

EXPLANATORY MEMORANDUM TO
THE WARM HOME DISCOUNT (RECONCILIATION) (AMENDMENT)
REGULATIONS 2017

2017 No. 847

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 makes amendments to the Warm Home Discount (Reconciliation) Regulations 2011 (“the Reconciliation Regulations”), which provide for the operation of a reconciliation mechanism for the purposes of the Warm Home Discount scheme (“the Scheme”).

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 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Warm Home Discount (Reconciliation) Regulations 2011 are part of a suite of three sets of regulations which together establish and regulate the Scheme. The other sets being the Warm Home Discount Regulations 2011 (“the WHD Regulations”) and the Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011.
- 4.2 The Scheme requires licensed electricity suppliers to incur spending on providing benefits to customers who are in, or are at risk of, fuel poverty. One part of the Scheme consists of the Core Group, under which participating electricity suppliers provide a rebate of £140 off electricity bills to their eligible customers in receipt of Pension Credit Guarantee Credit.
- 4.3 The Warm Home Discount (Miscellaneous Amendments) Regulations 2016 amended the WHD Regulations to extend the Scheme for a sixth and seventh scheme year to 31st March 2018. The WHD Regulations were also amended to require participating electricity suppliers to notify the Gas and Electricity Markets Authority (“the Authority”) of the number of rebates they provided which were not accepted by the customer, and to require the Authority to take this into account when setting the amount to be spent by the supplier under the Scheme in scheme year 7.

- 4.4 The Reconciliation Regulations establish a reconciliation mechanism which balances the amount of Core Group rebates across electricity suppliers, by providing for cash transfers to be made between suppliers so that each supplier pays for a share of the total number of Core Group rebates that is proportionate to its market share. The cash transfers are calculated and administered by an operator (“the Operator”).
- 4.5 Under section 11(2) of the Energy Act 2010, the reconciliation mechanism must secure, so far as reasonably practicable, an equitable distribution between the electricity suppliers. Regulations 8 and 9 of this instrument amend the final reconciliation process so that deductions are made for the number of rebates provided by a supplier which were not accepted by the customer.
- 4.6 For scheme year 6, this change to the final reconciliation process does not apply if, before this instrument comes into force, the Authority has given the notification to the Operator under regulation 7(a) of the Reconciliation Regulations that triggers the start of the final reconciliation process. The Authority cannot give the notification until after it has determined the total amount of Core Group rebates provided by each electricity supplier (and this is not expected before this instrument comes into force).
- 4.7 In 2011, Elexon Ltd was appointed by the Secretary of State as the Operator following a procurement, and in 2015 the contract was extended until 30th November 2017, when the final reconciliation for scheme year 6 is expected to have been completed. Regulation 3(b) of this instrument appoints the Authority as the Operator for scheme year 7.
- 4.8 Regulation 11(d) of this instrument amends regulation 11(5) of the Reconciliation Regulations to correct a drafting error.
- 4.9 Regulations 12 and 14 of this instrument exclude the Authority from the appeals process and the provisions for non-performance of obligations set out in regulations 14 and 16 of the Reconciliation Regulations. The Authority will put in place and publish an internal appeals process for its role as the Operator. The obligations of the Authority under the Scheme, including its obligations where it is the Operator, may be enforced by judicial review.
- 4.10 The remainder of this instrument makes consequential amendments on the appointment of the Authority as the Operator.

5. Extent and Territorial Application

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

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The Warm Home Discount 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 appointment of the Authority as the Operator for scheme year 7 will provide a streamlined administration of the reconciliation, as the Authority holds information on the market shares of energy suppliers and information on the rebates delivered by suppliers needed for the reconciliation, and participating suppliers will deal with fewer organisations in the administration of their obligations under the Regulations.
- 7.3 The purpose of the reconciliation mechanism is to ensure that a supplier that has a disproportionate number of customers eligible for Core Group rebates is not put at a competitive disadvantage. The Government considers that the reconciliation process should operate on the basis of the number of rebates that have actually benefited customers. The total number of Core Group rebates should not include those provided by way of vouchers or by way of credit for pre-payment meters which have not been accepted by the customer.
- 7.4 The approach is to amend the Reconciliation Regulations so that they take into account changes that were made to the WHD Regulations for the sixth and seventh scheme year.
- 7.5 Government will consult in due course on the future of the Scheme beyond scheme year 7 (2017/18).

Consolidation

- 7.6 This is the second instrument to amend the Reconciliation Regulations and a consolidation of these regulations is not considered necessary at present.

8. Consultation outcome

- 8.1 The amendment to the reconciliation process made by regulations 8 and 9 of this instrument was within the scope of the public consultation on the Warm Home Discount scheme which was carried out for 4 weeks from 8th April 2016 to 6th May 2016. The consultation outcome is described in the explanatory memorandum for the Warm Home Discount (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/806). The majority of respondents agreed with the principle that the scheme should only take into account rebates that have been accepted by the customer, but the energy suppliers who responded opposed the proposal. A formal Government response was published on 29th June 2016.¹
- 8.2 The Department consulted the Authority, Elexon Ltd and electricity suppliers on the appointment of the Authority as the Operator for scheme year 7. The consultation ran for 2 weeks from 8th March to 21st March 2017. Two weeks was considered appropriate due to the specific nature of the proposal.
- 8.3 Nine responses were received. The majority of responses were broadly in favour of the appointment of the Authority. Two responders were opposed to the appointment.
- 8.4 The Department has placed a copy of its response on the gov.uk website.²

¹ <https://www.gov.uk/government/consultations/warm-home-discount-scheme-201617>

² <https://www.gov.uk/government/publications/beis-response-to-consultation-on-the-warm-home-discount-reconciliation-regulations>

9. Guidance

- 9.1 Elexon Ltd has provided energy suppliers with guidance on compliance with the requirements of the reconciliation mechanism. The Authority intends to provide guidance for scheme year 7.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is very small. Participating energy suppliers will need to familiarise themselves with the changes to the reconciliation process.
- 10.2 The impact on the public sector is very small. The functions of the Operator will be carried out by the Authority for scheme year 7. These functions were carried out by Elexon Ltd for scheme years 1 to 6 following a procurement.
- 10.3 An impact assessment was published alongside the Warm Home Discount (Miscellaneous Amendments) Regulations 2016 on the legislation.gov.uk website. A separate impact assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses, as the Scheme includes a threshold for mandatory participation. The threshold is set at 250,000 domestic customer accounts. Small electricity suppliers can opt in to participate on a voluntary basis.

12. Monitoring & review

- 12.1 The Secretary of State is under a duty, set out in regulation 31 of the WHD Regulations, to conduct a review of the scheme if the Secretary of State is satisfied that a review would be desirable because of a significant change in circumstances since the commencement of the scheme or if the scheme is not, or may not, be operating effectively or its effectiveness could be improved.
- 12.2 Regulation 2 of this instrument limits the application of the Reconciliation Regulations to scheme years 1 to 7, which run until 31st March 2018. Consultation with the Authority, electricity suppliers and other appropriate persons and new regulations will be needed to extend the application of the Reconciliation Regulations to any scheme years beyond that date.

13. Contact

- 13.1 Charlotte Dann at the Department for Business, Energy and Industrial Strategy Telephone: 0300 068 5232 or email: charlotte.dann@beis.gov.uk can answer any queries regarding the instrument.