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DRAFT STATUTORY INSTRUMENTS

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**2022 No.**

**The Warm Home Discount (England  
and Wales) Regulations 2022**

**PART 4**

**Non-Core Spending**

**CHAPTER 1**

**Determination etc. of non-core spending obligation**

**Determination and notification of aggregate non-core spending obligation**

**15.**—(1) The Secretary of State must determine and notify the Authority of the aggregate non-core spending obligation—

- (a) for scheme year 12, on or before the 7th day after the commencement day;
- (b) for scheme years 13, 14 and 15, by 14th February preceding the start of the scheme year.

(2) Schedule 1 makes provision for the determination of the aggregate non-core spending obligation.

**Duty to calculate and adjust, and notify, compulsory scheme electricity suppliers' non-core spending obligations**

**16.**—(1) The Authority must—

- (a) calculate, in accordance with regulation 17, the non-core spending obligation for each compulsory scheme electricity supplier for each scheme year, and
- (b) adjust each supplier's non-core spending obligation for a scheme year in accordance with—
  - (i) for scheme year 12, regulation 18; or
  - (ii) for any other scheme year, regulation 19.

(2) The Authority must notify each compulsory scheme electricity supplier—

- (a) of its non-core spending obligation for each scheme year;
- (b) whether any adjustment is made to its obligation for a scheme year in accordance with regulation 18 or 19;
- (c) if such an adjustment is made, of the adjusted amount of its non-core spending obligation for that scheme year.

(3) The notification under paragraph (2)(a) must be given—

- (a) for scheme year 12, on or before the 25th working day after the commencement day;
- (b) for any other scheme year, by 14th March preceding the start of the scheme year.

(4) The notification under paragraph (2)(b) and, as the case may be, (c) must be given by 31st October in the scheme year to which it relates.

### Calculation of non-core spending obligation

17.—(1) The non-core spending obligation of a compulsory scheme electricity supplier (“C”) for a scheme year, subject to any adjustments under regulation 18 or 19, is—

- (a) where the Secretary of State adjusts the initial overall spending target for the scheme year in accordance with paragraph 4(3) or (4) of Schedule 1—
  - (i) A, if C is not a relevant supplier;
  - (ii) A + B, if C is a relevant supplier and the initial overall spending target is increased in accordance with paragraph 4(3) of Schedule 1;
  - (iii) A – B, if C is a relevant supplier and the initial overall spending target is reduced in accordance with paragraph 4(4) of Schedule 1;
- (b) otherwise, C’s obligation percentage of the aggregate non-core spending obligation for the scheme year.

(2) For the purposes of paragraph (1)(a)—

- (a) “A” is C’s obligation percentage for the scheme year of the amount which would have been the aggregate non-core spending obligation if the adjustment under paragraph 4(3) or (4) (as the case may be) of Schedule 1 had not been made;
- (b) “B” is—
  - (i) if the scheme year is scheme year 12, C’s relevant percentage (as determined under regulation 13(2) of the 2011 Regulations for scheme year 11) of the amount by which the initial overall spending target for scheme year 12 is adjusted in accordance with paragraph 4(3) or (4) of Schedule 1;
  - (ii) otherwise, C’s obligation percentage for the preceding scheme year of the amount by which the initial overall spending target for the scheme year is adjusted in accordance with paragraph 4(3) or (4) of Schedule 1.

(3) For the purposes of this regulation, “the obligation percentage” in relation to C and a scheme year is—

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

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 compulsory scheme electricity suppliers, and
  - (ii) all scheme gas suppliers who are connected to a compulsory scheme electricity supplier.

(4) For the purposes of paragraph (3)(a), the relevant number of GB domestic customers is—

- (a) if C is connected to one or more scheme gas suppliers but is not connected to any other compulsory scheme electricity suppliers, the combined number of GB domestic customers of C and its connected scheme gas suppliers;
- (b) if C is connected to one or more scheme gas suppliers and to one or more other compulsory scheme electricity suppliers, a number equal to C% of (CE + CG) where—
  - (i) “C%” is C’s number of GB domestic customers as a percentage of CE;
  - (ii) “CE” is the combined number of—

- (aa) C's number of GB domestic customers, and
- (bb) the number of GB domestic customers of C's connected compulsory scheme electricity suppliers;
- (iii) "CG" is the number of GB domestic customers of C's connected scheme gas suppliers;
- (c) otherwise, C'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 on 31st December preceding the start of the scheme year;
  - (b) a supplier is to be treated as connected to another supplier only if they were connected on that date.
- (6) In this regulation "relevant supplier" means—
  - (a) in relation to scheme year 12, a compulsory scheme electricity supplier (within the meaning given in regulation 5(1) of the 2011 Regulations) in relation to scheme year 11;
  - (b) in relation to any other scheme year, a compulsory scheme electricity supplier in relation to the preceding scheme year.

#### **Adjustment of non-core spending obligation: scheme year 12**

**18.**—(1) The adjustments that must be made to the non-core spending obligation for scheme year 12 ("O") of a compulsory scheme electricity supplier ("C") are as follows.

(2) O must be adjusted in accordance with paragraph (3) or (4) if I is less than or exceeds S where—

- (a) "I" is the amount of spending incurred by C under Part 4 of the 2011 Regulations in scheme year 11 (as determined by the Authority in accordance with regulation 29(1)(d) of those Regulations);
  - (b) "S" is C's non-core spending obligation under that Part of those Regulations for scheme year 11, as adjusted (where required) in accordance with regulation 14 of those Regulations.
- (3) If I is less than S, O must be adjusted by adding an amount equal to 90.6% of (S – I).
- (4) If I exceeds S, O must be adjusted by subtracting the lesser of—
- (a) an amount equal to 90.6% of (I – S), and
  - (b) an amount equal to 90.6% of the overspend amount.
- (5) For the purposes of paragraph (4) "the overspend amount" is—
- (a) 5% of S, or
  - (b) where C notified the Authority of their intention to meet all or part of a failed supplier's non-core spending obligation in accordance with regulation 30A of the 2011 Regulations in scheme year 11, 10% of S.
- (6) Whether or not an adjustment is made under paragraph (2), O must be adjusted by adding an amount equal to 90.6% of the undelivered rebate amount.
- (7) For the purposes of paragraph (6) "the undelivered rebate amount" is £140 multiplied by—
- (a) where C has made a notification under regulation 9(7) of the 2011 Regulations in respect of scheme year 11, the number of prescribed rebates as stated in that notification, and

- (b) where C has made a notification under regulation 14(3A) of the 2011 Regulations in respect of scheme year 11, the number of prescribed rebates as stated in that notification.

### **Adjustment of non-core spending obligation: scheme years 13 to 15**

**19.**—(1) The adjustments that must be made to the non-core spending obligation for a scheme year (other than scheme year 12) (“O”) of a compulsory scheme electricity supplier (“C”) are as follows.

(2) O must be adjusted in accordance with paragraph (3) or (4) if I is less than or exceeds S where—

- (a) “I” is the amount of spending incurred by C under this Part (as determined by the Authority in accordance with regulation 27) in the preceding scheme year;
- (b) “S” is C’s non-core spending obligation for the preceding scheme year as adjusted for that year, where required, in accordance with regulation 18 or this regulation.

(3) If I is less than S, O must be adjusted by adding (S – I).

(4) If I exceeds S, O must be adjusted by subtracting the lesser of—

- (a) (I – S), and
- (b) the relevant amount.

(5) For the purposes of paragraph (4) “the relevant amount” is—

- (a) 5% of S, or
- (b) where C notified the Authority of their intention to meet all or part of a failed supplier’s non-core spending obligation in accordance with regulation 29, 10% of S.

(6) Whether or not an adjustment is made under paragraph (2), O must be adjusted by adding an amount equal to the undelivered rebate amount.

(7) For the purposes of paragraph (6) “the undelivered rebate amount” is £150 multiplied by, where C has made a notification under regulation 12(8) in respect of the preceding scheme year, the number of prescribed rebates as stated in that notification.

## **CHAPTER 2**

### **Obligation to incur spending etc.**

#### **Obligation to incur spending and amounts of spending**

**20.**—(1) In each scheme year, a compulsory scheme electricity supplier must incur spending under this Part to the amount of its non-core spending obligation.

(2) In doing so, the supplier—

- (a) must include spending under Chapter 3 (industry initiatives), subject to the requirements and limits in paragraphs (3) to (5);
- (b) may include spending under Chapter 4 (activities specified by the Secretary of State).

(3) Where the aggregate non-core spending obligation for the scheme year exceeds £10 million, the amount of spending on financial assistance under regulation 21 which a supplier counts towards its non-core spending obligation—

- (a) must be no less than the obligation percentage of £5 million, but
- (b) must not, in total, exceed the obligation percentage of £10 million.

(4) Where the aggregate non-core spending obligation for the scheme year exceeds £6 million, the amount of spending on debt write-off under regulation 21 which a supplier counts towards its non-core spending obligation—

- (a) must not exceed the obligation percentage of £3 million in respect of customers who are supplied with neither electricity or gas through a pre-payment meter;
  - (b) must not, in total, exceed the obligation percentage of £6 million.
- (5) Where the aggregate non-core spending obligation for the scheme year exceeds £8 million, the amount of spending on the installation of boilers or central heating systems under regulation 21 which a supplier counts towards its non-core spending obligation must not in total exceed the obligation percentage of £8 million.
- (6) In this regulation—
- “financial assistance” means the activity listed in the final entry in the table in Part 1 of Schedule 2;
  - “obligation percentage”, in relation to a supplier, means the percentage determined in accordance with paragraph (3) of regulation 17.
- (7) This regulation is subject to regulations 23 and 24.

### CHAPTER 3

#### Industry initiatives

##### **Spending on industry initiatives by a compulsory scheme electricity supplier**

- 21.**—(1) A compulsory scheme electricity supplier may in respect of a scheme year count towards its non-core spending obligation spending (excluding Value Added Tax) incurred in that scheme year on an activity of a kind listed in the table in Part 1 of Schedule 2 (an “industry initiative”) by—
- (a) the supplier, or
  - (b) a connected gas supplier, to the extent permitted by regulation 23.
- (2) But spending on an industry initiative does not count towards a supplier’s non-core spending obligation if the spending—
- (a) is incurred pursuant to a requirement in—
    - (i) any other enactment, or
    - (ii) an electricity supply or gas supply licence,
  - (b) is counted by a scheme supplier towards a spending obligation or target imposed by—
    - (i) any other enactment, or
    - (ii) an electricity supply or gas supply licence, or
  - (c) falls within any exception in the table in Part 1 of Schedule 2.
- (3) In addition, spending on an industry initiative does not count towards a supplier’s non-core spending obligation unless—
- (a) the industry initiative has been notified to the Authority, and
  - (b) either—
    - (i) the spending takes place after the Authority approves the initiative, or
    - (ii) in relation to scheme year 12, the spending takes place before the Authority decides whether to approve the initiative but the Authority subsequently approves it.

##### **Approval of industry initiatives**

- 22.**—(1) A compulsory scheme electricity supplier must notify the Authority of the industry initiatives which it, or any connected scheme gas supplier, proposes to carry out.
- (2) A supplier may—

- (a) make a notification for the purposes of one or more scheme years;
  - (b) make more than one notification in respect of a scheme year.
- (3) The Authority must approve a supplier's notification if, but only if, it is satisfied that the supplier's proposed industry initiatives—
- (a) meet the criteria specified in the relevant entry in the first column of the table in Part 1 of Schedule 2, and do not fall within the exceptions in the corresponding entry in the second column of the table,
  - (b) ensure, so far as reasonably practicable, that every E&W domestic customer provided with benefits under the industry initiatives will be provided with energy advice and smart meter advice,
  - (c) include adequate measures to ensure, so far as reasonably practicable, that benefits provided under the industry initiatives will be provided wholly or mainly to persons in fuel poverty or in a fuel poverty risk group, and
  - (d) will provide value for money.

#### **Spending on industry initiatives which may be treated as incurred by a compulsory scheme electricity supplier**

**23.**—(1) This regulation applies where a compulsory scheme electricity supplier (“C”) is connected to one or more scheme gas suppliers on the qualifying date (referred to in this regulation as a “connected scheme gas supplier”).

(2) For the purposes of this regulation, the qualifying date is 31st December preceding the start of the scheme year.

(3) If C is not connected to any other compulsory scheme electricity supplier on the qualifying date, C may treat any amount of spending incurred under regulation 21 by a connected scheme gas supplier in the relevant scheme year as an amount of spending incurred by C in that scheme year.

(4) If C is connected to one or more compulsory scheme electricity suppliers on the qualifying date (referred to in this regulation as a “connected compulsory scheme electricity supplier”), C may treat the specified percentage of any amount of spending incurred under regulation 21 by a connected scheme gas supplier in the relevant scheme year as an amount of spending incurred by C in that scheme year.

(5) For the purposes of paragraph (4), the “specified percentage” is C's number of GB domestic customers on the qualifying date as a percentage of the combined number of GB domestic customers of—

- (a) C, and
  - (b) C's connected compulsory scheme electricity suppliers,
- on that date.

#### **Spending incurred by a compulsory scheme electricity supplier before the commencement day**

**24.** In scheme year 12, a compulsory scheme electricity supplier may treat as an amount of spending incurred under regulation 21 any spending which—

- (a) was incurred between 1st April 2022 and the commencement day, and
- (b) would have counted towards its non-core spending obligation by virtue of regulations 20 to 23, if these Regulations had come into force on 1st April 2022.

## CHAPTER 4

### Specified activities

#### **Types of spending: activities specified by the Secretary of State**

**25.**—(1) A compulsory scheme electricity supplier may, in respect of any scheme year, count towards its non-core spending obligation financial contributions (excluding Value Added Tax) made by the supplier in the scheme year to fund a specified activity.

(2) A “specified activity” is an activity specified in a notice published by the Secretary of State.

(3) The Secretary of State may only specify an activity in a notice if 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 Part 1 of Schedule 2, 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 E&W domestic customer provided with benefits under the activity will be provided with energy advice and smart meter advice, and
  - (ii) benefits provided 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.

(4) But financial contributions made to fund a specified activity do not count towards a supplier’s non-core spending obligation if they are—

- (a) made pursuant to a requirement in—
  - (i) any other enactment, or
  - (ii) an electricity supply or gas supply licence, or
- (b) counted by a scheme supplier towards a spending obligation or target imposed by—
  - (i) any other enactment, or
  - (ii) an electricity supply or gas supply licence.

(5) In addition, financial contributions to fund a specified activity may count towards a supplier’s non-core spending obligation only if they are made after the Secretary of State has published the notice specifying the activity.