

EXPLANATORY MEMORANDUM TO
THE HEAT NETWORK (METERING AND BILLING) (AMENDMENT)
REGULATIONS 2020

2020 No. 1221

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy & Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the existing Heat Network (Metering and Billing) Regulations 2014 (S.I. 2014/3120) (as amended by S.I. 2015/855) (“the Regulations”) which originally transposed heat network metering and billing requirements of Directive 2012/27/EU (the Energy Efficiency Directive (EED)). The amendments ensure that metering devices which measure consumption of heating, cooling or hot water by each final customer are installed in buildings where it is technically feasible and cost-effective to do so, and ensure that compliance with the metering and billing requirements of the Regulations is enforced. This instrument extends mandatory billing and meter accuracy requirements to all customers in buildings where metering devices are installed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Amendments were made by the Heat Network (Metering and Billing) (Amendment) Regulations 2015 (S.I. 2015/855) to correct errors identified by the Joint Committee on Statutory Instruments in their 19th Report of Session 2014-15 dated 21st January 2015. The Explanatory Memorandum to S.I. 2015/855 indicated that regulations 4(9) and 6(7) (which contained the requirement to comply with the accuracy requirements of regulation 5) were omitted as they were considered superfluous. This had the unintended effect of removing the offence of failure to comply with those accuracy requirements. These Regulations remedy that by making failure to comply with regulation 5 an offence.
- 3.2 The Department has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar in relation to the reinstatement of this offence. Having consulted with the SI Registrar, the Department has decided it would be disproportionate to apply the free issue procedure to these Regulations.
- 3.3 The new offence under regulation 11(1)(ba) falls within the either way offences mentioned in regulation 13(2). We consider that section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 does not apply to the new offence, and have therefore amended regulation 13(2) to provide for a fine of an unlimited

amount on summary conviction in England and Wales for the offences under regulation 11(1)(b) to (d).

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)

- 3.4 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 the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

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 Heat Network (Metering and Billing) Regulations 2014 (S.I. 2014/3120) transposed the metering and billing requirements in Articles 9-11 and 13 of the Energy Efficiency Directive (2012/27/EU). This instrument is being made to ensure that the requirements can be effectively enforced.
- 6.2 The amendments introduce building classes based on EU guidelines which determine the metering requirements. Meters which measure consumption must be installed in all buildings in the viable class and in those buildings in the open class where it is cost effective and technically feasible to do so. The instrument amends the methodology in Schedule 1 which a heat supplier must use as a basis for analysing cost-effectiveness.
- 6.3 The original Heat Metering Viability Tool (“the tool) released by the Department for Energy and Climate Change which was suspended in 2015 has been updated to reflect the amendments made to Schedule 1. From the day the Regulations come into force, the new tool will be available on the website of the Office for Product Safety and Standards (OPSS) at <https://www.gov.uk/guidance/heat-networks>.
- 6.4 Due to the suspension of the original tool, regulations 4 and 6 were not enforced by the enforcement authority. In 2015 the enforcement authority was the National Measurement and Regulation Office (NMRO), which subsequently underwent change to become OPSS. OPSS is now the enforcement authority for the Regulations.
- 6.5 Until further customer protection legislation for heat networks is introduced the metering and billing requirements in these Regulations provide the only heat network specific customer protections. Government has committed to introducing new consumer protection measures under its Heat Network Market Framework by 2022. The amendments extend the billing requirements and the requirements for accuracy and ongoing maintenance to all installed metering devices, including those not installed under a duty.

7. Policy background

What is being done and why?

- 7.1 Heat networks deliver space heating, process heating, hot water, and cooling from a central energy source to multiple sites and buildings (district heat networks), or multiple dwellings and non-domestic units within a building (communal heat networks). Further information on heat networks is available on the OPSS website at <https://www.gov.uk/guidance/heat-networks>.
- 7.2 The main objective of the original instrument (and the Directive) is to drive energy efficiency through meter installation and billing based on consumption. Where customers pay for the energy they consume (in this case heating, hot water, and/or cooling) rather than paying a fixed or flat rate, this is expected to lead to a change in behaviour resulting in decreased use of energy, reduced consumer bills, and associated carbon emission savings. Metering also supports fair and transparent billing of customers on heat networks. The amendments support the effective implementation and enforcement of the metering and billing requirements while taking into consideration the burden on heat suppliers.
- 7.3 In new buildings (or those undergoing major renovations) which are supplied by a district heat network, final customer meters have been mandatory since 2014. The amendments introduce an equivalent mandatory requirement for new buildings with communal heat networks, on the basis that this is cost-effective, but allow for some exemptions where energy and cost savings may not be achieved. This means that final customer meters will be installed in almost all new buildings supplied by heat networks to enable fair and transparent billing based on consumption of heat and cooling. This will also drive energy efficiency and cost savings.
- 7.4 In other buildings, final customer metering devices are only required where it is technically feasible and cost-effective to install them. Schedule 1 to the Regulations describes how cost effectiveness must be assessed. In very basic terms, it is considered cost-effective where over a ten-year period the projected cost savings, due to reduced energy consumption, are higher than the costs related to metering and billing.
- 7.5 Due to the suspension of the original Heat Metering Viability Tool in 2015, no meters have been installed in compliance with this requirement. The amendments mean that a new tool can be released and that heat suppliers must install metering devices where it is technically feasible and cost-effective to do so.
- 7.6 To reduce the burden on heat suppliers with regards to carrying out a cost-effectiveness assessment, the instrument introduces three building classes. These are based on guidelines published by the EU Commission and determine a building's metering requirements. The guidelines are available at https://ec.europa.eu/energy/sites/ener/files/documents/mbic_guidelines20170123_en.pdf. In this context the instrument introduces changes to the criteria which determine the metering requirements, most notably the mandatory metering requirement for newly constructed buildings with communal heat networks.
- 7.7 Following the consultation, the proposed building classes have been modified to minimise the burden and cost on heat suppliers where appropriate and to take account of customers in vulnerable circumstances where metering and billing is not expected to drive energy and cost savings. Changes have been introduced with regards to

buildings which contain supported social housing, almshouses, purpose-built student accommodation, and properties covered by a leasehold.

- 7.8 The metering requirements for buildings in each class are as follows:
- Viable class: customer meters are always mandatory;
 - Open class: metering devices (meters or heat cost allocators) are required only where it is assessed to be technically feasible and cost-effective to install them; and
 - Exempt class: no requirement to install metering devices for customers (no assessment of technical feasibility and cost-effectiveness is required as the outcome is expected to be negative).
- 7.9 Heat suppliers must identify the class for each building on their heat network and comply with the metering requirements for that class. The amendments add a requirement for notification of information on building classes to the existing notification requirements.
- 7.10 The instrument extends the requirements on the accuracy and maintenance of meters and heat cost allocators as well as the mandatory billing requirements to all installed metering devices. Previously these requirements only applied to metering devices installed under a duty in the Regulations. These provisions support customer protection and the changes result in the same protections for all customers with metering devices supplied by heat networks falling within the scope of the Regulations.
- 7.11 The instrument amends regulation 11 to include the offence for failing to comply with regulation 5. This amendment will make it possible to take enforcement action where meters are not working correctly.
- 7.12 This instrument sets out transitional arrangements for heat suppliers who already operate heat networks. This includes a 21-month period for heat suppliers to complete the installation of metering devices and comply with all other requirements. The period includes two complete summer periods to minimise disruption to existing customers on heat networks during meter installation. Heat suppliers must determine within the first 12 months if and what kind of metering devices (meters, heat cost allocators, hot water meters) must be installed to ensure necessary activities are prioritised while allowing the market and heat suppliers to respond to the scale of the installations needed.
- 7.13 Heat suppliers are already required to submit a notification of their heat networks to the enforcement agency before the first date of operation and an updated notification every four years after that. In order to minimise the burden on heat suppliers, this instrument does not impose a separate requirement to report on compliance at the end of the transitional period. Heat suppliers must provide information on the number of buildings in each class, the outcome of the technical feasibility and cost-effectiveness assessment, and the number of meters installed as part of their notifications. Where an updated notification is due during the transitional period, it may be submitted at any time up until the end of that period. The instrument introduces a requirement to submit the notification in an approved format to support the audit, compliance and enforcement activities of the enforcement authority.

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.

9. Consolidation

9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 A public consultation on proposed amendments was open from 17 October 2019 to 24 January 2020 (<https://www.gov.uk/government/consultations/heat-network-metering-and-billing-regulations-2014-proposed-amendments>). There was additional engagement with stakeholders to better understand the social housing sector and to improve and test the cost-effectiveness assessment tool.

10.2 The 54 respondents to the consultation represented a diverse range of stakeholders from across the UK, including social housing providers, metering and other businesses, trade associations, local authorities, property management companies, bodies representing consumers, and six individuals. Responses were submitted both via the online survey and by direct submission to the department. Most respondents answered the questions while some submitted summary statements. Additional evidence on metering and billing costs was also provided together with several of the responses.

10.3 The responses were broadly supportive and the proposals have been modified to address the following main stakeholder concerns:

- a longer transitional period for heat suppliers to implement the requirements (from the proposed six months in the consultation to 21 months);
- modification to the building classes to take account of cost and benefit considerations for specific types of housing and properties; and
- for the new cost-effectiveness assessment tool to enable heat suppliers to more accurately reflect estimated savings and costs resulting from the installation of metering devices.

10.4 The full government response is published on the gov.uk website at <https://www.gov.uk/government/consultations/heat-network-metering-and-billing-regulations-2014-proposed-amendments>.

10.5 The department has engaged closely with officials in the devolved administrations during the policy development and the legal drafting.

11. Guidance

11.1 Further guidance for heat suppliers will be available on the OPSS website. The guidance will be available on the day this instrument comes into force (27 November 2020) at <https://www.gov.uk/guidance/heat-networks>.

11.2 The amended notification template, cost-effectiveness assessment tool, and associated user guide will also be available on the OPSS website on the day this instrument comes into force.

12. Impact

- 12.1 The impact on business, charities, and voluntary bodies is as follows. Where these organisations are heat suppliers, they will be required to familiarise themselves with the amendments made by this instrument. There is a further financial impact on heat suppliers where the amendments require the installation of metering devices and compliance with other requirements of the Regulations. The Impact Assessment estimates the additional cost to business at £12m per year. The impact analysis focuses on the costs and benefits associated with installing additional customer level heat metering devices in domestic dwellings or non-domestic premises of currently unmetered heat network customers. It is estimated that out of the approximately 480,000 current heat network customers, 340,000 are unmetered and over the next four years the amendments will result in heat meter devices being installed for an additional 84,000 unmetered customers. A further 13,000 customers are expected to start receiving billing information for their heat usage (where meters are already installed).
- 12.2 The impact on the public sector occurs where a public sector organisation is a heat supplier (for example, for social housing). The impact is included in the estimates of the Impact Assessment as outlined in the previous section.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to reduce the burden on heat suppliers by defining the building classes taking into account comments made during the consultation. Furthermore, the enforcement agency OPSS, in line with the Regulator's code, works with those it regulates to bring them into compliance and offer support where possible. The Regulator's code is available at <https://www.gov.uk/government/publications/regulators-code>.

14. Monitoring & review

- 14.1 The enforcement agency will be monitoring through audit, compliance and enforcement activities.
- 14.2 It is expected that the evaluation will follow a theory-based approach to assess the overall impact of the Regulations. If this approach is adopted then the evaluation would include further analysis of monitoring data, bespoke data collection from heat suppliers and users through surveys and interviews and wider evidence gathering to inform broader impacts.
- 14.3 A statutory review clause was included in the original Regulations. A Post Implementation Review was published in July 2020 (<https://www.legislation.gov.uk/ukxi/2014/3120/resources>), with the next statutory review due by December 2024.

15. Contact

- 15.1 Christine Schams at the Department for Business, Energy & Industrial Strategy. Telephone: 0300 0686815 or email: heatnetworks@beis.gov.uk for any queries regarding the instrument.
- 15.2 John Saunders, Deputy Director for Heat Networks, at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Kwasi Kwarteng MP, Minister of State for Business, Energy and Clean Growth at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.