

2016 No. 806

ELECTRICITY

GAS

**The Warm Home Discount (Miscellaneous Amendments)
Regulations 2016**

Made - - - - *22nd July 2016*

Coming into force in accordance with regulation 1

The Secretary of State for Energy and Climate Change makes the following Regulations in exercise of the powers conferred by sections 9, 10, 14(4), and 31(5) and (6) of the Energy Act 2010(a), and sections 142, and 144(2) and (4), of the Pensions Act 2008(b), with the consent of the Treasury(c).

The Secretary of State has consulted the Gas and Electricity Markets Authority, licensed electricity suppliers, licensed gas suppliers and such other persons as the Secretary of State considers appropriate.

In accordance with section 31(2)(b) of the Energy Act 2010 and section 143(4) and (5)(a) of the Pensions Act 2008 a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Warm Home Discount (Miscellaneous Amendments) Regulations 2016 and come into force on the day after the day on which they are made.

Amendment of the Warm Home Discount Regulations 2011

2. The Warm Home Discount Regulations 2011(d) are amended in accordance with regulations 3 to 22.

Amendments to regulation 2 (interpretation)

3.—(1) In regulation 2(1)—

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- (a) 2010 c. 27. Sections 9 and 31 of the Energy Act 2010 will be amended by section 58 of the Scotland Act 2016 (c.11) once that section is brought into force.
- (b) 2008 c. 30.
- (c) The consent of the Treasury is required by section 14(3) of the Energy Act 2010 to make regulations under section 9 of that Act.
- (d) S.I. 2011/1033, amended by S.I. 2014/695 and S.I. 2015/652.

- (a) for the definition of “couple” substitute—
 - ““couple” means—
 - (a) two people who are married to, or civil partners of, each other and are members of the same household; or
 - (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”;
- (b) in the definition of “the prescribed rebate”, in paragraph (d), for “years 4 and 5” substitute “years 4, 5, 6 and 7”;
- (c) for the definition of “scheme year” (including the definition of “scheme year” followed by a number from 1 to 5) substitute—
 - ““scheme year” means a period—
 - (a) from the commencement date to 31st March 2012 (“scheme year 1”);
 - (b) of 12 months commencing on 1st April in any of the years 2012 to 2015 (and “scheme year” followed by a number from 2 to 5 means the scheme year commencing in 2012, 2013, 2014 or 2015, as the case may be);
 - (c) from the third commencement date to 31st May 2017 (“scheme year 6”); or
 - (d) from 1st June 2017 to 31st March 2018 (“scheme year 7”);”;
- (d) after the definition of “second commencement date” insert—
 - ““specified activity” has the meaning given in regulation 27A(1);”;
- (e) after the definition of “state pension credit” insert—
 - ““third commencement date” means the date on which the Warm Home Discount (Miscellaneous Amendments) Regulations 2016 come into force;”.
- (2) After regulation 2(2) insert—
 - “(3) For the purposes of these Regulations, a prescribed rebate is undelivered if—
 - (a) the rebate was provided to a customer by tendering payment of the amount of the prescribed rebate to the customer, and the customer has not accepted that payment; or
 - (b) the rebate was provided to a customer who pre-pays for electricity or gas with credit in the amount of the prescribed rebate against the cost of future electricity or gas use, and the customer has not accepted that credit.”.

Amendments to regulation 3 (name and duration of scheme)

- 4. In regulation 3—
 - (a) in paragraph (2), before “scheme period” insert “first”;
 - (b) in paragraph (3), before “scheme period” insert “first”;
 - (c) after paragraph (3) insert—
 - “(4) The scheme also has effect during the period from the third commencement date to 31st March 2018 (“the second scheme period”).
 - (5) The following duties and powers continue to apply after the end of the second scheme period—
 - (a) the duties of scheme suppliers under regulations 9(6) and (7), 14(3A) and 30(3);
 - (b) the duty of the Secretary of State under regulation 10;
 - (c) the duties of the Authority under regulation 29; and
 - (d) the powers of the Authority under regulation 30(1) and (2).”.

Amendments to regulation 4 (notification by suppliers)

5. In regulation 4—

(a) in paragraph (2)(b), for “and 2014” substitute “, 2014 and 2017”;

(b) after paragraph (2)(c) insert—

“(d) 14 days after the third commencement date.”;

(c) after paragraph (3A) insert—

“(3B) If, before the third commencement date, a supplier has notified the Authority of the number of that supplier’s domestic customers on 31st December 2015, the Authority shall treat that as the supplier’s notification for the purposes of paragraph (2)(d).”.

Amendments to regulation 5 (scheme suppliers)

6. In regulation 5(4)—

(a) in sub-paragraph (b), for “and 4” substitute “, 4 and 7”;

(b) after sub-paragraph (c) insert—

“(d) in relation to scheme year 6, by 14 days after the third commencement date.”.

Amendment to regulation 6 (determination of scheme customers by the Secretary of State)

7. After regulation 6(4) insert—

“(5) In scheme year 7, a notice may not be given after 1st March 2018.”.

Amendments to regulation 7 (provision of rebate to core group customers)

8. In regulation 7(3)—

(a) after sub-paragraph (a) insert—

“(aa) following a request by the customer, crediting to the customer’s gas account an amount as a result of which the amount (including Value Added Tax) charged to the customer is reduced by the amount of the prescribed rebate;”;

(b) at the end of sub-paragraph (b) omit “or”;

(c) at the end of sub-paragraph (c) insert “or”;

(d) after sub-paragraph (c) insert—

“(d) following a request by the customer, providing a customer who pre-pays for gas with credit in the amount of the prescribed rebate against the cost (including Value Added Tax) of future gas use.”.

Amendment to regulation 9 (provision of information by suppliers)

9. In regulation 9, after paragraph (6) insert—

“(7) For scheme years 6 and 7, a scheme electricity supplier must, within the period specified in paragraph (8), notify the Authority of the number of prescribed rebates provided, or treated as being provided, by the supplier under this Part in the scheme year which are undelivered as at the date of the notification.

(8) The period specified for the purposes of paragraph (7) is—

(a) for scheme year 6, the period beginning on 1st July 2017 and ending on 30th September 2017;

(b) for scheme year 7, the period beginning on 1st April 2018 and ending on 31st August 2018.”.

Amendments to regulation 12 (determination and notification of non-core spending obligation)

10. In regulation 12—

- (a) in paragraph (1)(b), for “3 and 4” substitute “3, 4 and 7”;
- (b) after paragraph (1)(c) insert—
 - “(d) for scheme year 6, by 7 days after the third commencement date.”;
- (c) after paragraph (5) insert—
 - “(6) The Authority must—
 - (a) for scheme year 6, by 28 days after the third commencement date, and
 - (b) for scheme year 7, by 14th March 2017,calculate for each compulsory scheme electricity supplier, and notify to that supplier, the amounts specified in paragraph (7).
 - (7) The amounts specified for the purposes of paragraph (6) are—
 - (a) the supplier’s non-core spending obligation (subject to any later adjustment under regulation 14);
 - (b) the amount of spending which the supplier must aim to make under Chapter 2; and
 - (c) the maximum amount of spending which the supplier may count towards meeting its non-core spending obligation under Chapters 4 and 5 combined (subject to any determination by the Authority under regulation 15(3A)(ba)(ii)).”.

Amendments to regulation 13 (calculation of non-core spending obligation)

11. In regulation 13—

- (a) in paragraph (5)—
 - (i) for “year 5” substitute “years 5, 6 and 7”;
 - (ii) after “overall spending target” insert “for the scheme year”;
- (b) in paragraph (6)—
 - (i) in sub-paragraph (a), after “Schedule 1” insert “and C was a compulsory scheme electricity supplier in the preceding scheme year”;
 - (ii) in sub-paragraph (b), after “Schedule 1” insert “and C was a compulsory scheme electricity supplier in the preceding scheme year”;
 - (iii) after sub-paragraph (b) insert—
 - “(c) A, if C was not a compulsory scheme electricity supplier in the preceding scheme year.”;
- (c) for paragraph (7) substitute—
 - “(7) In paragraph (6)—
 - (a) A is C’s relevant percentage for the scheme year of the amount which would have been the aggregate non-core spending obligation for that scheme year if the overall spending target had not been reduced or increased under paragraph 5, or paragraph 6 (as applicable), of Schedule 1;
 - (b) B is C’s relevant percentage, as determined under paragraph (2) for the preceding scheme year, of the amount by which the overall spending target has been reduced or increased under paragraph 5, or paragraph 6 (as applicable), of Schedule 1.”.

Amendments to regulation 14 (adjustments for banking and borrowing)

12. In regulation 14—

- (a) in paragraph (1), for “2, 3, 4 and 5” substitute “2 to 7”;

- (b) in paragraph (3)(b)(iii), for “year 5” substitute “years 5, 6 and 7”;
- (c) after paragraph (3) insert—
 - “(3A) For scheme years 6 and 7, a compulsory scheme electricity supplier must, within the period specified in paragraph (3B), notify the Authority of the number of prescribed rebates provided by the supplier under Chapter 2 in the scheme year which are undelivered as at the date of the notification.
 - (3B) The period specified for the purposes of paragraph (3A) is—
 - (a) for scheme year 6, the period beginning on 1st July 2017 and ending on 30th September 2017;
 - (b) for scheme year 7, the period beginning on 1st April 2018 and ending on 31st August 2018.
 - (3C) In scheme year 7, whether or not an adjustment is also made under paragraph (1), the Authority must adjust each supplier’s non-core spending obligation by adding F, where F is £140 multiplied by the total number of prescribed rebates provided, or treated as being provided, by the supplier in scheme year 6 which the supplier has notified under regulation 9(7) and paragraph (3A) as undelivered.”;
- (d) in paragraph (4), after “4 and 5” insert “and by 31st October in scheme year 7”;
- (e) after paragraph (4) insert—
 - “(5) In scheme year 6, the Authority must notify each compulsory scheme electricity supplier of the matters referred to sub-paragraphs (a) and (b) of paragraph (4) by 30th September 2016, or by 2 months after the third commencement date, whichever is the later.”.

Amendments to regulation 15 (types and amounts of spending)

- 13.**—(1) In regulation 15(3)—
- (a) in sub-paragraph (a)—
 - (i) for “year 5” substitute “years 5, 6 and 7”;
 - (ii) after “regulation 12(5)(b)” insert “or (7)(b) for the scheme year”;
 - (b) at the end of sub-paragraph (b) omit “and”;
 - (c) at the beginning of sub-paragraph (c) insert “in scheme years 1 to 5,”;
 - (d) at the end of sub-paragraph (c) insert “and”;
 - (e) after sub-paragraph (c) insert—
 - “(d) in scheme years 6 and 7, may include spending on industry initiatives under Chapter 4 and on specified activities under Chapter 5, subject to the limits in paragraphs (4)(d) and (4B).”.
- (2) In regulation 15(3A)—
- (a) for “year 5” substitute “years 5, 6 and 7”;
 - (b) for sub-paragraph (a) substitute—
 - “(a) a compulsory scheme electricity supplier must notify the Authority by 15th December in the scheme year if it considers that it will not incur at least the amount of spending notified to the supplier under regulation 12(5)(b) or (7)(b) for the scheme year.”;
 - (c) at the beginning of sub-paragraph (b), insert “in scheme year 5,”;
 - (d) at the end of sub-paragraph (b) omit “and”;
 - (e) after sub-paragraph (b) insert—
 - “(ba) in scheme years 6 and 7, the Authority must, within 28 days of receiving such a notification—

- (i) determine whether, and if so the extent to which, the supplier may incur spending below that amount;
 - (ii) where the Authority determines that the supplier may incur spending below that amount, determine the amount by which the supplier must increase its spending under Chapters 4 or 5; and
 - (iii) notify the supplier accordingly; and”;
- (f) in sub-paragraph (c), for “sub-paragraph (b)(iii)” substitute “sub-paragraphs (b)(iii) or (ba)(iii)”.
- (3) In regulation 15(4)—
- (a) at the end of sub-paragraph (b)(ii) omit “and”;
 - (b) at the end of sub-paragraph (c)(iii) insert “and”;
 - (c) after sub-paragraph (c) insert—
 - “(d) under Chapters 4 and 5 combined, in scheme years 6 and 7, is the relevant percentage of £30 million, unless the Authority has notified the supplier under paragraph (3A)(ba)(iii) that spending in excess of that amount is necessary to meet the supplier’s non-core spending obligation.”.
- (4) In regulation 15(4A), for “year 5” substitute “years 5, 6 and 7”.
- (5) After regulation 15(4A) insert—
- “(4B) The maximum amount of spending under Chapter 4 on debt write-off that a compulsory scheme electricity supplier may count towards its non-core spending obligation is the relevant percentage of—
- (a) £15 million in scheme year 6; and
 - (b) £12 million in scheme year 7.”.
- (6) In regulation 15(5), for “paragraphs (4) and (4A)” substitute “paragraphs (4) to (4B)”.
- (7) After regulation 15(5), insert—
- “(6) In paragraph (4B), “debt write-off” means the provision of assistance to reduce or cancel debts for household electricity or gas supply by means of reducing or cancelling the debts.”.

New regulation 17A (scheme year 6 spending incurred before third commencement date)

14. After regulation 17 insert—

“Scheme year 6 spending incurred before third commencement date

17A. In scheme year 6, a compulsory scheme electricity supplier may treat as an amount of spending incurred under Chapter 4 any spending which—

- (a) was incurred in the period beginning on 1st April 2016 and ending on the day before the third commencement date, and
- (b) would count towards its non-core spending obligation by virtue of Chapter 4 if the Warm Home Discount (Miscellaneous Amendments) Regulations 2016 had come into force on 1st April 2016.”.

Amendments to regulation 19 (eligibility criteria and verification measures)

15. In regulation 19—

- (a) in paragraph (4)(b), for “2, 3, 4 and 5” substitute “2 to 7”;
- (b) in paragraph (6), for “2, 3, 4 and 5” substitute “2 to 7”.

Amendments to regulation 20 (provision of rebate to broader group customers)

16.—(1) In regulation 20(1), in sub-paragraph (b)(ii), for “year 1” substitute “years 1 and 6”.

(2) In regulation 20(2)—

(a) after sub-paragraph (a) insert—

“(aa) following a request by the customer, crediting to the customer’s gas account an amount as a result of which the amount (including Value Added Tax) charged to the customer is reduced by the amount of the prescribed rebate;”;

(b) at the end of sub-paragraph (b) omit “or”;

(c) at the end of sub-paragraph (c) insert “or”;

(d) after sub-paragraph (c) insert—

“(d) following a request by the customer, providing a customer who pre-pays for gas with credit in the amount of the prescribed rebate against the cost (including Value Added Tax) of future gas use.”.

New regulation 21ZA (scope of Chapter 3)

17. In Chapter 3 of Part 4, before regulation 21 insert—

“Scope of Chapter 3

21ZA. This Chapter does not apply in scheme years 6 and 7.”.

Amendments to regulation 26 (industry initiatives)

18. In regulation 26—

(a) in paragraph (1), after “regulation 15(4)” insert “and (4B)”;

(b) in paragraph (3)(b)(ii), for “year 1” substitute “years 1 and 6”.

New Chapter 5 of Part 4 (specified activities)

19. In Part 4, after regulation 27 insert—

“CHAPTER 5

Specified Activities

Activities specified by the Secretary of State

27A.—(1) Subject to regulation 15(4) and paragraphs (3) and (4), a compulsory scheme electricity supplier may, in respect of scheme years 6 and 7, count towards its non-core spending obligation financial contributions (excluding Value Added Tax) made by the supplier in the scheme year to fund an activity specified in a notice published by the Secretary of State in accordance with paragraph (2) (a “specified activity”).

(2) The Secretary of State may publish a notice specifying an activity for the purposes of paragraph (1) where the Secretary of State is satisfied that—

(a) the funding of the activity is open to contributions from any compulsory scheme electricity supplier;

(b) the activity is of a kind listed in the first column of the table in Schedule 4 and does not fall within an exception in the second column of the table;

(c) the activity includes adequate measures to ensure, so far as reasonably practicable, that—

(i) every domestic consumer provided with benefits under the activity will be provided with energy advice; and

- (ii) benefits under the activity will be provided wholly or mainly to persons in fuel poverty or in a fuel poverty risk group; and
 - (d) the activity will provide value for money.
- (3) Financial contributions made to fund a specified activity may not count towards a compulsory scheme electricity supplier's non-core spending obligation if the financial contribution—
- (a) is made pursuant to a requirement in any other enactment, or in an electricity supply licence or gas supply licence; or
 - (b) is counted by a scheme supplier towards a spending obligation or target imposed by any other enactment, or by an electricity supply or gas supply licence.
- (4) Paragraph (1) only applies in relation to financial contributions made to fund a specified activity if the financial contribution is made after the Secretary of State has published the notice specifying the activity for the purposes of paragraph (1)."

Amendments to regulation 29 (determination of amounts spent by scheme suppliers)

20. In regulation 29(1)(c)—

- (a) at the end of paragraph (i) omit "and";
- (b) at the end of paragraph (ii) insert "and";
- (c) after paragraph (ii) insert—
 - “(iii) for scheme years 6 and 7, spending on specified activities under Chapter 5 of Part 4.”.

Amendments to Schedule 1 (aggregate non-core spending obligation)

21. In Schedule 1—

- (a) after paragraph 3(c)(iii) insert—
 - “(iv) £323 million for scheme year 6;
 - (v) £329 million for scheme year 7.”;
- (b) in paragraph 4, for “scheme year 2, 3, 4 or 5” substitute “any of scheme years 2 to 7”;
- (c) in paragraph 7, for “scheme year 3, 4 or 5” substitute “any of scheme years 3 to 7”.

Amendment to Part 1 of Schedule 2 (broader group eligibility criteria : description of persons satisfying condition 1)

22. In Part 1 of Schedule 2, in paragraph 4, for “is self-employed” substitute “self-employed”.

Amendments to regulation 2 of the Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011 (interpretation)

23. In regulation 2(1) of the Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011(a)—

- (a) for the definition of “couple” substitute—
 - ““couple” means—
 - (a) two people who are married to, or civil partners of, each other and are members of the same household, or
 - (b) two people who are not married to, or civil partners of, each other but are living together as a married couple;”;

(a) S.I. 2011/1830, amended by S.I. 2015/652.

(b) for the definition of “scheme year” substitute—

““scheme year” has the meaning given in regulation 2(1) of the WHD Regulations;”.

21st July 2016

Neville-Rolfe
Minister of State
Department for Business, Energy and Industrial Strategy

We consent.

22nd July 2016

David Evennett
Mel Stride
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on the day after the day on which they are made, amend the Warm Home Discount Regulations 2011 (the “WHD Regulations”) and the Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011 (the “Disclosure Regulations”).

The WHD Regulations established the Warm Home Discount scheme (“the Scheme”), which was in operation for five years, until 31st March 2016. The Scheme placed obligations on licensed electricity suppliers who have 250,000 or more domestic customer accounts (or who are part of a group of electricity or gas supply companies which together have 250,000 or more domestic customer accounts) to incur spending on providing benefits to customers who are in, or are at risk of, fuel poverty.

The Scheme required those electricity suppliers to provide a rebate in each scheme year to their “core group customers” (that is, domestic customers who are, or who have a partner who is, in receipt of state pension credit guarantee credit). It also required those suppliers to incur “non-core spending” by providing the rebate to other domestic customers (“the broader group”) who met their eligibility criteria, and by undertaking “industry initiatives” for the benefit of energy consumers, such as the provision of energy advice or debt assistance.

Regulations 3(1)(c) and (e) and 4(c) amend the WHD Regulations to reinstate the Scheme for a further two scheme years. Scheme year 6 will run from the coming into force of this instrument to 31st May 2017, and scheme year 7 will run from 1st June 2017 to 31st March 2018.

A number of amendments are made to the WHD Regulations for the new scheme years. Regulation 3(1)(b) sets the value of the prescribed rebate to customers at £140, and regulation 21(a) sets the overall spending target at £323 million for scheme year 6 and £329 million for scheme year 7.

Regulation 3(1)(a) replaces the definition of “couple”.

Regulations 5(b), 6(b), 10(b) and (c) and 12(d) and (e) change the deadlines for certain notifications and determinations under the Scheme.

Regulation 5(c) inserts provision to take into account notifications of domestic customer numbers made to the Authority before this instrument comes into force, and regulation 14 inserts provision

to enable spending on industry initiatives incurred between 1st April 2016 and the coming into force of this instrument to count towards the non-core spending obligation.

Regulations 8 and 16(2) insert provision to allow the rebate to be credited to the customer's gas account.

Regulations 9 and 12(c) insert requirements on scheme electricity suppliers to notify the Gas and Electricity Markets Authority ("the Authority") following the end of the scheme year of the number of rebates they provided in the scheme year which were not accepted by the customer. The supplier's non-core spending obligation for scheme year 7 is increased by the value of the rebates provided in scheme year 6 that were not accepted.

Regulation 11(b) inserts provisions for the calculation of the non-core spending obligation of a supplier that was not a compulsory scheme electricity supplier in the preceding scheme year.

Regulation 13(5) and (7) insert limits on the amount of spending on industry initiatives for debt reduction or cancellation that can count towards a supplier's non-core spending obligation.

Regulation 17 inserts provision so that nothing in Chapter 3 of Part 4 of the WHD Regulations (relating to legacy spending) applies in scheme years 6 and 7.

Regulation 19 inserts a new Chapter 5 into Part 4 of the WHD Regulations to allow spending on activities specified in a notice published by the Secretary of State to count towards the non-core spending obligation. Regulation 13(3) inserts a limit on the combined amount of spending on industry initiatives and on activities specified by the Secretary of State that can be counted towards the non-core spending obligation.

The remaining provisions in regulations 3 to 21 amend the WHD Regulations in consequence of the extension of the Scheme and the other changes described above.

Regulation 22 corrects a drafting error in Schedule 2 to the WHD Regulations.

The Disclosure Regulations authorise the sharing of data between the Secretary of State and electricity suppliers about customers, or their partners, who are in receipt of state pension credit, to facilitate the operation of the Scheme. This instrument amends the Disclosure Regulations to align the definitions of "couple" and "scheme year" with the WHD Regulations, as amended by these Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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