13.1 Carolina Valsecchi at the Department for Business, Energy and Industrial Strategy; Telephone: 03000686737 or email: carolina.valsecchi@beis.gov.uk can answer any queries regarding the instrument.