

EXPLANATORY MEMORANDUM TO
THE BOILER UPGRADE SCHEME (ENGLAND AND WALES) REGULATIONS
2022

2022 No. [XXXX]

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 statutory instrument implements the Boiler Upgrade Scheme (BUS) which will support the installation of heat pumps and in limited circumstances, biomass boilers in domestic and small non-domestic buildings in England and Wales. A grant payment will be offered to help customers overcome the high upfront capital costs of low carbon heat technologies in the transition away from fossil fuel systems. The scheme will run for three years, from 2022 to 2025.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

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

5. European Convention on Human Rights

- 5.1 The Secretary of State, Kwasi Kwarteng, has made the following statement regarding Human Rights:

“In my view the provisions of the Boiler Upgrade Scheme (England and Wales) 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 100 of the Energy Act 2008 enables the Secretary of State to make regulations establishing a scheme to encourage the renewable generation of heat and to provide for the administration and financing of the scheme. The low carbon heat market has previously been supported by the domestic Renewable Heat Incentive (DRHI)¹, but this scheme will close to new applications on 31 March 2022. The BUS will follow on from this support.

¹ <https://www.legislation.gov.uk/ukdsi/2014/9780111111192/contents>

7. Policy background

What is being done and why?

- 7.1 The BUS will support the installation of heat pumps and biomass boilers in domestic and small non-domestic buildings² in England and Wales up to a capacity limit of 45 kWth. It has £450m of funding over three years (2022/23 to 2024/25) as confirmed at the Spending Review 2021. While heat pumps can be installed in any eligible property, biomass boilers will only be eligible in rural properties not connected to the gas grid to minimise air quality impacts in line with the government's Clean Air Strategy³. A grant payment will be offered to help customers overcome the high upfront capital cost of low carbon heat technologies in the transition away from fossil fuel systems, rather than a tariff-payment as awarded under the DRHI.
- 7.2 The government has committed in the 10 Point Plan⁴ to an ambitious trajectory for heat pump deployment within this decade (600,000 heat pumps a year by 2028) to meet our carbon budgets and make progress towards our 2050 net zero ambition. The current UK market for low carbon heat is relatively small, and these technologies are largely unable to compete on cost with conventional heating options, such as natural gas, oil and direct electric heating. This is partly due to the emerging nature of low carbon heating in the UK, which means that it does not benefit from economies of scale or from mature supply chains to the same degree as conventional technologies.
- 7.3 As set out in the Heat and Buildings Strategy⁵, regulation and market-based mechanisms will drive significant change for both the new build and retrofit market from the mid-2020s, but as recommended by the Climate Change Committee, additional financial support is required to enable the development of supply chains ahead of the introduction of new standards. The BUS is a key part of this. It will grow the market for retrofit installations, put downward pressure on costs and avoid a hiatus after the closure of the DRHI, building supply chains in preparation for the introduction of the planned regulations and market-based approaches later in the decade. It will provide financial support for up to 30,000 installations in England and Wales in year one of the scheme, contributing 2.6MtCO₂e of carbon savings over its lifetime and supporting up to 2100 direct FTE and 1800 indirect FTE per year over the three years.
- 7.4 With the growth in demand encouraged under the scheme and wider market developments, we expect to see cost reductions in the technologies during the lifetime of the scheme. As a result, this instrument sets out a provision to allow the Secretary of State to review grant levels and to maintain the right to adjust these in response to market changes or if uptake differs substantially from the projected range. Notification to stakeholders of a grant level adjustment will be provided ahead of any change coming into force.
- 7.5 The delivery model will be an installer-led, two stage voucher system. The installer will apply for a voucher in the first stage, pre-installation, where they undergo basic eligibility checks. In the second stage, post-installation, the installer will provide evidence of the installation and any required eligibility criteria and will then be

² New build and social housing will not be eligible for support under the scheme. However, domestic custom builds will be eligible.

³ <https://www.gov.uk/government/publications/clean-air-strategy-2019>

⁴ <https://www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution>

⁵ <https://www.gov.uk/government/publications/heat-and-buildings-strategy>

paid the grant from the scheme administrator (the Office of Gas and Electricity Markets, Ofgem), reducing the upfront price paid by the customer. An installer-led scheme allows for a smoother and simpler consumer journey, while maintaining certainty for installers as to the availability of budget. This model is suited to ensuring market growth and enabling industry to deliver through the grant model at scale and will streamline the voucher application process.

- 7.6 The department recognises the importance of consumer protection, ensuring installations supported through the scheme are of the highest quality and that consumers are protected against mis-selling. To mitigate against these risks in an installer-led scheme, consent will be sought from the consumer ahead of any voucher issuance. All installers participating in the scheme must be certified by the Microgeneration Certification Scheme (MCS), or equivalent, and confirm membership of a Consumer Code (that ensures customers are protected by a Trading Standards Institute Approved Code of Practice). This ensures that people who buy low carbon heating systems are covered by consumer protection schemes governing the products and their performance, as well as the quality of the installation and service they receive from the installer. Current MCS installer standards certify that an installer can install to a defined quality, using products that have met rigorous testing standards.

8. European Union Withdrawal and Future Relationship

- 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 This instrument does not amend another instrument and therefore consolidation will not be undertaken.

10. Consultation outcome

- 10.1 Future Support for Low Carbon Heat⁶, the consultation for the BUS (formally the Clean Heat Grant) and the Green Gas Support Scheme, ran from 28 April 2020 to 7 July 2020. A further consultation, ‘Clean Heat Grant: further policy design proposals’ ran from 12 February 2021 to 5 March 2021 and sought views on minimum insulation requirements, biomass eligibility, the voucher application process and clarified our proposed approach to new build eligibility.
- 10.2 The first consultation, Future Support for Low Carbon Heat, received 352 responses across Great Britain, split between respondents who were primarily concerned with the BUS and those who were mainly focused on the Green Gas Support Scheme. The further consultation received 30 responses. Responses were received from a range of stakeholders including trade bodies, certification schemes, consumer protection groups, environmental NGOs, manufacturers, installers and members of the public. The government response⁷ to the consultations was published on 19 October 2021 alongside the Heat and Buildings Strategy.

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888736/future-support-for-low-carbon-heat-consultation.pdf

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1026446/clean-heat-grant-government-response.pdf

- 10.3 Respondents to the main consultation were largely supportive of the objective to incentivise the deployment of low carbon heating systems in domestic and small non-domestic buildings through capital grants. They also broadly agreed with the proposed limit on the size of installation.
- 10.4 Many respondents raised concerns about the relatively small size of the overall scheme budget and the proposed £4000 flat rate grant for all technologies, claiming this would not incentivise the level of deployment required to reach our climate targets. In response to this feedback, the budget for the scheme has since been increased from £100m over two years to £450m over three years. The grant values have also been increased and varied across technologies. The BUS will now provide grants of £5000 for air source heat pumps and biomass boilers and £6000 for ground source heat pumps.
- 10.5 Most respondents agreed with a two-stage voucher system, with the consumer applying for a voucher and an installer redeeming it. However, having carefully considered the balance of roles and responsibilities between the consumer and the installer, the full voucher process will now be installer-led as this approach allows for a smoother and simpler consumer journey, while maintaining certainty for installers of budget availability. To mitigate risks of consumer mis-selling in an installer-led process, the necessary approvals will be sought from the customer as part of the application.
- 10.6 Many respondents pointed out that poor product and installation standards, as well as incorrect sizing, were the most significant consumer protection risks on a grant scheme. To mitigate against these risks, all installers participating in the scheme must be MCS certified, or equivalent, and confirm membership of a Consumer Code that ensures customers are protected by a Trading Standards Institute Approved Code of Practice. Stakeholders believed requiring installers to be MCS certified or equivalent was the best mitigation against these risks.
- 10.7 The main risks associated with non-compliance, fraud or gaming identified by respondents were to do with inappropriately sized installations, phoenix companies that create business plans that involve aggressive selling leading to rapid sales growth, and incorrect fuel use in biomass boilers. Respondents also identified grants may be claimed for non-existent installations or multiple claims could be made for the same installation. To minimise non-compliance, fraud, and gaming on the scheme, upfront checks will be conducted before vouchers are issued and grants paid out. Suitable powers are in place within the legislation to address significant cases of non-compliance or gaming and enable corrective action or the recouping of grant payments.
- 10.8 The BUS proposals were consulted on across Great Britain and the Devolved Administrations have been engaged throughout the development of this instrument. However, through discussions with Scottish Government, they have since confirmed Scotland will not be participating in the scheme as they already operate a comprehensive support package for domestic and small scale non-domestic heat and energy efficiency through Home Energy Scotland and the Energy Efficiency Business Support Service. This instrument will therefore apply to England and Wales only. Wales has been supportive of scheme development and have been consulted in line with the legal requirements set out in Section 148A(1) of the Government of Wales Act 2006.

11. Guidance

- 11.1 Ofgem, the intended scheme administrator, will be responsible for running the day-to-day operations for the scheme, including performing functions such as handling enquiries, reviewing applications, making payments, and monitoring compliance with the scheme rules. Ofgem will publish guidance on the administration of the scheme on their website ahead of launch to provide clarity to installers and consumers on the application process and Ofgem's role in the scheme.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 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 legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Department will be undertaking an evaluation of the BUS to assess the extent to which the objectives and expected impacts of the scheme are realised, as well as to collect evidence that will support wider learning in relation to low carbon heat and other relevant policy areas (such as energy efficiency, net-zero behaviour change etc.). The ongoing monitoring will also support the management of the scheme, including tracking of delivery, financial management and amendments.
- 14.2 The instrument does not include a statutory review clause. The requirement under section 28(2) of the Small Business, Enterprise and Employment Act 2015⁸ to make provision for review does not apply to this instrument as it falls within an exception in section 28(3) of that Act.

15. Contact

- 15.1 Jessica Brodholt at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 4022 or email: jessica.brodholt@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rebecca Vallance, Deputy Director for RHI and Future Funding, at the Department for Business, Energy and Industrial Energy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kwasi Kwarteng, Secretary of State at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

⁸ <https://www.legislation.gov.uk/ukpga/2015/26/section/28>