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STATUTORY INSTRUMENTS

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**2022 No. 1162**

**ELECTRICITY**

**GAS**

**The Warm Home Discount (Reconciliation) Regulations 2022**

<i>Made</i>	- - - -	<i>at 11.24 a.m. on 9th November 2022</i>
<i>Laid before Parliament</i>		<i>at 4.00 p.m. on 9th November 2022</i>
<i>Coming into force</i>	- -	<i>30th November 2022</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 11 and 31(5) and (6) of the Energy Act 2010<sup>(1)</sup>.

In accordance with section 14(1) of the Energy Act 2010, 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 thinks appropriate<sup>(2)</sup>.

**PART 1**

**Introductory**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Warm Home Discount (Reconciliation) Regulations 2022.

(2) These Regulations come into force on 30th November 2022.

(3) These Regulations extend to England and Wales and Scotland.

**Interpretation: general**

2. In these Regulations—

“England & Wales Scheme Regulations” means the Warm Home Discount (England and Wales) Regulations 2022<sup>(3)</sup>;

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<sup>(1)</sup> 2010 c. 27.

<sup>(2)</sup> “Licensed electricity supplier” and “licensed gas supplier” are defined in section 15(5) of the Energy Act 2010.

<sup>(3)</sup> S.I. 2022/772.

“Scotland Scheme Regulations” means the Warm Home Discount (Scotland) Regulations 2022(4).

## PART 2

### Reconciliation Mechanism: England & Wales Scheme Regulations

#### CHAPTER 1

##### Introductory

#### Part 2: Interpretation

3.—(1) In this Part—

“Bank of England base rate” means—

- (a) the percentage rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998(5) is in force, any equivalent percentage rate determined by the Treasury under that section;

“calculation date” has the meaning given in regulation 4(7);

“final reconciliation” means the calculation by the Authority(6) of the amounts to be paid by, or received by, scheme electricity suppliers as final reconciliation payments for a scheme year;

“final reconciliation payment” has the meaning given in regulation 10(1);

“interim reconciliation” has the meaning given in regulation 6(2);

“interim reconciliation direction” has the meaning given in regulation 6(3);

“interim reconciliation payment” has the meaning given in regulation 7(1);

“interim reconciliation period” has the meaning given in regulation 6(5);

“reconciliation payment” means—

- (a) an interim reconciliation payment; or
- (b) a final reconciliation payment;

“reporting date” has the meaning given in regulation 4(7);

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or public holiday in England and Wales or in Scotland.

(2) In this Part the following expressions have the same meanings as in the England & Wales Scheme Regulations(7)—

“core group customer”;

“GB domestic customer”;

“scheme electricity supplier”;

“scheme gas supplier”;

“scheme year” and “scheme year” followed by a number.

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(4) S.I. 2022/1073.

(5) 1998 c. 11.

(6) The “Authority” is defined in section 34 of the Energy Act 2010.

(7) See regulations 2 and 3 of those Regulations.

### **Notification of GB domestic customer numbers: scheme years 13 to 15**

4.—(1) For each of scheme years 13 to 15, the Secretary of State may give a notice to the Authority specifying as a calculation date for the scheme year, a date falling—

- (a) no more than two months before the start of the scheme year; and
- (b) at least two months before the end of the scheme year.

(2) If the Authority is given a notice under paragraph (1), the Authority must give a notice to all relevant suppliers—

- (a) stating the calculation date; and
- (b) specifying a reporting date, which must be a date falling—
  - (i) within the scheme year;
  - (ii) at least one month after the calculation date; and
  - (iii) more than 14 days after the day on which the notice is given to all relevant suppliers.

(3) A relevant supplier who is given a notice under paragraph (2) must notify the Authority on or before the reporting date of the supplier's number of GB domestic customers on the calculation date.

(4) If a relevant supplier does not notify the Authority in accordance with paragraph (3), the Authority must determine the number of the supplier's GB domestic customers on the calculation date.

(5) For the purposes of paragraphs (3) and (4), a relevant supplier's number of GB domestic customers on the calculation date is the number of GB domestic customers to whom the supplier supplies—

- (a) electricity (other than as part of the supply of dual fuel);
- (b) gas (other than as part of the supply of dual fuel); and
- (c) dual fuel,

on that date.

(6) For the purposes of paragraph (5)—

- (a) “dual fuel” means electricity and gas, where both are supplied to a GB domestic customer at the same domestic premises by a person who is both a licensed electricity supplier and a licensed gas supplier;
- (b) a supply of dual fuel to a GB domestic customer is to be treated as a supply to two GB domestic customers.

(7) In this regulation—

“calculation date”, in relation to a scheme year, means a date specified as a calculation date for the scheme year in a notice given by the Secretary of State under paragraph (1);

“relevant supplier” means—

- (a) a scheme electricity supplier; or
- (b) a scheme gas supplier;

“reporting date”, in relation to a scheme year, means a date falling within the scheme year and specified as a reporting date in a notice given by the Authority under paragraph (2).

### **Determination of market share for scheme electricity suppliers**

5.—(1) The Authority must—

- (a) in relation to each scheme year, determine the market share of each scheme electricity supplier on 31st December preceding the start of the scheme year; and

- (b) where the Secretary of State has given a notice under regulation 4(1) specifying a calculation date for the scheme year, determine the market share of each scheme electricity supplier on the calculation date.
- (2) The Authority must make the determination—
- (a) under paragraph (1)(a), as soon as is reasonably practicable after the start of the scheme year;
- (b) under paragraph (1)(b), as soon as is reasonably practicable after the reporting date for the scheme year.
- (3) The market share of a scheme electricity supplier (“E”) is calculated as follows—

$$\left(\frac{X}{Y}\right) \times 100 \%$$

where—

- (a) “X” is the relevant number of GB domestic customers; and
- (b) “Y” is the total number of GB domestic customers of—
- (i) all scheme electricity suppliers; and
- (ii) all scheme gas suppliers.
- (4) For the purposes of paragraph (3)(a), the relevant number of GB domestic customers is—
- (a) if E is connected to one or more scheme gas suppliers but is not connected to any other scheme electricity suppliers, the total number of GB domestic customers of—
- (i) E; and
- (ii) E’s connected scheme gas suppliers;
- (b) if E is connected to one or more scheme gas suppliers and to one or more other scheme electricity suppliers, a number equal to E% of (CE + CG) where—
- (i) “E%” is E’s number of GB domestic customers as a percentage of CE;
- (ii) “CE” is the total number of GB domestic customers of—
- (aa) E; and
- (bb) E’s connected scheme electricity suppliers;
- (iii) “CG” is the number of GB domestic customers of E’s connected scheme gas suppliers;
- (c) otherwise, E’s number of GB domestic customers.
- (5) For the purposes of paragraphs (3) and (4)—
- (a) a reference to a supplier’s number of GB domestic customers is a reference to the supplier’s number of GB domestic customers—
- (i) in relation to a determination under paragraph (1)(a), on 31st December preceding the start of the scheme year as notified, or treated as notified, to the Authority by the supplier under regulation 5(1) of the England & Wales Scheme Regulations, or, as the case may be, determined by the Authority under regulation 5(3) of those Regulations;
- (ii) in relation to a determination under paragraph (1)(b), on the calculation date for the scheme year as notified to the Authority by the supplier under regulation 4(3) of these Regulations or, as the case may be, determined by the Authority under regulation 4(4);
- (b) a supplier is to be treated as connected to another supplier only if they both belonged to the same group of companies on 31st December preceding the start of the scheme year.

(6) For the purposes of paragraph 5(b) “group of companies” has the meaning given in regulation 3(1) of the England & Wales Scheme Regulations.

## CHAPTER 2

### Interim reconciliation

#### **Direction to carry out interim reconciliation**

6.—(1) The Secretary of State may direct the Authority to carry out an interim reconciliation for a scheme year or any part of a scheme year.

(2) An interim reconciliation is a calculation of the amounts to be paid by, or received by, scheme electricity suppliers on account of final reconciliation payments for the scheme year.

(3) A direction under paragraph (1) (an “interim reconciliation direction”) may be given at any time—

- (a) after the Secretary of State has given a rebate notice in the scheme year under regulation 8(1) of the England & Wales Scheme Regulations; but
- (b) before the Authority has notified scheme electricity suppliers in relation to that scheme year under regulation 8 of these Regulations.

(4) The Secretary of State may give more than one interim reconciliation direction to the Authority in relation to different parts of the scheme year.

(5) An interim reconciliation direction must specify the period to which it relates (the “interim reconciliation period”).

(6) The interim reconciliation period specified must end on or before the date on which the interim reconciliation direction is given.

(7) If the Secretary of State gives an interim reconciliation direction to the Authority, the Secretary of State must—

- (a) notify the Authority of—
  - (i) the number of eligible domestic customers of each scheme electricity supplier; and
  - (ii) the total number of eligible domestic customers of all scheme electricity suppliers, to be used for the purposes of calculating interim reconciliation payments; and
- (b) notify each scheme electricity supplier of—
  - (i) the interim reconciliation direction;
  - (ii) the interim reconciliation period;
  - (iii) the number of eligible domestic customers of the supplier notified to the Authority under sub-paragraph (a)(i); and
  - (iv) the total number of eligible domestic customers notified to the Authority under sub-paragraph (a)(ii).

(8) For the purposes of paragraph (7), the number of eligible domestic customers of a scheme electricity supplier is  $A - B$  where—

- (a) “A” is the number of persons that are specified in rebate notices given to the supplier under regulation 8(1) of the England & Wales Scheme Regulations during the interim reconciliation period; and
- (b) “B” is the number of persons the supplier has notified to the Secretary of State during the interim reconciliation period in accordance with regulation 12(5) of the England & Wales Scheme Regulations—
  - (i) as not being core group customers; or

- (ii) whom the supplier is unable to identify as core group customers.

### **Calculation of interim reconciliation payments**

7.—(1) If the Authority is given an interim reconciliation direction in accordance with regulation 6, it must calculate the amount (the “interim reconciliation payment”) to be paid or received by each scheme electricity supplier in accordance with this regulation.

(2) If the amount of interim liability of a scheme electricity supplier (“E”) for the interim reconciliation period exceeds the amount of E’s market share liability for that period, E is entitled to receive an interim reconciliation payment equal to the difference between those two amounts.

(3) If E’s amount of interim liability for the interim reconciliation period is less than the amount of E’s market share liability for that period, E must make an interim reconciliation payment equal to the difference between those two amounts.

(4) For the purposes of paragraphs (2) and (3)—

- (a) a scheme electricity supplier’s interim liability for a period is  $\text{£}150 \times N$ , where “N” is the number of eligible domestic customers of that supplier notified to the Authority under regulation 6(7)(a)(i) for the purpose of calculating the interim reconciliation payment;
- (b) a scheme electricity supplier’s market share liability for a period is  $\text{£}150 \times (M\% \text{ of } T)$ , where—
  - (i) “M%” is the supplier’s latest market share for the relevant scheme year; and
  - (ii) “T” is the total number of eligible domestic customers notified to the Authority under regulation 6(7)(a)(ii) for the purpose of calculating the interim reconciliation payment.

(5) In this regulation—

“latest market share”, in relation to a scheme electricity supplier and a relevant scheme year, means the most recent of any of the following determinations or recalculations of the supplier’s market share made by the Authority before the relevant date—

- (a) a determination under regulation 5(1)(a) of the supplier’s market share on 31st December preceding the start of the relevant scheme year;
- (b) a determination under regulation 5(1)(b) of the supplier’s market share on a calculation date for the relevant scheme year;
- (c) a recalculation under regulation 13(4) of the supplier’s market share for the relevant scheme year;

“relevant date” means the date on which the Authority makes the calculation referred to in paragraph (1);

“relevant scheme year” means the scheme year for which, or for part of which, the interim reconciliation is carried out.

## **CHAPTER 3**

### **Final reconciliation**

#### **Notification of amounts of rebates provided**

8. As soon as is reasonably practicable after the end of a scheme year, the Authority must notify each scheme electricity supplier of—

- (a) the total amount of rebates provided, or treated as being provided, to core group customers in the scheme year by the scheme electricity supplier (as determined in accordance with regulation 27(1)(a) of the England & Wales Scheme Regulations); and

- (b) the sum of the amounts so determined for all scheme electricity suppliers.

### **Estimate of the number of undelivered rebates**

**9.**—(1) This regulation applies where a scheme electricity supplier has not complied with regulation 12(8) of the England & Wales Scheme Regulations in relation to a scheme year.

(2) The Authority must estimate the number of undelivered rebates—

- (a) provided by the scheme electricity supplier in the scheme year; or
- (b) treated as being provided by the supplier in the scheme year by virtue of regulation 10(6)(b) of the England & Wales Scheme Regulations.

(3) In this regulation—

“prescribed rebate” has the meaning given in regulation 3(1) of the England & Wales Scheme Regulations;

“undelivered rebate” means a prescribed rebate provided by a scheme electricity supplier under Part 3 of the England & Wales Scheme Regulations, where the rebate was—

- (a) provided to a customer by tendering payment of the amount of the prescribed rebate to the customer, but the customer has not accepted that payment; or
- (b) 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, but the customer has not accepted that credit.

### **Calculation of final reconciliation payments**

**10.**—(1) The Authority must calculate, in relation to each scheme year, the amount (the “final reconciliation payment”) to be received or paid by each scheme electricity supplier in accordance with this regulation.

(2) The calculation referred to in paragraph (1) must be made as soon as is reasonably practicable after—

- (a) the Authority has given a notification to each scheme electricity supplier under regulation 8; and
- (b) either—
  - (i) each supplier has complied with regulation 12(8) of the England & Wales Scheme Regulations; or
  - (ii) the Authority has made an estimate under regulation 9(2) of these Regulations in respect of each supplier who has not so complied.

(3) If the adjusted contribution of a scheme electricity supplier (“E”) for the scheme year exceeds E’s market share contribution for the scheme year, E is entitled to receive a final reconciliation payment equal to the difference between those two amounts.

(4) If E’s adjusted contribution for the scheme year is less than E’s market share contribution for the scheme year, E must make a final reconciliation payment equal to the difference between those two amounts.

(5) For the purposes of paragraphs (3) and (4)—

- (a) a scheme electricity supplier’s adjusted contribution for a scheme year is the supplier’s actual contribution for the scheme year adjusted by—
  - (i) adding the amounts of any interim reconciliation payments for the scheme year made by the supplier; and

- (ii) subtracting the amounts of any interim reconciliation payments for the scheme year received by the supplier;
  - (b) a scheme electricity supplier's market share contribution for a scheme year is M% of the amount notified to that supplier under regulation 8(b), where "M%" is the supplier's latest market share for the scheme year.
- (6) For the purposes of paragraph (5)(a), a scheme electricity supplier's actual contribution for a scheme year is—

$$A - (£150 \times F)$$

where—

"A" is the amount notified to the supplier under regulation 8(a);

"F" is the number of undelivered rebates provided, or treated as being provided, in the scheme year by the supplier, being the amount notified to the Authority in accordance with regulation 12(8) of the England & Wales Scheme Regulations or, as the case may be, estimated by the Authority in accordance with regulation 9(2) of these Regulations.

(7) In this regulation—

"latest market share", in relation to a scheme electricity supplier and a scheme year, means the most recent of any of the following determinations or recalculations of the supplier's market share made by the Authority before the relevant date—

- (a) a determination under regulation 5(1)(a) of the supplier's market share on 31st December preceding the start of the scheme year;
  - (b) a determination under regulation 5(1)(b) of the supplier's market share on a calculation date for the scheme year;
  - (c) a recalculation under regulation 13(4) of the supplier's market share for the scheme year;
- "relevant date" means the date on which the Authority makes the calculation referred to in paragraph (1).

## CHAPTER 4

### Payments and related matters

#### **Making reconciliation payments**

**11.**—(1) After the Authority has calculated interim reconciliation payments under Chapter 2, or final reconciliation payments under Chapter 3, it must give a notice (a "payment notice") to each scheme electricity supplier who is liable to make or entitled to receive a reconciliation payment.

(2) A payment notice must specify—

- (a) the amount of the reconciliation payment;
- (b) the scheme electricity supplier's latest market share, as used to calculate the reconciliation payment;
- (c) where the supplier is liable to make a reconciliation payment, the date on or before which the payment is to be made;
- (d) where the supplier is entitled to receive a reconciliation payment, the date on or before which the payment is to be made.

(3) The date specified for the purposes of paragraph (2)(c) must be at least three working days after the date on which the payment notice is given.

(4) The date specified for the purposes of paragraph (2)(d) must not be more than 10 working days—



- (a) after the date specified for the purposes of paragraph (2)(c); or
  - (b) if different dates are specified for the purposes of that sub-paragraph for different scheme electricity suppliers, after the latest of those dates.
- (5) A scheme electricity supplier who is given a payment notice and is liable to make a reconciliation payment must pay the specified amount to the Authority on or before the specified date.
- (6) Where a scheme electricity supplier is given a payment notice and is entitled to receive a reconciliation payment, the Authority must pay the specified amount to the scheme electricity supplier on or before the specified date (but see regulation 12(6) and (7)).
- (7) The Authority must maintain a fund into which reconciliation payments by scheme electricity suppliers and from which reconciliation payments by the Authority under these Regulations are to be made.
- (8) In this regulation “specified” means specified in a payment notice.

### **Mutualisation**

**12.**—(1) This regulation applies if, after the Authority has given a notice under regulation 11(1) to each scheme electricity supplier who is liable to make a reconciliation payment, one or more of those scheme electricity suppliers (each a “defaulting supplier”) fails to make the whole or part of the reconciliation payment to the Authority on or before the date on which it is due (the “due date”).

- (2) The Authority must—
  - (a) apportion the total of the overdue amounts that remain unpaid between all the scheme electricity suppliers other than the defaulting suppliers, in proportion to their latest market shares for the relevant scheme year; and
  - (b) give a notice (a “mutualisation notice”) to each of the scheme electricity suppliers other than the defaulting suppliers.
- (3) A mutualisation notice must specify—
  - (a) the amount apportioned to the scheme electricity supplier under paragraph (2)(a) (the “mutualisation payment”);
  - (b) the date on or before which the mutualisation payment must be made; and
  - (c) the supplier’s latest market share, as used to calculate the mutualisation payment.
- (4) The date specified for the purposes of paragraph (3)(b) must be at least three working days after the date on which the mutualisation notice is given.
- (5) A scheme electricity supplier who is given a mutualisation notice must pay the specified amount to the Authority on or before the specified date.
- (6) The Authority may defer the whole, or part, of any reconciliation payments due to scheme electricity suppliers until up to 10 working days after the date it has received—
  - (a) the overdue amounts from the defaulting suppliers; or
  - (b) mutualisation payments from the other scheme electricity suppliers.
- (7) The amount of the payments deferred under paragraph (6) may not exceed the total of the overdue amounts.
- (8) Paragraph (9) applies if—
  - (a) after giving a mutualisation notice to scheme electricity suppliers; but
  - (b) before any of those suppliers has made a mutualisation payment,the Authority receives an overdue amount from a defaulting supplier (a “paying supplier”).

- (9) Where this paragraph applies, the Authority must—
- (a) cancel the mutualisation notice; and
  - (b) if any overdue amounts still remain unpaid, give a new mutualisation notice under paragraph (2) in relation to those amounts (but see paragraph (10)).
- (10) A mutualisation notice given in accordance with paragraph (9)(b) must not be given to—
- (a) the paying supplier; or
  - (b) any other supplier who—
    - (i) was a defaulting supplier; but
    - (ii) has paid the whole of the overdue amount to the Authority.

(11) Paragraph (12) applies if, after receiving mutualisation payments from scheme electricity suppliers, the Authority receives an overdue amount from a defaulting supplier.

(12) Where this paragraph applies, the Authority must, within 10 working days after the date on which it receives the amount from the defaulting supplier, distribute that amount among the suppliers who have made mutualisation payments in proportion to their latest market shares (as used to calculate their mutualisation payment).

(13) In this regulation—

“latest market share”, in relation to a scheme electricity supplier and a relevant scheme year, means the most recent of any of the following determinations or recalculations of the supplier’s market share made by the Authority before the relevant date—

- (a) a determination under regulation 5(1)(a) of the supplier’s market share on 31st December preceding the start of the relevant scheme year;
- (b) a determination under regulation 5(1)(b) of the supplier’s market share on a calculation date for the relevant scheme year;
- (c) a recalculation under regulation 13(4) of the supplier’s market share for the relevant scheme year;

“overdue amount”, in relation to a reconciliation payment that a scheme electricity supplier is liable to make, means the amount of the reconciliation payment which the scheme electricity supplier has failed to pay to the Authority by the due date;

“relevant date” means the date on which the Authority makes the apportionment referred to in paragraph (2)(a);

“relevant scheme year”, in relation to the calculation of a mutualisation payment by apportionment of an overdue amount, means the scheme year for which, or for part of which, the interim or final reconciliation to which the overdue amount relates was carried out;

“specified” means specified in a mutualisation notice.

### **Termination of supply licence**

**13.—(1)** This regulation applies if the electricity supply licence of a scheme electricity supplier (“E”) is terminated—

- (a) after the date on which the Authority makes a determination under regulation 5(1)(a) in relation to a scheme year (the “relevant scheme year”); but
- (b) before the date on which the Authority gives a notification under regulation 8 in respect of the relevant scheme year.

(2) If, before the termination of E’s licence, the Authority has calculated under Chapter 2 that E is liable to make or entitled to receive an interim reconciliation payment for the relevant scheme year—

- (a) to the extent that the payment remains unpaid, E remains so liable or entitled (as the case may be) despite the termination of E's licence;
  - (b) in relation to E, the interim reconciliation for the relevant scheme year is to be treated as final.
- (3) E is not to be treated as a scheme electricity supplier for the purposes of any of the following events taking place after the termination of its licence—
- (a) an interim or final reconciliation;
  - (b) a mutualisation notice given under regulation 12(2);
  - (c) a distribution of interest (see regulation 14(4) or 15).
- (4) After the termination of E's licence, the Authority must recalculate the market share of each remaining scheme electricity supplier for the relevant scheme year in accordance with the following formula—

$$M2 = M1 \times \left( \frac{100}{100 - E1} \right)$$

where—

“M2” is the remaining scheme electricity supplier's recalculated market share for the relevant scheme year;

“M1” is the remaining scheme electricity supplier's original market share for the relevant scheme year;

“E1” is E's original market share for the relevant scheme year.

(5) For the purposes of paragraph (4), a scheme electricity supplier's original market share for the relevant scheme year is the most recent of any of the following determinations or recalculations of the supplier's market share made by the Authority before the date on which E's licence is terminated—

- (a) a determination under regulation 5(1)(a) of the supplier's market share on 31st December preceding the start of the relevant scheme year;
- (b) a determination under regulation 5(1)(b) of the supplier's market share on a calculation date for the relevant scheme year;
- (c) a recalculation under paragraph (4) of the supplier's market share for the relevant scheme year.

(6) If, before the termination of E's licence, E received an interim reconciliation payment (“IRP”) for the relevant scheme year—

- (a) any final reconciliation payment that a supplier is entitled to receive under regulation 10(3) on a final reconciliation for the relevant scheme year is to be adjusted by subtracting M2% of IRP;
- (b) any final reconciliation payment that a supplier is liable to pay under regulation 10(4) on a final reconciliation for the relevant scheme year is to be adjusted by adding M2% of IRP.

(7) If, before the termination of E's licence, E paid an interim reconciliation payment (“IRP”) for the relevant scheme year—

- (a) any final reconciliation payment that a supplier is entitled to receive under regulation 10(3) on a final reconciliation for the relevant scheme year is to be adjusted by adding M2% of IRP;
- (b) any final reconciliation payment that a supplier is liable to pay under regulation 10(4) on a final reconciliation for the relevant scheme year is to be adjusted by subtracting M2% of IRP.

(8) For the purposes of this regulation, an electricity supply licence is terminated if—

- (a) it is revoked by the Authority in accordance with the terms of the licence;
- (b) it is surrendered by the licensee; or
- (c) it expires by the passage of time.

(9) In this regulation “electricity supply licence” means a licence under section 6(1)(d) of the Electricity Act 1989<sup>(8)</sup>.

### **Interest on late payments**

**14.**—(1) A scheme electricity supplier who fails to make the whole or part of any payment under these Regulations by the date on which it is due (a “defaulting supplier”) must pay interest (“late payment interest”) on the unpaid amount for the period—

- (a) beginning with the day after the date on which the amount is due; and
- (b) ending with the date on which the amount is paid.

(2) Late payment interest is to be calculated at a rate of two percentage points above the Bank of England base rate.

(3) Any payment under these Regulations that is made by a defaulting supplier after the date on which it is due must be applied first to any late payment interest payable under paragraph (1).

(4) Where a defaulting supplier pays late payment interest to the Authority, the Authority must distribute the amount of late payment interest among all the other scheme electricity suppliers, in proportion to their latest market shares for the relevant scheme year.

(5) In this regulation—

“latest market share”, in relation to a scheme electricity supplier and a relevant scheme year, means the most recent of any of the following determinations or recalculations of the supplier’s market share made by the Authority before the relevant date—

- (a) a determination under regulation 5(1)(a) of the supplier’s market share on 31st December preceding the start of the relevant scheme year;
- (b) a determination under regulation 5(1)(b) of the supplier’s market share on a calculation date for the relevant scheme year;
- (c) a recalculation under regulation 13(4) of the supplier’s market share for the relevant scheme year;

“relevant date” means the date on which the Authority makes the distribution referred to in paragraph (4);

“relevant scheme year”, in relation to the distribution of late payment interest on an unpaid amount, means the scheme year for which, or for part of which, the interim or final reconciliation to which the unpaid amount relates was carried out.

### **Interest earned by the Authority**

**15.**—(1) The Authority must distribute to all the scheme electricity suppliers in proportion to their latest market shares the amount of any interest earned by the Authority on any payments made to it by scheme electricity suppliers under these Regulations.

(2) The Authority—

- (a) must, if it has earned any interest, make a distribution under paragraph (1) at the same time as it makes final reconciliation payments for any scheme year commencing after scheme year 12; and

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(8) 1989 c. 29.

- (b) may make additional distributions at such other times as it considers appropriate.
- (3) In this regulation—
- “latest market share”, in relation to a scheme electricity supplier, means—
- (a) where the interest is to be distributed at the same time as any final reconciliation payment, the supplier’s latest market share as used to calculate the final reconciliation payment (see the definition of “M%” in regulation 10(5)(b));
  - (b) where the interest is to be distributed at any other time, the most recent of the following determinations or recalculations of the supplier’s market share made by the Authority before the relevant date—
    - (i) a determination under regulation 5(1);
    - (ii) a recalculation under regulation 13(4);
- “relevant date” means the date on which the Authority makes the distribution under paragraph (1).

### **Make-right amounts**

**16.**—(1) This regulation applies if the Authority identifies that an error has been made on an interim or final reconciliation or on the calculation of a mutualisation payment.

(2) The Authority must calculate the amount that each scheme electricity supplier is liable to pay, or is entitled to receive, to correct the error (the “make-right payment”).

(3) The make-right payment for a scheme electricity supplier is the sum of—

- (a) the difference between the amount already paid or received by the scheme electricity supplier (“amount A”), and the amount which the supplier would have been liable to pay or entitled to receive if the error had not been made (“amount B”); and
- (b) interest on the difference between amount A and amount B from the date of payment or receipt of amount A, calculated at a rate of two percentage points above the Bank of England base rate.

(4) But where there is an imbalance, the Authority must adjust each scheme electricity supplier’s make-right payment by a percentage of the amount of the imbalance equal to the supplier’s latest market share for the relevant scheme year, so that the total of the make-right payments which suppliers are liable to pay is equal to the total amount of make-right payments that suppliers are entitled to receive.

(5) For the purposes of paragraph (4), there is an imbalance if, on calculating each scheme electricity supplier’s make-right payment in accordance with paragraph (3), there is a difference between—

- (a) the total amount of make-right payments which suppliers are liable to pay; and
- (b) the total amount of make-right payments which suppliers are entitled to receive.

(6) The Authority must give a notice (a “make-right notice”) to each scheme electricity supplier who is liable to make or entitled to receive a make-right payment.

(7) A make-right notice must specify—

- (a) the amount of the make-right payment;
- (b) if an adjustment is made under paragraph (4)—
  - (i) the amount by which the make-right payment is adjusted; and
  - (ii) the supplier’s latest market share, as used to calculate the make-right payment;
- (c) where the scheme electricity supplier is liable to make a make-right payment, the date on or before which the payment is to be made;

- (d) where the scheme electricity supplier is entitled to receive a make-right payment, the date on or before which the payment is to be made.
- (8) The date specified for the purposes of paragraph (7)(c) must be at least three working days after the date on which the make-right notice is given.
- (9) The date specified for the purposes of paragraph (7)(d) must not be more than 10 working days—
- after the date specified for the purposes of paragraph (7)(c); or
  - if different dates are specified for the purposes of that sub-paragraph for different suppliers, after the latest of those dates (the “latest due date”).
- (10) A scheme electricity supplier who is given a make-right notice and is liable to make a make-right payment must pay the specified amount to the Authority on or before the specified date.
- (11) Where a scheme electricity supplier is given a make-right notice and is entitled to receive a make-right payment, the Authority must pay the specified amount to the scheme electricity supplier on or before the specified date (but see paragraphs (12) and (13)).
- (12) The Authority may defer the whole, or part, of the make-right payments due to scheme electricity suppliers until up to 10 working days after the date it has received the make-right payments due from scheme electricity suppliers.
- (13) The amount of the payments deferred under paragraph (12) may not exceed the total of the make-right payments which the scheme electricity suppliers have failed to pay to the Authority on or before the latest due date.
- (14) The Authority must maintain a fund into which make-right payments by scheme electricity suppliers and from which make-right payments by the Authority under these Regulations are to be made.
- (15) In this regulation—
- “latest market share”, in relation to a scheme electricity supplier and a relevant scheme year, means the most recent of any of the following determinations or recalculations of the supplier’s market share made by the Authority before the relevant date—
- a determination under regulation 5(1)(a) of the supplier’s market share on 31st December preceding the start of the relevant scheme year;
  - a determination under regulation 5(1)(b) of the supplier’s market share on a calculation date for the relevant scheme year;
  - a recalculation under regulation 13(4) of the supplier’s market share for the relevant scheme year;
- “mutualisation payment” has the meaning given in regulation 12(3)(a);
- “relevant date” means the date on which the Authority makes the adjustment under paragraph (4);
- “relevant scheme year” means—
- in relation to an error made on an interim or final reconciliation, the scheme year for which, or for part of which, the interim or final reconciliation was carried out;
  - in relation to an error made on the calculation of a mutualisation payment, the scheme year for which, or for part of which, the interim or final reconciliation to which the mutualisation payment relates was carried out;
- “specified” means specified in a make-right notice.

## PART 3

### Reconciliation Mechanism: Scotland Scheme Regulations

#### Reconciliation mechanism in relation to the support scheme made by the Scotland Scheme Regulations

**17.** For the purposes of a reconciliation mechanism<sup>(9)</sup> in relation to the support scheme<sup>(10)</sup> made by the Scotland Scheme Regulations, Part 2 of these Regulations applies in the same way as it applies for the purposes of a reconciliation mechanism in relation to the support scheme made by the England & Wales Scheme Regulations, with the following modifications—

- (a) for “England & Wales Scheme Regulations” in each place substitute “Scotland Scheme Regulations”;
- (b) in regulation 6(8)(b), for “regulation 12(5)” substitute “regulation 11(5)”;
- (c) in regulation 8(a), for “regulation 27(1)(a)” substitute “regulation 30(a)”;
- (d) in regulation 9—
  - (i) in paragraph (1), for “regulation 12(8)” substitute “regulation 11(8)”;
  - (ii) in paragraph (2)(b), for “regulation 10(6)(b)” substitute “regulation 9(6)(b)”;
- (e) in regulation 10—
  - (i) in paragraph (2)(b)(i), for “regulation 12(8)” substitute “regulation 11(8)”;
  - (ii) in paragraph (6), in the definition of “F”, for “regulation 12(8)” substitute “regulation 11(8)”.

## PART 4

### Set-off

#### Set-off

**18.**—(1) This regulation applies where a relevant supplier is entitled to receive a payment from the Authority under these Regulations and is at the same time liable to make a payment to the Authority under these Regulations (whether or not the due date for the payment has passed).

(2) The Authority may reduce the payment that it makes to the relevant supplier by up to the amount of the payment the supplier is liable to make under these Regulations.

(3) Where the Authority reduces a payment that it makes to a relevant supplier by virtue of paragraph (2)—

- (a) for the purposes of these Regulations—
  - (i) the Authority is to be treated as having paid to the relevant supplier, and the relevant supplier as having received from the Authority, the relevant amount; and
  - (ii) the relevant supplier is to be treated as having paid to the Authority, and the Authority as having received from the relevant supplier, the relevant amount; and
- (b) the Authority must give a notice to the relevant supplier specifying—
  - (i) the relevant amount;
  - (ii) the balance of the payment the relevant supplier is entitled to receive (if any); and

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<sup>(9)</sup> “Reconciliation mechanism” is defined in section 11(2) of the Energy Act 2010.

<sup>(10)</sup> “Support scheme” is defined in section 15(5) of the Energy Act 2010.

(iii) the balance of the payment the relevant supplier is liable to make (if any).

(4) In this regulation—

“relevant amount” means the amount by which the Authority reduces the payment that it makes to a relevant supplier by virtue of paragraph (2);

“relevant supplier” means—

- (a) a scheme electricity supplier as defined in regulation 3(1) of the England & Wales Scheme Regulations; or
- (b) a scheme electricity supplier as defined in regulation 3(1) of the Scotland Scheme Regulations.

*Callanan*  
Parliamentary Under Secretary of State  
Department for Business, Energy and Industrial  
Strategy

At 11.24 a.m. on 9th November 2022



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the establishment and operation of reconciliation mechanisms for the purposes of the Warm Home Discount (England and Wales) Scheme and the Warm Home Discount (Scotland) Scheme (each a “Scheme”). The Schemes are made by the Warm Home Discount (Scotland) Regulations 2022 and the Warm Home Discount (England and Wales) Regulations 2022 (the “Scheme Regulations”). The Scheme Regulations place obligations on electricity suppliers to incur spending in each scheme year (as defined in regulation 3(1) of each of the Scheme Regulations) on the provision of benefits, including rebates, to customers in or at risk of fuel poverty.

The reconciliation mechanisms provide for payments to be made to, or by, each electricity supplier that provides rebates to customers (“core group customers”) as specified in rebate notices given by the Secretary of State under Part 3 of each of the Scheme Regulations, so that the cost to each electricity supplier of providing rebates to core group customers is proportionate to its market share.

Part 1 contains general interpretation provisions.

Part 2 makes provision for the reconciliation mechanism in relation to the Warm Home Discount (England and Wales) Scheme—

- (a) Chapter 1 provides for the determination of the market share of each scheme electricity supplier. A “scheme electricity supplier” is a licensed electricity supplier that is required to participate in the Scheme or has been approved by the Gas and Electricity Markets Authority (the “Authority”) as a voluntary participant (and the expression is defined in regulation 3(1) of each of the Scheme Regulations).
- (b) Chapter 2 provides for interim reconciliations to be carried out during the scheme year, under which each scheme electricity supplier will make or receive a payment on account of its liability or entitlement for that year.
- (c) Chapter 3 provides for the final reconciliation to be carried out after the end of each scheme year.
- (d) Chapter 4 makes provision about payments. These set out how and when payments are to be made by scheme electricity suppliers or the Authority. Provision is also made for the adjustment of liability or entitlement to payments where a scheme electricity supplier defaults on making a payment or the supplier’s electricity supply licence is terminated. Provision is also made for interest payments and for the correction of errors.

Part 3 makes provision for the reconciliation mechanism in relation to the Warm Home Discount (Scotland) Scheme.

Part 4 enables the Authority to set-off payments to be made to scheme electricity suppliers against payments to be made by the scheme electricity supplier.

A full impact assessment has not been produced for this instrument. An analysis of the effect of each of the Schemes on the costs of business and the public sector has been produced and is available alongside the Scheme Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk). Paper copies can be obtained from the Warm Home Discount Team, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*