

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY AND GAS (ENERGY COMPANY OBLIGATION)
(AMENDMENT) ORDER 2019

2019 No. 1441

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 This instrument changes some of the criteria for the energy efficiency measures that qualify towards meeting the home-heating cost reduction target set for certain licensed gas and electricity suppliers under the Electricity and Gas (Energy Company Obligation) Order 2018 (S.I. 2018/1183). This instrument also changes the method for calculating the contribution that certain measures make towards a supplier's target. Some of these changes are designed to increase consumer protection and quality within the Energy Company Obligation (ECO) scheme, whilst others will change the eligibility requirements and incentives for first time heating systems and broken boiler replacements that can be installed under the scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales and Scotland.
4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The instrument is making amendments to the Electricity and Gas (Energy Company Obligation) Order 2018 ("the 2018 Order").
6.2 The 2018 Order places a home-heating cost reduction obligation for the period to 31st March 2022 on licensed gas and electricity suppliers that exceed domestic customer

and gas or electricity supply thresholds set out in the Order and requires them to promote the installation of measures in Great Britain for reducing the cost to individuals of heating their homes (the “ECO3” scheme).

7. Policy background

What is being done and why?

- 7.1 The principle objectives of the scheme are to: (i) help alleviate fuel poverty and meet fuel poverty targets; (ii) contribute to carbon reduction targets in the domestic sector; (iii) reduce the costs of meeting the UK’s renewable energy target through promoting more efficient energy use, and (iv) encourage innovation in the industry.
- 7.2 Between January 2013, when the first ECO scheme began, and August 2018, the most recent date for which data is available, over 2.5 million energy efficiency measures have been installed in over 2 million homes through the scheme, helping to reduce people’s energy bills, making homes more energy efficient, saving carbon and making our energy system more resilient.
- 7.3 The 2015 Spending Review announced plans for an ECO scheme to run to 31st March 2022 at an estimated level of £640m per year in 2017 prices. A new home-heating cost reduction obligation was introduced by the 2018 Order for the period up to 31st March 2022 (the “ECO3” scheme). This obligation is expressed in terms of outcomes not expenditure. The obligation is a notional lifetime bill savings target of £8.253bn to be achieved by 31st March 2022.
- 7.4 New installation standards and consumer protection were introduced into the scheme when the first ECO scheme began in January 2013 and were substantially better than those required under predecessor schemes. Part of those new installation standards were Publicly Available Specifications, which set standards for the installation of energy efficiency measures in existing buildings, and as part of the process of on-going improvement the Government has supported the British Standards Institution to regularly review and update those Publicly Available Specifications to take into account new learnings and best practice. The Government has then made the latest standards a requirement of ECO. These standards were last updated in 2017.
- 7.5 In July 2015, the then Department of Energy and Climate Change and Department for Communities and Local Government, commissioned the independent Each Home Counts (EHC) Review, looking at consumer advice, protection, standards and enforcement for UK home energy efficiency and renewable measures. The EHC Review was commissioned in response to findings which suggested that, despite improvements to industry standards, too often interventions are not well-targeted to suitable properties and, in some cases, poor practice and sub-standard work being carried out was putting consumers at detriment. The EHC Review produced key recommendations for Government and industry to take forward to improve consumer protection. These included the introduction of a quality mark and new design and installation standards. The quality mark and the new standards were not ready when the current ECO3 scheme began in December 2018.
- 7.6 As a response to the recommendations of the EHC Review to create a recognisable quality mark which builds on existing consumer protection schemes, the TrustMark Government Endorsed Quality scheme has been significantly reformed and strengthened to take on the role as the EHC quality mark. The reformed TrustMark scheme was first launched by the Department in Green Great Britain Week 2018 and

the Department has worked with TrustMark since to refine their requirements alongside the new PAS standards, published in June 2019. Embedding TrustMark as an ECO3 eligibility requirement through this instrument will build-in further consumer protection in the scheme. This will mean that all measures, subject to specified exceptions, are to be delivered by TrustMark registered installers. This will bring in further financial and consumer protections, as well as providing greater oversight across the ECO market. For example, TrustMark will require that ECO measures have at least two years' financial protection in place, improving on current guarantee provision. That improved financial protection is reflected where relevant in this instrument by way of the amendments to articles 18 and 33 of, and Schedule 3 to, the 2018 Order.

- 7.7 The EHC Review also recommended that there was an industry need for new design and installation standards, which go beyond the pre-existing approach. This resulted in the development of the new Publicly Available Specifications, PAS 2035:2019 and PAS 2030:2019, which were published by the British Standards Institution in June 2019, and which were sponsored by the Department.
- 7.8 These standards build on existing industry installation standards, but go much further in scope to consider all stages of the delivery of energy efficiency measures, including: the assessment of the premises; clear design specifications; installation processes; and post-installation monitoring. This instrument will further improve the quality of measures delivered under the scheme by incorporating these new installation standards. We believe these will continue to improve the industry's competence and help push for a 'right first time' approach, reducing the need for remedial work, which happens at a cost to industry and to the detriment of the householder.
- 7.9 Separately, this instrument stipulates that for room-in-roof and underfloor insulation to be awarded cost savings based on their standard lifetime, those measures will have to have guarantees of 25 years or longer that meet certain criteria. This is intended to bring them into line with comparable complex measures and improve consumer protection. These guarantees will be a requirement from 1 July 2020 to allow industry time to make the guarantees available.
- 7.10 The instrument also changes the way first time heating system measures are treated under the scheme. Firstly, the instrument increases the lifetime for first time heating systems which involve the installation of central heating to 20 years for the purposes of calculating their cost savings. Secondly, it allows first time heating systems (both central heating systems and district heating connections) to be installed under the ECO3 scheme in domestic private rented sector (PRS) EPC Band F&G rated properties. Finally, where a first time heating system is installed it will only be eligible if the premises in question meet certain insulation requirements. The above changes are expected to result in a slightly higher deployment of first time heating systems, a measure installed in small numbers currently, which can make homes much more affordable to heat and is a highly effective fuel poverty reduction measure. The requirement for properties to meet certain insulation requirements will reduce the initial and ongoing running costs of the heating system and make the homes more suitable for low temperature heating systems, such as heat pumps.
- 7.11 There is a high level of interest in the scheme and these changes from energy suppliers who deliver the scheme, the installers of measures, fuel poverty groups and some interest from the public.

8. **European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. **Consolidation**

9.1 There are no plans for a consolidation at this time.

10. **Consultation outcome**

10.1 On 9 July 2019, the Department for Business, Energy and Industrial Strategy published a four-week public consultation on proposals to amend the ECO3 scheme. A four-week consultation period was considered appropriate as the main proposals had already been trailed in the previous ECO3 consultation in 2018 and were widely supported. However at that time it was recognised that further work was needed before embedding the requirements into regulation.

10.2 The consultation closed on 6 August 2019 and the Department received 110 responses, including from energy suppliers, installers, manufacturers, managing agents and members of the public.

10.3 Some responses received included complaints about the short consultation period and costs of the proposed changes reflected in the impact assessment. This has been addressed through the Government response and changes to the impact assessment.

10.4 Consultees broadly supported the consultation proposals, bar one proposal, and the Department's final policy decisions reflect this. A majority agreed that the new TrustMark Government Endorsed Quality scheme, alongside new published PAS standards, should be incorporated into the ECO3 scheme. However, there was strong opposition to the proposed removal of a 400% uplift for replacements of broken boilers where these are delivered outside of the broken heating system cap, alongside insulation measures.

10.5 Having analysed the responses received, we are implementing the majority of the proposals as detailed in the consultation, but with some changes to take into consideration feedback. In particular, we have:

10.5.1 delayed when this instrument will come into force to 1 January 2020 to allow more time for businesses to register with TrustMark;

10.5.2 increased the transitional period for the installers to become certified to the new PAS standards to allow SMEs more flexibility in how they upskill and modify their processes, this will now end on 30th June 2021;

10.5.3 introduced a 20% uplift to the scores that measures receive when they are delivered in compliance with the new PAS standards during the transitional period;

10.5.4 reduced the current uplift of 400% to 200% for replacements of broken boilers delivered outside of the broken heating system cap and which are not renewable heating measures to encourage multiple measures delivery;

10.5.5 introduced a requirement whereby a first time heating system will not be eligible unless the premises in question meet certain insulation requirements.

10.6 From 1st July 2021, after the transition to the new PAS standards, requirements to certify to, and comply with, them and certain guarantee requirements will no longer be retained in the legislation for the ECO3 scheme in relation to measures installed by TrustMark registered businesses. However, they will continue to be a key requirement in the TrustMark scheme. The regulatory requirements have been retained during the transition period to ensure technical monitoring of installations continues until TrustMark fully take on responsibility for technical monitoring of installations. Transitioning these requirements and technical monitoring to TrustMark will mean that the energy suppliers are no longer responsible for monitoring their individual installers as TrustMark will have oversight across the whole ECO market.

10.7 The 20% uplift, combined with the extended PAS transition period, is being introduced to ensure the ECO3 scheme remains within the agreed spending envelope and to incentivise businesses to adopt the new standards earlier with consequent benefits for consumers.

10.8 A full description of the changes, and a summary of the consultation responses, are included in the Government's consultation response which is available on the gov.uk website.

10.9 As part of the consultation process the Department discussed its proposals with the devolved administrations in Scotland and Wales and subsequently received their formal responses.

11. **Guidance**

11.1 After the instrument is laid, an updated version of the non-statutory guidance for obligated suppliers will be consulted on, and then published, by the Gas and Electricity Markets Authority ("the Administrator").

11.2 The guidance will be made available free of charge from the website of the Administrator.

12. **Impact**

- 12.1 The impact on business, charities or voluntary bodies is mainly that obligated energy suppliers will incur costs in meeting their obligations. They are expected to recoup their costs by passing them onto their domestic customers through their energy bills, although the energy bills of those households which receive measures will be reduced for the long-term from what they would be otherwise. The costs to obligated suppliers are estimated to be around £640m per year on average over the scheme to 2022 (the period covered by the 2018 Order), in 2017 prices, but the actual costs incurred by suppliers in meeting their obligations will depend on a range of factors, including: the cost of finding eligible households willing to install energy efficiency measures; the cost of installing energy efficiency measures into these homes; and, the level of co-funding suppliers can secure from local authorities, households and others.
- 12.2 We understand that there are additional cost implications associated with increasing consumer protections, standards and guarantee requirements as detailed in the final stage ECO3 impact assessment. We have made changes to our initial policy proposals so that total estimated ECO3 delivery costs remain within the spending envelope. This is ensured by two key changes, the first is the introduction of a time-limited score uplift during the PAS transition period and the second is a 6-month extension to this transition which will now end on 30th June 2021. These changes are estimated to both help offset some of the additional costs and support the supply chain to successfully meet the new requirements. The uplift will award a 20% score increase to all measures which are completed by installers certified to PAS 2030:2019 and in compliance with PAS 2030:2019 and PAS 2035:2019 on or after the date this instrument comes into force until the end of the transition period.
- 12.3 There is no significant impact on the public sector.
- 12.4 A full impact assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. **Regulating small business**

- 13.1 The supplier threshold means that energy suppliers that are small businesses (those with fewer than 50 full time employees) are likely to be exempt from obligations under the 2018 Order.

14. **Monitoring & review**

- 14.1 The approach to monitoring of this legislation is through a requirement on the Administrator to submit monthly progress reports to the Secretary of State on suppliers' performance against the overall target. The Department also has regular engagement with the Administrator, obligated suppliers, supply chain, local authorities and others to understand progress on delivery and any delivery issues. The regulation does not include a statutory review clause by virtue of section 28(3)(d) of the Small Business, Enterprise and Employment Act 2015, because the deadline for the Administrator to determine whether suppliers have met their obligation under the 2018 Order is 30th September 2022.

15. **Contact**

- 15.1 Emi Morris at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 2998 or email: emi.morris@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Olivia Haslam, Deputy Director for Energy Efficiency and Local, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kwasi Kwarteng, Minister of State for Business, Energy and Clean Growth, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.