

EXPLANATORY MEMORANDUM TO
THE STATE PENSION CREDIT (DISCLOSURE OF INFORMATION)
(ELECTRICITY SUPPLIERS) REGULATIONS 2010

2010 No. 227

1. This explanatory memorandum has been prepared by the Department for Work and Pensions (“DWP”) and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 These Regulations allow DWP to disclose information to electricity suppliers about persons aged 70 years and over, and their partners, where one of those persons is in receipt of only the guarantee credit element of State Pension Credit¹ (“SPC”). This is so that under the Energy Rebate Scheme agreed between the Government and suppliers, suppliers can give these persons an automatic rebate on their electricity bill, offer them help with energy efficiency measures and offer to place these persons on a register that offers priority services. The Regulations also allow electricity suppliers to provide information about their domestic electricity customers to DWP. This is so that DWP can match that data against its own records and then confirm to each supplier which of its customers qualify for a rebate.

2.2 The Regulations also make unauthorised disclosure of information a criminal offence. This is aimed at strengthening the security of data handled and transferred.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Context**

This instrument implements Section 142 of the Pensions Act 2008, which conferred power on the Secretary of State to make regulations allowing for SPC information to be shared with electricity suppliers, and suppliers to provide information about their customers to the Secretary of State, for the purpose of providing assistance to eligible customers. These disclosures of information would be unlawful without legislation.

¹ The guarantee credit works by topping up the income of people aged 60 and over to their guarantee level (the standard minimum guarantee in 2009 is £130 a week for single people and £198.45 for couples). It can be more for people with a severe disability, caring responsibilities or certain housing costs. The savings credit is designed specifically to reward pensioners aged 65 and over who have low or modest second pensions or savings. The savings credit is worth up to a maximum of £20.40 a week for a single person and £27.03 for couples. People can receive any combination of the elements of Pension Credit. The group receiving only guarantee credit represents the poorest pensioners on Pension Credit.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

Angela Eagle, Minister of State at the Department for Work and Pensions (“DWP”) has made the following statement regarding Human rights:

“In my view the provisions of the draft State Pension Credit (Disclosure of Information) (Electricity Suppliers) Regulations 2010 are compatible with Convention Rights.”

7. Policy background

• *What is being done and why*

7.1 In 2008 the Government secured a voluntary agreement with the big six energy suppliers² to increase their spend on their social programmes to help vulnerable customers. Under this agreement, energy suppliers have agreed to increase the level of their social assistance programmes to at least £150 million a year by 2010-11. This spend provides a wide range of help for vulnerable households with their fuel bills such as rebates, social tariffs and debt write-offs.

7.2 The Government wants to ensure that the money spent under the current voluntary agreement reaches those who need it most. Its focus is on pensioners who make up over fifty percent of all those in fuel poverty, and who are at greatest risk from excess winter deaths.

7.3 Under the Energy Rebate Scheme DWP and electricity suppliers will share information to identify a particular group of SPC recipients to whom suppliers will give an automatic rebate on their electricity bill. The electricity suppliers have the discretion also to offer other forms of assistance such as energy efficiency measures.

7.4 The Government has given careful consideration to whether sharing data was an appropriate approach to delivering assistance with fuel bills. It considered alternatives such as inviting people to make a claim for help or issuing vouchers which could be redeemed against fuel bills. However the Government knows from some prior experience of dealing with this group that the likely level of response to this type of contact can be very low. Data sharing has the benefit of providing automatic assistance to this group, without requiring them to take any action in response to an offer.

7.5 The Government therefore decided that data sharing is a more efficient way of identifying and delivering help with fuel bills to older, poorer pensioners.

7.6 The Energy Rebate Scheme has been agreed between Ministers from DWP and Department of Energy and Climate Change (“DECC”). The Government has been working closely with the big six energy suppliers in developing this Scheme.

7.7 Further details which are not covered by this instrument such as the amount of the rebate, further eligibility and how the rebate will be delivered will be addressed in

² British Gas; EDF Energy; E.ON UK; ScottishPower; Scottish and Southern Energy; RWEpower.

the Energy Rebate Scheme Policy Document. This will be published before the scheme comes into operation and will be available in the libraries of the House of Commons and House of Lords and on the internet. The current draft of this document will also be placed in the libraries.

7.8 The data-sharing exercise provided under these Regulations will also act as a pilot for the proposed future mandated social price support scheme – which would provide assistance with energy bills to customers thought to be vulnerable to fuel poverty - as announced in DECC's White Paper 'The UK Low Carbon Transition Plan'³. Under this plan the Government has stated that it would bring forward legislation at the earliest possible opportunity with the aim of introducing mandated social price support after the current voluntary agreement ends in March 2011. This is being taken forward in the Energy Bill, introduced to Parliament on 19 November 2009. The Government has announced that it is minded to focus a large part of the additional resources available under the post-2011 mandatory social price support scheme on older, poorer pensioner households.

Social tariff data

7.9 The Regulations allow electricity suppliers to provide to DWP the names and addresses of their customers – and also to indicate to the Department which of their customers are already receiving discounted tariffs on their electricity account.

7.10 The current policy intention is not to include existing recipients of a social tariff in the rebate. This is for reasons of fairness, and to meet the intention of providing help to people vulnerable to fuel poverty and in particular those who do not respond to other forms of offers of help. The Government does not know how many of the people who are in receipt of only the guarantee credit element of SPC will already be receiving a discounted tariff. If the degree of overlap between existing social tariff recipients and our target group is small, then the policy will be maintained. However, if the degree of overlap is so large that to exclude social tariff recipients would result in giving the rebate to a much smaller number than planned, the Government will reappraise this policy. In these circumstances the Government may decide to offer this group a rebate through the scheme.. This cannot be determined without knowledge of the degree of overlap between existing recipients and our target group and its impact on potential numbers of beneficiaries. Once the Secretary of State has this information, she will determine whether or not to pass information on those individuals back to their energy suppliers.

7.11 Following the data-matching exercise, it is intended that DWP will send letters to all those in receipt of SPC whose data has not been successfully matched i.e. those in receipt of Pension Credit whose names, for whatever reason, do not appear on any of the suppliers' lists e.g. because they are spelt differently in DWP's records. These letters will explain the scheme and the criteria for eligibility and set out that the recipient may be entitled to receive the benefit which has been automatically applied to those who did match. The letter would be intended to encourage these persons to contact their energy supplier.

7.12 Without the social tariff data, the Government would not know who among the unmatched group was already in receipt of a social tariff, and therefore ineligible for the rebate under the current policy intention. Persons in that group would then receive a general letter from DWP, along with all others who did not match.

³ http://www.decc.gov.uk/en/content/cms/publications/lc_trans_plan/lc_trans_plan.aspx

7.13 This could create confusion and potentially distress to a vulnerable group of elderly persons, few of whom are likely to be active in the energy market and few of whom are likely to know whether they are on a social tariff. Moreover, many will have concerns about affording the cost of adequately heating their homes during winter. Unnecessarily raising their expectations of the possibility of an additional reduction in their energy bill and the distress it might cause when they subsequently find they are ineligible could be largely avoided, and dealt with more appropriately, if we had access to the necessary data.

7.14 The provision of the social tariff data will allow those whose data has been successfully matched but are already on a social tariff to be treated in a more targeted and tailored way. This could either be by excluding them from any DWP mail shot, thus ensuring that they would not receive unnecessary communications about assistance for which they are not eligible, or by DWP contacting them in a way that is targeted more appropriately to their situation, for example explaining the policy and setting out why they are not eligible.

7.15 If there were a seemingly poor match rate (i.e. relatively few payments are made as a direct result of data-matching), the Government will be able to understand if this is due to many persons in receipt of Pension Credit already receiving social tariffs or because we have a large number of genuine mismatches (e.g. through different spellings of names or addresses between DWP and supplier records). This will help the Government to know if it needs to improve the processes, or look to collect different data to ensure effective matching in any future process.

Data matching and retention

7.16 DWP's authorised IT provider, HP Enterprise Services, will be responsible for undertaking the data-matching exercise as DWP's agent. After the matching process, the only information that DWP will keep is a record of relevant SPC claimants who did not match so that the Department can write to them. No information provided by electricity suppliers will be kept by DWP after the matching process. It will not become information that could be used for social security or other purposes.

8. Consultation outcome

8.1 The Government consulted from 24th September 2009 to 23rd October 2009, on the draft Regulations and scheme details. While mindful of Cabinet Office guidance that consultation should be at least 12 weeks, the Government is anxious to bring forward this legislation in early in 2010 so that systems and the data matching process can be fully tested before the scheme begins to operate. The Government's aim is to share the matched data with suppliers and begin the rebates in spring 2010, when some householders will have had higher bills to reflect their higher winter fuel consumption. The Government therefore decided that, on balance, it was preferable to opt for a short consultation.

8.2 To mitigate the impact of a shortened period, the Government actively sought the views of stakeholders and interested parties. As well as publishing on the DWP consultation website, the consultation document was issued to 49 organisations including the big six energy suppliers, customer representative organisations and the Information Commissioner. In addition, although there was no formal requirement to

consult the Social Security Advisory Committee, the Government included them in the consultation exercise. 24 replies were received. DWP also arranged a seminar towards the end of the consultation period with key stakeholders at which proposals were discussed. Suppliers, representatives from Equality and Human Rights Commission, Age Concern, National Energy Action, Energy Retail Association, National Right to Fuel Campaign, Citizens Advice Bureau, Consumer Focus and EAGA attended the seminar.

8.3 The scheme was generally welcomed by those responding to the consultation exercise and attending the seminar. Several issues were raised, such as the name and coverage of the scheme, the amount of the rebate, extending the purposes for which the data could be used, the definition of an energy supplier and concerns over data protection. The Government has considered these carefully and made changes to the draft Regulations. The most notable changes to this instrument are:

- to permit electricity suppliers to contact customers who have received the rebate to offer to place them on a register for priority services;
- to re-name the scheme the Energy Rebate Scheme.

8.4 There was also a range of suggestions which the Government considered but did not adopt, for example, where some of those consulted asked us to include who would qualify for the rebate and when and how the payment would be made. The Government was unable to implement these suggestions as section 142 of the Pensions Act 2008 allows the Regulations to deal only with the data sharing element of the scheme. Details of how the scheme will operate will be contained within the scheme policy document. This document should be read in conjunction with the Regulations for a clear understanding of how the scheme will work.

8.5 The Government's response is available on DWP's website.

8.6 DWP consulted the Ministry of Justice and the Scottish Executive's criminal law division regarding the offence provisions in Regulations 7 and 8. They are content that these provisions are appropriate for such a Scheme.

9. Guidance

9.1 Mechanisms will be put in place to inform customers about the Scheme, and to make available contact details for obtaining further information. Information about who is entitled will be made available before the scheme is operational, Government will work with external stakeholders who represent pensioner groups on our communications strategy.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to simply facilitating the sharing of data.

10.2 The impact on the public sector comprises minimal administration costs.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

At the end of the data-matching exercise and once the rebates have been delivered the Government will evaluate the success of the scheme and make an assessment as to whether it provides a secure and effective means of targeting assistance to poorer pensioners which could be used in an ongoing scheme. In particular the Government will consider whether the scheme provides value for money, whether it meets legal and data protection standards, and whether the systems and processes associated with data-sharing are effective. The Government will continue to work with stakeholders to ensure that any impacts on welfare organisations, and those they represent, are included in any evaluation.

13. Contact

Yasmin Ghazali at the Department for Work and Pensions Tel: 0207 449 7147 or email: Yasmin.Ghazali@dwp.gsi.gov.uk can answer any queries regarding this instrument.