

EXPLANATORY MEMORANDUM TO
THE WARM HOME DISCOUNT (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2016

2016 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Energy and Climate Change 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 The Warm Home Discount Regulations 2011 (“the WHD Regulations”) established the Warm Home Discount scheme (“the scheme”) which required licensed electricity suppliers to incur spending on providing benefits to customers who are in, or are at risk of, fuel poverty. This instrument amends the WHD Regulations to run the scheme from the coming into force of this instrument until 31st March 2018 and makes some amendments to the operation of the scheme. It also makes consequential amendments to the related Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011 (“the Disclosure Regulations”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument will come into force on the day after the day on which it is made. This is because an essential part of electricity suppliers providing eligible customers with their Core Group rebates is the process of data matching with the Department of Work and Pensions. That process requires extensive testing which can only begin once the instrument is in force and takes several months before suppliers can start to provide the rebates. The policy intent is that rebates reach the customers before the winter period and recipients will expect them in time for winter when homes most need to be heated. Any delay to commencement will lead to knock on delays in when rebates to the Core Group can start to be provided.
- 3.2 There are two deadlines that apply to licensed electricity suppliers within 14 days of commencement of the instrument.
 - The amendments made to regulation 4 of the WHD Regulations will give licensed electricity suppliers 14 days from the commencement of the instrument to notify Ofgem of their number of domestic customers as of 31st December 2015. This deadline is considered appropriate because electricity suppliers have already provided this information to Ofgem for other purposes (as part of their obligations under other Government schemes).
 - The amendments made to regulation 5 of the WHD Regulations will give smaller licensed electricity suppliers 14 days from the commencement of the instrument to notify Ofgem if they wish to participate voluntarily in the scheme. This deadline is considered appropriate because Ofgem has contacted

those suppliers who may volunteer this year to explain the formal process for notification. Over the last 5 years of the scheme, no smaller suppliers have given notice to voluntarily participate in the scheme.

- 3.3 The size of the obligations for each supplier cannot be calculated by Ofgem until after these two deadlines have passed and the number of electricity suppliers participating in the scheme is known. The deadlines for compliance with all the other requirements of the WHD Regulations (as amended by the instrument) fall more than 21 days after commencement of the instrument, with the exception of the 7 day deadline that applies to the Secretary of State under regulation 12 of the WHD Regulations, to notify Ofgem of the aggregate non-core spending obligation.

Other matters of interest to the House of Commons

- 3.4 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

- 4.1 The WHD Regulations and the Disclosure Regulations are two of a suite of three sets of Regulations which together established and regulate the scheme, the third set being the Warm Home Discount (Reconciliation) Regulations 2011 (“the Reconciliation Regulations”).
- 4.2 The scheme established by the WHD Regulations ran from 1st April 2011 until 31st March 2016. In the last scheme year (2015/16) the scheme was made up of two parts:
- The Core Group – electricity suppliers provide a rebate of £140 off electricity bills to their eligible customers in receipt of Pension Credit Guarantee Credit;
 - The non-core spending obligation:
 - electricity suppliers provide a rebate of £140 off electricity bills to low income and vulnerable customers who meet their individual eligibility criteria and successfully apply (“the Broader Group”);
 - suppliers could also incur spending, up to a cap, on a range of activities including debt assistance, benefit entitlement checks and energy advice to domestic customers in or at risk of fuel poverty (“Industry Initiatives”).
- 4.3 This instrument amends the WHD Regulations so that the scheme runs for a sixth and seventh scheme year, from the commencement of this instrument until 31st March 2018.
- 4.4 The general approach has been to amend the WHD Regulations so that they apply to the new scheme years 6 and 7, in the same way as they applied to scheme year 5, except for certain specific changes:
- increasing the overall spending target;
 - allowing the rebate to be credited to a customer’s gas account;
 - setting a limit on industry initiative spending on debt reduction or cancellation;
 - requiring suppliers to notify the Authority of the number of rebates they provide which are not accepted by the customer, and taking this into account when setting the amount to be spent by the supplier on the non-core spending obligation in scheme year 7;

- allowing spending on activities that have been specified in a notice published by the Secretary of State to count towards the non-core spending obligation. This is subject to the same spending cap that applies to Industry Initiatives;
 - adjusting some of the deadlines for notifications and determinations under the scheme, taking into account notifications of domestic customer numbers made by suppliers before the instrument comes into force and recognising spending on industry initiatives incurred between 1st April 2016 and the coming into force of the instrument.
- 4.5 In addition, amendments are made to:
- clarify how the amount to be spent by the supplier on the non-core spending obligation is to be calculated if the supplier was not a compulsory scheme electricity supplier in the previous scheme year;
 - clarify that nothing relating to legacy spending applies in scheme years 6 and 7. Legacy spending related to voluntary commitments entered into by some suppliers in respect of periods before 31st March 2011 and this spending ceased count towards a supplier's obligations under the scheme after scheme year 3;
 - to correct a drafting error in Schedule 2 to the WHD Regulations.
- 4.6 The instrument also makes minor consequential amendments to the Disclosure Regulations.
- 4.7 A separate instrument is planned to amend the Reconciliation Regulations, so that the methodology through which Core Group expenditure is reconciled between electricity suppliers will take into account the number of rebates provided by a supplier which were not accepted by the customer.
- 4.8 Once section 58 of the Scotland Act 2016 is brought into force, many of the powers to make the scheme in relation to Scotland will be transferred to the Scottish Ministers.

5. Extent and Territorial Application

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

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

“In my view the provisions of the Warm Home Discount (Miscellaneous Amendments) Regulations 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Warm Home Discount scheme is a key policy in the Government's programme to tackle fuel poverty and the impact of the cost of energy on low income households. The scheme was launched in 2011 and has provided assistance with energy costs to around 2 million low income and vulnerable households in Great Britain each year.

- 7.2 The fuel poverty strategy “Cutting the cost of keeping warm: a fuel poverty strategy for England” published by the Department of Energy and Climate Change in March 2015, showed that energy bill rebates have a role as part of a cost effective mix of measures to tackle the long-term, structural problem of fuel poverty. The strategy drew attention to the fact that as upgrading the energy efficiency of the housing stock is a gradual process, other interventions (such as bill rebates) are necessary to support those struggling with their energy bills. That is why Government continues to promote a range of measures to tackle fuel poverty, including rebates through the Warm Home Discount scheme.
- 7.3 In England, a household is considered to be in fuel poverty if the home has higher than typical energy costs and, were they to spend that amount on energy, they would be left with a residual income below the official poverty line. Fuel poverty is a significant problem which affected approximately 2.35 million households in England in 2013, representing approximately 10.4 per cent of all English households. In Scotland and Wales, a household is considered fuel poor if they need to spend more than 10% of their net income on energy. As there are significant similarities in the characteristics of households considered to be in fuel poverty across Great Britain, the Government has not made variations in the way the scheme is delivered in different parts of Great Britain.
- 7.4 As part of the spending review, in November 2015 the Government announced that the scheme would be extended to 2020/21 at current levels of £320m per year, rising with inflation.
- 7.5 Under the WHD Regulations, the scheme ended on 31st March 2016. This instrument amends the WHD Regulations to run the scheme for a sixth and seventh scheme year and to make some improvements to the scheme. The main changes include:
- Placing a cap on the amount of industry initiative spending on debt write-off that can count towards the non-core spending obligation. This is to encourage a more diverse range of activities under the Industry Initiatives element of the scheme.
 - Providing electricity suppliers with the option to count spending on schemes specified by the Secretary of State towards their non-core spending obligation. This may make compliance easier for smaller suppliers who may not have the resources to set up their own industry initiatives and it may benefit new ‘start up’ initiatives as well as opening up options to link with existing fuel poverty programmes or other forms of funding.
 - Requiring electricity suppliers to report back on the number of rebates they have provided by way of vouchers or by way of credit for pre-payment meters which have not been accepted by the customer. This is taken into account when setting the level of the non-core spending obligation for the following year. The Government considers that the scheme should operate on the basis of the number of customers that have actually benefited from the rebates.
 - Allowing electricity suppliers to credit the rebate to a customer’s gas account, if requested by the customer. This may be preferred by customers wanting to use the rebate to increase their use of gas for heating.
- 7.6 As set out in the Government’s fuel poverty strategy, any future energy-bill rebates should be focused on where they make the most impact in order to ensure that they are helping those most in need and least able to pay. Accurate and accessible data on

property characteristics, energy use and income are key to tackling fuel poverty. To address this, the Government has been working to introduce primary legislation that would enable more data sharing and improve the targeting of fuel poverty schemes. Depending on the timing and passage of that legislation, we could potentially make use of these data sharing powers for the Warm Home Discount from 2017/18, at which point we may look to make more significant changes to the scheme

- 7.7 The consultation carried out for this instrument was for the next year of the scheme. However, the instrument covers the next two years of the scheme because, at this point in time, it is not certain if and when the data sharing powers described above will be in place or what changes will be deliverable using these powers in time for the scheme in 2017/18. Though the Government intends to make changes to the scheme for 2017/18 following consultation, it will not be necessary to make new regulations next year if no changes are possible or desirable. This would also reduce the consultation burden on the scheme's stakeholders.
- 7.8 There is a reasonable level of public interest from energy suppliers who deliver the scheme, fuel poverty groups and the public in the scheme.

Consolidation

- 7.9 This is the third instrument to amend the WHD Regulations. An informal consolidated text will be published on the gov.uk website. Should more significant amendments be made to the scheme for 2017/18 or beyond, a consolidation of the WHD Regulations may be necessary. This instrument is the second to make minor amendments to the Disclosure Regulations and a consolidation of those regulations is not considered necessary at present.

8. Consultation outcome

- 8.1 The consultation on the Warm Home Discount scheme for 2016/17 was launched on 8th April 2016 and closed on 6th May 2016. The length of the consultation was set at 4 weeks as the scheme is well established, key stakeholders were engaged with via email and in face to face meetings before the consultation was launched and the changes proposed were fairly minimal. There were a total of 52 unique responses to the questions that were asked and 6 responses requesting the scheme to be extended to cover Northern Ireland. None of the responses mentioned the length of the consultation period.
- 8.2 There was broad support for the proposals that were outlined in the consultation. As such, the outcome of the consultation was to extend the Warm Home Discount, keeping the Core and Broader group eligibility criteria and the rebate amount the same as in the previous scheme year (2015/16). The consultation proposed not to allow any overspend from the previous scheme year on the non-core spending obligation to be counted towards the following scheme year. In the light of the consultation responses, the decision was taken to continue to allow up to 5% overspend to be carried over into the following scheme year. There was a mixed response to the proposed cap on spending on writing-off debts, although a slight majority of respondents were in favour of some form of cap. The majority of respondents agreed with the principle that the scheme should only take into account rebates that have been accepted by the customer, but the energy suppliers who responded opposed the proposal.

- 8.3 A formal Government response setting out further details on respondents' views was published on 29th June 2016.¹

9. Guidance

- 9.1 The Government will host a round table meeting with participating energy suppliers in July 2016 to inform and discuss the amendments made to the scheme.
- 9.2 The Gas and Electricity Markets Authority, which is the scheme administrator, intend to publish a draft guidance document in July for comment from suppliers participating in the scheme.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is small. Participating energy suppliers will need to familiarise themselves with the changes to the scheme. However, many of the suppliers participating in the scheme will have done so for the past five years and so the impact on these suppliers is likely to be limited.
- 10.2 The impact on the public sector is very small. Ofgem will administer the scheme, monitor compliance and enforce the scheme. The Department of Work and Pensions enable the delivery of the scheme through verifying the eligibility of Core Group rebate recipients. The Department of Energy and Climate Change is responsible for the design of the scheme and have oversight of its impact and effectiveness.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to exempt small electricity suppliers from participation in the scheme. These are suppliers that have less than 250,000 domestic customer accounts (and are not part of a group of electricity or gas supply companies which together have 250,000 or more domestic customer accounts). Small electricity suppliers may participate voluntarily, in which case the requirements of the WHD Regulations relating to the provision of rebates to core group customers will apply to the small supplier.

12. Monitoring & review

- 12.1 The Secretary of State will be under a duty, set out in regulation 31 of the WHD Regulations, to conduct a review of the scheme if the Secretary of State is satisfied that a review would be desirable because of a significant change in circumstances since the commencement of the scheme or if the scheme is not, or may not, be operating effectively or its effectiveness could be improved.
- 12.2 Ofgem is under a duty, set out in section 13 of the Energy Act 2010, to keep the operation of the scheme under review. For each year of the scheme, energy suppliers who participate in the scheme will be required to demonstrate to Ofgem that they have complied with the requirements of the scheme. Ofgem will publish an annual report on the scheme.

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

12.3 The instrument provides for the scheme to run until 31st March 2018. Consultation with Ofgem, electricity and gas suppliers and other appropriate persons and new regulations requiring the approval of Parliament will be needed to extend the scheme beyond that date.

13. Contact

13.1 Hannah Ward at the Department of Energy and Climate Change, telephone: 0300 068 8388 or email: Hannah.ward@decc.gsi.gov.uk, can answer any queries regarding the instrument.