

DRAFT STATUTORY INSTRUMENTS

**2011 No.**

**The Warm Home Discount Regulations 2011**

**PART 4**

**Non-core spending**

**CHAPTER 1**

**General**

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

**12.**—(1) The Secretary of State must—

- (a) for scheme year 1, by 7 days after the commencement date, and
- (b) for scheme years 2, 3 and 4, by 14th February preceding the start of the scheme year,

determine and notify to the Authority the aggregate non-core spending obligation.

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

(3) The Authority must—

- (a) for scheme year 1, by 28 days after the commencement date, and
- (b) for scheme years 2, 3 and 4, by 14th March preceding the start of the scheme year,

calculate for each compulsory scheme electricity supplier, and notify to that supplier, the amounts specified in paragraph (4).

(4) The amounts are—

- (a) the supplier's non-core spending obligation (subject to any later adjustment under regulation 14); and
- (b) the maximum amounts of spending which the supplier may count towards meeting its non-core spending obligation under—
  - (i) Chapter 3 (legacy spending);
  - (ii) Chapter 4 (industry initiatives); and
  - (iii) Chapters 3 and 4 combined.

**Calculation of non-core spending obligation**

**13.**—(1) The non-core spending obligation of a compulsory scheme electricity supplier for a scheme year (subject to any adjustment under regulation 14) is the relevant percentage of the aggregate non-core spending obligation for that scheme year.

(2) The relevant percentage, in relation to a compulsory scheme electricity supplier (“C”) and a

scheme year, is  $\frac{X \times 100}{Y}$  % where—

- (a) X is C's number of domestic customers, unless sub-paragraph (b) or (c) applies;
  - (b) if C is connected to one or more scheme gas suppliers but not to any other compulsory scheme electricity suppliers, X is the combined number of domestic customers of C and its connected scheme gas suppliers;
  - (c) if C is connected to one or more scheme gas suppliers and to one or more other compulsory scheme electricity suppliers, X is a number equal to Z% of the combined number of domestic customers of C and its connected scheme gas suppliers and connected compulsory scheme electricity suppliers; and
  - (d) Y is the total number of domestic customers of all—
    - (i) compulsory scheme electricity suppliers; and
    - (ii) scheme gas suppliers which are connected to a compulsory scheme electricity supplier.
- (3) In paragraph (2)(c), "Z%" is C's number of domestic customers as a percentage of the combined number of domestic customers of C and its connected compulsory scheme electricity suppliers.
- (4) In paragraphs (2) and (3)—
- (a) references to a supplier's number of domestic customers are to the supplier's number of domestic customers on the 31st December preceding the start of the scheme year; and
  - (b) a supplier is to be treated as connected to another supplier if those suppliers were connected on the 31st December preceding the start of the scheme year (but not otherwise).

### **Adjustments for banking and borrowing**

- 14.—(1) In scheme years 2, 3 and 4, if the amount of spending incurred under this Part (as determined by the Authority in accordance with regulation 29(d)) by a compulsory scheme electricity supplier in the preceding scheme year (" $D_{t-1}$ ") is greater or less than the supplier's non-core spending obligation for the preceding scheme year (" $S_{t-1}$ "), the Authority must adjust the supplier's non-core spending obligation for the current scheme year (" $S$ ") in accordance with paragraphs (2) and (3).
- (2) If  $D_{t-1}$  is less than  $S_{t-1}$ ,  $S$  is to be adjusted by adding  $(S_{t-1} - D_{t-1})$ .
  - (3) If  $D_{t-1}$  is greater than  $S_{t-1}$ ,  $S$  is to be adjusted by subtracting—
    - (a)  $(D_{t-1} - S_{t-1})$ , unless sub-paragraph (b) applies; or
    - (b) 1% of  $S_{t-1}$ , if the amount determined under sub-paragraph (a) is greater than 1% of  $S_{t-1}$ .
- (4) The Authority must notify each compulsory scheme electricity supplier by 30th September in scheme years 2, 3 and 4—
- (a) whether any adjustment has been made under this regulation to its non-core spending obligation for that scheme year; and
  - (b) if so, the adjusted amount of the supplier's non-core spending obligation.

### **Types and amounts of spending**

- 15.—(1) In each scheme year a compulsory scheme electricity supplier must, subject to paragraph (2), incur spending under this Part to the amount of its non-core spending obligation.
- (2) In relation to scheme year 1, 2 or 3, a compulsory scheme electricity supplier is not in breach of paragraph (1) if the amount of spending incurred by the supplier under this Part (as determined by the Authority in accordance with regulation 29(d)) is equal to or greater than 99% of its non-core spending obligation.
  - (3) The spending to be incurred by a compulsory scheme electricity supplier under this Part—

- (a) must, in each scheme year, include the provision of rebates to broader group customers under Chapter 2;
  - (b) if the supplier is a relevant supplier, may in scheme years 1, 2 and 3 include legacy spending under Chapter 3, subject to the limits in paragraph (4)(a) and (c); and
  - (c) may include spending on industry initiatives under Chapter 4, subject to the limits in paragraph (4)(b) and (c).
- (4) The maximum amount of spending that a compulsory scheme electricity supplier may count towards its non-core spending obligation—
- (a) under Chapter 3, is the relevant percentage of—
    - (i) £140 million in scheme year 1;
    - (ii) £70 million in scheme year 2; and
    - (iii) £35 million in scheme year 3;
  - (b) under Chapter 4, in any scheme year, is the relevant percentage of £30 million; and
  - (c) under Chapters 3 and 4 combined, is the relevant percentage of—
    - (i) £150 million in scheme year 1;
    - (ii) £85 million in scheme year 2; and
    - (iii) £53 million in scheme year 3.
- (5) In paragraph (4), “the relevant percentage” means the percentage determined under regulation 13(2).

#### **Spending by connected scheme suppliers**

**16.**—(1) Paragraph (2) applies if a compulsory scheme electricity supplier (“C”) is connected to one or more scheme gas suppliers, but is not connected to another compulsory scheme electricity supplier.

(2) C may treat the amount of any spending incurred under Chapter 3 or Chapter 4 by a connected scheme gas supplier as an amount of spending incurred by C.

(3) Paragraph (4) applies if C is connected to one or more scheme gas suppliers and to one or more compulsory scheme electricity suppliers.

(4) C may treat Z% of the amount of any spending incurred under Chapter 3 or Chapter 4 by a connected scheme gas supplier as an amount of spending incurred by C.

(5) In paragraph (4), “Z%” is C’s number of domestic customers as a percentage of the combined number of domestic customers of C and its connected compulsory scheme electricity suppliers.

#### **Spending incurred before commencement date**

**17.**—(1) Paragraph (2) applies if these Regulations come into force after 1st April 2011.

(2) In scheme year 1, a compulsory scheme electricity supplier may treat as an amount of spending incurred under Chapter 3 or Chapter 4 any spending which—

- (a) was incurred between 1st April 2011 and the commencement date; and
- (b) would have counted towards its non-core spending obligation by virtue of Chapter 3 or Chapter 4, if these Regulations had come into force on 1st April 2011.

## CHAPTER 2

### The broader group

#### **Broader group customers**

**18.**—(1) A compulsory scheme electricity supplier must, in each scheme year, provide the prescribed rebate to domestic customers selected by the supplier (“broader group customers”), who appear to the supplier to meet eligibility criteria determined by the supplier and approved by the Authority in accordance with this Chapter.

(2) Paragraph (1) does not require a compulsory scheme electricity supplier to provide the prescribed rebate to every domestic customer meeting its eligibility criteria.

(3) A compulsory scheme electricity supplier may not treat a rebate as being provided under this Chapter if it is provided to a core group customer pursuant to a notice under regulation 6.

#### **Eligibility criteria and verification measures**

**19.**—(1) A compulsory scheme electricity supplier must determine, and notify to the Authority—

- (a) eligibility criteria which the supplier proposes to apply in selecting broader group customers; and
- (b) measures (“verification measures”) to be taken before providing the prescribed rebate to a broader group customer, for the purpose of verifying so far as reasonably practicable that the customer meets the supplier’s eligibility criteria.

(2) A supplier may make—

- (a) a notification for the purposes of one or more scheme years; and
- (b) more than one notification in respect of a scheme year.

(3) When the Authority receives a notification, it must decide whether to approve—

- (a) the eligibility criteria; and
- (b) the verification measures.

(4) The Authority must approve a supplier’s eligibility criteria if, but only if—

- (a) they satisfy Condition 1; and
- (b) in the case of eligibility criteria notified for the purposes of any of scheme years 2, 3 and 4, they also satisfy Condition 2.

(5) Condition 1 is that either—

- (a) the eligibility criteria consist of—
  - (i) one or more of the descriptions of persons in Part 1 of Schedule 2; or
  - (ii) a description, or descriptions, of persons, all the members of which fall within one or more of the descriptions of persons in Part 1 of Schedule 2; or
- (b) the Authority is satisfied that customers meeting the criteria will wholly or mainly be persons in fuel poverty, or in a fuel poverty risk group.

(6) Condition 2 is that the criteria are such as to ensure that in scheme years 2, 3 and 4, customers meeting the criteria will wholly or mainly be persons who were not core group customers in the previous scheme year.

(7) The Authority must approve a supplier’s proposed verification measures if, but only if—

- (a) they include all the measures specified in Part 2 of Schedule 2; or

- (b) the Authority is satisfied that the measures will be at least as effective as those specified in Part 2 of Schedule 2 for the purpose of verifying so far as reasonably practicable that customers provided with the prescribed rebate under this Chapter meet the supplier's eligibility criteria.

### **Provision of rebate to broader group customers**

**20.**—(1) Where a compulsory scheme electricity supplier provides the prescribed rebate to a domestic customer, that rebate is only to be treated as being provided under this Chapter if—

- (a) the supplier has notified eligibility criteria and verification measures to the Authority;
- (b) either—
  - (i) the rebate is provided after the Authority has approved the eligibility criteria and verification measures; or
  - (ii) in scheme year 1, the rebate is provided before the Authority has decided whether to approve the eligibility criteria and verification measures, and the Authority subsequently approves them;
- (c) the supplier applies its verification measures; and
- (d) it appears to the supplier that the customer meets its eligibility criteria.

(2) A compulsory scheme electricity supplier must provide the prescribed rebate to a broader group customer by—

- (a) crediting to the customer's electricity 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) tendering payment of the amount of the prescribed rebate to the customer; or
- (c) providing a customer who pre-pays for electricity with credit in the amount of the prescribed rebate against the cost (including Value Added Tax) of future electricity use.

(3) The date on which a compulsory scheme electricity supplier provides the prescribed rebate to a customer is the date on which the supplier complies with paragraph (2).

(4) Where a compulsory scheme electricity supplier provides the prescribed rebate to a domestic customer under this Chapter, it must—

- (a) specify on the customer's bill; or
- (b) otherwise notify the customer in writing,

that the customer has been given a rebate under the Warm Home Discount scheme.

## **CHAPTER 3**

### **Legacy spending**

#### **Legacy spending**

**21.**—(1) Subject to regulation 15(4) and to paragraph (3), a compulsory scheme electricity supplier which is a relevant supplier may count towards its non-core spending obligation for a scheme year—

- (a) the amount of any legacy spending incurred by the compulsory scheme electricity supplier in the scheme year; and
- (b) if the compulsory scheme electricity supplier is connected to a scheme gas supplier which is a relevant supplier, the amount of any legacy spending incurred by the scheme gas supplier, to the extent permitted by regulation 16.

(2) The amount of legacy spending incurred by a relevant supplier in a scheme year is the sum of—

- (a) the amount (excluding Value Added Tax) of relevant benefits in the form of rebates; and
- (b) the value of relevant benefits in the form of discounted tariffs (excluding any reduction in the amount of Value Added Tax paid by eligible customers as a result of the provision of those tariffs),

provided to eligible customers by that supplier in the scheme year.

(3) A compulsory scheme electricity supplier may not in any scheme year count towards its non-core spending obligation the amount or value of relevant benefits provided to a number of eligible customers exceeding the number specified in paragraph (4).

(4) The number referred to in paragraph (3) is the number of eligible customers who were provided with a financial benefit in the period 1st April 2010 to 31st March 2011 under a voluntary commitment by—

- (a) the compulsory scheme electricity supplier; or
- (b) a connected scheme gas supplier.

#### **Provision of rebates**

**22.**—(1) A rebate to an eligible customer under this Chapter must be provided by—

- (a) crediting the rebate to the customer’s account;
- (b) tendering payment to the customer; or
- (c) providing a customer who pre-pays for a fuel type with credit against future use of that fuel type.

(2) The date on which a relevant supplier provides a rebate to an eligible customer is the date on which the supplier complies with paragraph (1).

#### **Reference tariffs**

**23.**—(1) For each scheme year the Authority must, in relation to each relevant supplier, for each combination of—

- (a) fuel type supplied by the supplier; and
- (b) payment method accepted by the supplier,

designate a tariff offered by the supplier as a reference tariff for the purpose of determining the value of discounted tariffs provided by the supplier.

(2) In designating a tariff as a reference tariff, the Authority must take account of the desirability of a reference tariff meeting as many as possible of the criteria specified in paragraph (3).

(3) The criteria referred to in paragraph (2) are that the tariff—

- (a) is available to all domestic customers;
- (b) is an enduring tariff; and
- (c) is not offered with an incentive (such as cashback, or discounts on other products).

(4) The Authority must consult a relevant supplier before designating a tariff offered by that supplier as a reference tariff.

(5) In paragraph (3)(b), “enduring tariff” means a tariff which—

- (a) has been continuously available to new customers for a period of not less than one year; or

- (b) the Authority is satisfied that the supplier intends to make continuously available to new customers for a period of not less than one year.

### Calculation of legacy spending

24.—(1) Each relevant supplier must provide to the Authority, within 8 weeks after the commencement date, details of—

- (a) the criteria which the supplier applied in the period from 1st April 2010 to 31st March 2011 to determine eligibility of domestic customers for relevant benefits provided by the supplier under its voluntary commitment; and
- (b) the number of domestic customers to whom the supplier provided a relevant benefit in the period from 1st April 2010 to 31st March 2011 under its voluntary commitment.

(2) Each relevant supplier must provide to the Authority, within 8 weeks after the end of each scheme year, the information specified in Part 1 of Schedule 3.

(3) The Authority may extend the time limits in paragraphs (1) and (2).

(4) Part 2 of Schedule 3 specifies the method to be used by the Authority to determine, under regulation 29, the amount of legacy spending incurred by a relevant supplier under this Chapter through the provision of discounted tariffs.

(5) Paragraphs (1) and (2) are without prejudice to the Authority's power to request information under regulation 30.

### Chapter 3: Interpretation

25. In this Chapter, and in Schedule 3—

“discounted tariff” means a relevant supplier's tariff for the supply of a fuel type to domestic customers paying by a particular payment method, which is cheaper than that supplier's reference tariff for the supply of that fuel type with that payment method;

“eligible customer”, in relation to a relevant supplier, means a domestic customer appearing to the supplier to meet criteria which were applied by the supplier in the period from 1st April 2010 to 31st March 2011 to determine eligibility for a financial benefit provided by the supplier under a voluntary commitment;

“fuel type” means—

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

“payment method” means—

- (a) standard credit;
- (b) direct debit; or
- (c) pre-payment;

“reference tariff” means a tariff designated by the Authority under regulation 23(1);

“relevant benefit” means—

- (a) a discounted tariff; or
- (b) a rebate (of any amount), other than one provided under Part 3 or under Chapter 2 of this Part; and

“standard credit” means a payment method whereby payment—

- (a) is not made by direct debit; and

- (b) falls due periodically on or following the issue of a bill.

## CHAPTER 4

### Industry initiatives

#### Industry initiatives

**26.**—(1) Subject to regulation 15(4) and to paragraphs (2) and (3), a compulsory scheme electricity supplier may in respect of any 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 first column of the table in Schedule 4 (an “industry initiative”) by—

- (a) that supplier; or
- (b) any connected scheme gas supplier, to the extent permitted by regulation 16.

(2) Spending on industry initiatives may not count towards a compulsory scheme electricity supplier’s non-core spending obligation if it—

- (a) is incurred pursuant to a requirement in any other enactment, or in an electricity supply or gas supply licence;
- (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; or
- (c) falls within an exception in the second column of the table in Schedule 4.

(3) Paragraph (1) only applies in relation to spending on an industry initiative if—

- (a) the industry initiative has been notified to the Authority under regulation 27; and
- (b) either—
  - (i) the spending is incurred after the Authority has approved the industry initiative; or
  - (ii) in scheme year 1, the spending is incurred before the Authority has decided whether to approve the industry initiative, and the Authority subsequently approves it.

#### Approval of industry initiatives

**27.**—(1) A compulsory scheme electricity supplier that wishes to count spending on industry initiatives towards its non-core spending obligation must notify the Authority of the industry initiatives which it, or any connected scheme gas supplier, proposes to carry out.

(2) A supplier may make—

- (a) a notification for the purposes of one scheme year, or for the purposes of more than one scheme year; and
- (b) 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 an entry in the first column of the table in Schedule 4, and do not fall within an exception specified in a corresponding entry in the second column of the table;
- (b) include adequate measures to ensure, so far as reasonably practicable, that benefits provided under the initiatives are provided wholly or mainly to persons in fuel poverty or in a fuel poverty risk group; and
- (c) will provide value for money.