
DRAFT STATUTORY INSTRUMENTS

2022 No.

The Warm Home Discount (Scotland) 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

14.—(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

15.—(1) The Authority must—

- (a) calculate, in accordance with regulation 16, 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 17; or
 - (ii) for any other scheme year, regulation 18.

(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 17 or 18;
- (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—

- (a) for scheme year 12, on or before the later of—

- (i) the 25th working day after the commencement day;
- (ii) 31st October 2022;
- (b) for any other scheme year, by 31st October in the scheme year to which it relates.

Calculation of non-core spending obligation

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

17.—(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 9.4% of (S - I).
- (4) If I exceeds S, O must be adjusted by subtracting the lesser of—
- (a) an amount equal to 9.4% of (I - S); and
 - (b) an amount equal to 9.4% 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 9.4% 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

18.—(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 30) 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 17 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 32, 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—

- (a) where C has made a notification under regulation 11(8) in respect of the preceding scheme year, the number of prescribed rebates as stated in that notification; and
- (b) where C has made a notification under regulation 23(5) 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

19.—(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 provide prescribed rebates under Chapter 3 (broader group) to at least the number of Scotland domestic customers (if any) specified by its broader group rebate target;
- (b) may include spending under Chapter 4 (industry initiatives), subject to the limits in paragraphs (3) and (4); and
- (c) may include spending under Chapter 5 (specified activities).

(3) Where the aggregate non-core spending obligation exceeds £600,000, the amount of spending on debt write-off under regulation 24 which a supplier counts towards its non-core spending obligation—

- (a) must not exceed the supplier’s obligation percentage of £300,000 in respect of customers who are supplied with neither electricity or gas through a pre-payment meter;
 - (b) must not, in total, exceed the supplier’s obligation percentage of £600,000.
- (4) Where the aggregate non-core spending obligation exceeds £800,000, the amount of spending on the installation of boilers or central heating systems under regulation 24 which a supplier counts towards its non-core spending obligation must not in total exceed the supplier’s obligation percentage of £800,000.
- (5) This regulation is subject to regulations 26 and 27.

The broader group rebate target

20.—(1) The “broader group rebate target” for a compulsory scheme electricity supplier in a scheme year is the number of Scotland domestic customers that is equal to—

- (a) where the aggregate non-core spending obligation exceeds £7 million, the lesser of—
 - (i) the relevant amount divided by 150 and rounded up to the nearest whole number; and
 - (ii) the most recent of any number determined by the Authority under paragraph (5)(b) for the supplier in the scheme year in question;
- (b) where the aggregate non-core spending obligation does not exceed £7 million, zero.

(2) For the purposes of paragraph (1)(a), “the relevant amount”, in relation to a supplier, is the supplier’s obligation percentage of the amount calculated by subtracting £7 million from the aggregate non-core spending obligation.

(3) A compulsory scheme electricity supplier must notify the Authority on or before the specified date if it considers that it will not provide prescribed rebates under Chapter 3 in the scheme year to at least the number of Scotland domestic customers specified by its broader group rebate target.

(4) For the purposes of paragraph (3) “the specified date” is—

- (a) in relation to scheme year 12, the later of—
 - (i) the day which is two months after the commencement day;
 - (ii) 15th November 2022;
- (b) in relation to any other scheme year, 15th November in that scheme year.

(5) Following receipt of a notification under paragraph (3), the Authority must—

- (a) determine whether it is not reasonably practicable for the supplier to provide rebates under Chapter 3 in the scheme year to at least the number of Scotland domestic customers specified by its broader group rebate target; and
- (b) where the Authority determines that it is not reasonably practicable for the supplier to provide rebates to at least that number of Scotland domestic customers, determine a smaller number of Scotland domestic customers (which may be zero) to whom the supplier must provide a prescribed rebate under Chapter 3 in the scheme year.

CHAPTER 3

Broader group

Broader group customers

21.—(1) A compulsory scheme electricity supplier must in respect of a scheme year provide the prescribed rebate to Scotland 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) A compulsory scheme electricity supplier cannot treat a prescribed rebate as being provided under this Chapter if it is provided to a core group customer pursuant to a notice under regulation 8.

(3) Paragraph (1) does not require a supplier—

- (a) to provide the prescribed rebate to every Scotland domestic customer meeting its eligibility criteria; or
- (b) to provide prescribed rebates to Scotland domestic customers in excess of its broader group rebate target for the scheme year.

Eligibility criteria and verification measures

22.—(1) A compulsory scheme electricity supplier must notify the Authority of—

- (a) the eligibility criteria which the supplier proposes to apply in selecting broader group customers; and
- (b) the measures (“verification measures”) which it proposes to take 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;
- (b) more than one notification in respect of a scheme year.

(3) The Authority must approve a supplier’s notification of eligibility criteria if, but only if, it is satisfied that—

- (a) the eligibility criteria include all the descriptions of persons in Part 1 of Schedule 2;
- (b) any description of persons included in the eligibility criteria and not included in Part 1 of Schedule 2 will wholly or mainly be persons in fuel poverty or in a fuel poverty risk group; and
- (c) the eligibility criteria are such as to ensure that customers meeting the criteria will wholly or mainly be persons who are not former core group customers of the supplier.

(4) In paragraph (3)(c), “former core group customer” has the same meaning as in regulation 7(5).

(5) The Authority must approve a supplier’s notification of verification measures if, but only if, it is satisfied that—

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

23.—(1) Where a compulsory scheme electricity supplier provides the prescribed rebate to a Scotland 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 12, 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) following a request by the customer, crediting to the customer’s gas 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;
 - (c) tendering payment of the amount of the prescribed rebate to the customer;
 - (d) providing a customer who pre-pays for electricity with credit to the amount of the prescribed rebate against the cost (including Value Added Tax) of future electricity use; or
 - (e) following a request by a customer who pre-pays for gas, providing the customer with credit to the amount of the prescribed rebate against the cost (including Value Added Tax) of future gas use.
- (3) The date on which the prescribed rebate is provided to a broader group customer is the date on which the compulsory scheme electricity supplier complies with paragraph (2).
- (4) A compulsory scheme electricity supplier who provides the prescribed rebate to a broader group customer 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 Scheme.
- (5) A compulsory scheme electricity supplier must, before the end of the specified period, notify the Authority of the number of prescribed rebates provided by the supplier under this Chapter in the scheme year which are undelivered as at the date of the notification.
- (6) For the purposes of this regulation—
 - (a) “the specified period”, in relation to a scheme year, means the period of five months beginning with 1st April immediately following the end of the scheme year;
 - (b) a prescribed rebate is undelivered if—
 - (i) the rebate was provided to a customer by tendering payment of the amount of the prescribed rebate to the customer, and the customer has not accepted the payment; or
 - (ii) the rebate was provided to a customer who pre-pays for electricity or gas with credit to the amount of the prescribed rebate against the cost of future electricity or gas use, and the customer has not accepted that credit.

CHAPTER 4

Industry initiatives

Spending on industry initiatives by a compulsory scheme electricity supplier

24.—(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 3 (an “industry initiative”) by—

- (a) the supplier; or
- (b) a connected scheme gas supplier, to the extent permitted by regulation 26.

(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 3.

(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

25.—(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 3, 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 Scotland 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

26.—(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 24 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 24 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

27. In scheme year 12, a compulsory scheme electricity supplier may treat as an amount of spending incurred under regulation 24 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 19 and 24 to 26, if these Regulations had come into force on 1st April 2022.

CHAPTER 5

Specified activities

Types of spending: activities specified by the Scottish Ministers

28.—(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 Scottish Ministers.

(3) The Scottish Ministers may only specify an activity in a notice if the Scottish Ministers are 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 3, 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 Scotland 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 Scottish Ministers have published the notice specifying the activity.