

**EXPLANATORY MEMORANDUM TO
THE ELECTRICITY AND GAS (ENERGY COMPANIES OBLIGATION)
(AMENDMENT) ORDER 2014**

2014 No. 1131

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.

2. Purpose of the instrument

2.1 This Order makes amendments to the Energy Companies Obligation (“ECO”), which requires large gas or electricity suppliers to achieve carbon and home heating cost reduction targets by promoting the installation of energy efficiency measures at domestic properties. These targets are the carbon emissions reduction obligation (“CERO”), the carbon saving community obligation (“CSCO”) and the home heating cost reduction obligation (“HHCRO”).

2.2 This Order will in particular (i) allow for the transfer of “excess actions” between obligated suppliers, (ii) ensure that ECO measures for the carbon targets can be installed in a period when a property is not occupied, and (iii) provide that certain recipients of Universal Credit are eligible for support under the home heating cost reduction obligation.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This Order amends the Electricity and Gas (Energy Companies Obligation) Order 2012 (S.I. 2012/3018) (the “ECO Order”) to reflect some developments in Government policy on ECO, and to reflect the introduction of Universal Credit.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 The Minister of State for Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the Electricity and Gas (Energy Companies Obligation) (Amendment) Order 2014 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 This Order makes several amendments and the most significant of these are; provision to allow the transfer of “excess actions” between obligated suppliers; provision to ensure that ECO measures can be installed in a period when a property is not occupied; and provision for certain people in receipt of Universal Credit to be eligible for support under the home heating cost reduction obligation.

7.2 Articles 3(a), 4(e) 5(d) and 6 of this Order amend the scoring rules which determine the contribution that glazing measures make to a supplier’s target. Under the current scoring system, glazing measures only receive credit for the part of the carbon or cost saving which exceeds the saving that would be achieved by a glazing measure which meets the minimum standard required under Building Regulations. This Order provides that all glazing measures are subject to the same scoring system as other ECO measures. This amendment will enable suppliers to count a higher carbon saving score towards their targets for delivering replacement window units compared to under the existing rule. It will ensure that suppliers are not perversely incentivised to deliver replacement panes (which do not fall within the definition of “glazing measure” in the ECO Order and, hence, already receive a full score) in cases where other glazing measures are more appropriate for the property in question.

7.3 Article 3(c) of this Order changes the requirements for solid wall insulation installed under ECO. The ECO Order currently requires that solid wall insulation must lower the U-Value (the measure in W/m^2K of heat transmission through material) of the walls to $0.30W/m^2K$. However, the Department was made aware that this requirement is different from standards applied under Building Regulations which allow a greater level of flexibility and can therefore be applied more appropriately to a wide range of properties including harder-to-treat properties. The current requirement in the ECO Order may not be appropriate for the insulation of solid walls in some types of harder-to-treat properties. As a result, this Order will remove the requirement that solid wall insulation must lower the U-value of the treated walls to $0.30W/m^2K$ or less. Installers will simply have to comply with any applicable standards under the Building Regulations.

7.4 Articles 3(b), 4(a), (b) and (d), and 5(a) to (c) of this Order make amendments to clarify that ECO measures can be installed in a period when a property is not occupied. As a result of these amendments, the ECO Order will no longer provide that the two carbon targets (CERO and CSCO) are to be achieved by promoting measures to a domestic energy user, but instead that they are to be achieved by promoting measures which are installed at domestic premises. This change was made following feedback from the private rented sector and housing charities, which suggested the ideal time to install more complex measures such as solid wall insulation was when a property was empty. However, suppliers will still have to meet 15% of CSCO by promoting measures to members of the affordable

warmth group living in a rural area. In addition, HHCRO must be achieved by promoting measures to households which include a person who is in receipt of certain benefits or tax credits. This is because these two elements of ECO are specifically designed to help people who are in particular circumstances. In these amendments, the term “domestic premises” will have its natural meaning. This term is already used in the ECO Order without specific definition and this has not caused difficulty. The ECO Administrator, Ofgem, issues guidance for energy suppliers on ECO, and this includes an explanation of how Ofgem interprets the term for the purpose of administering ECO.

7.5 Article 4(c) of this Order changes one of the rules which apply to the making of a connection to a District Heating System (DHS). Making a connection to a DHS is eligible as a secondary measure under the CERO – this means that a connection to a DHS can only be made under CERO if it is provided alongside solid wall insulation or hard to treat cavity wall insulation. However, the ECO Order currently requires the DHS connection to be made within six months of hard to treat cavity wall insulation or solid wall insulation being installed at the property. This Order removes the six-month time limit in response to feedback from stakeholders that this rule was too short a time frame for larger scale projects, in order to facilitate the delivery of DHSs.

7.6 Article 7 of this Order inserts a new article 21A into the ECO Order, which will allow suppliers to apply to the Administrator (Ofgem), to transfer “excess actions” to another supplier. An “excess action” is work completed under previous energy efficiency schemes which was not required to meet the target under the relevant scheme and is approved by Ofgem for carry forward to ECO. This amendment will put “excess actions” on the same footing as “qualifying actions” (that is, measures installed under ECO), which can already be transferred to another supplier under article 20 of the ECO Order. This will give suppliers greater flexibility in how they meet their obligation, help suppliers to realise the full benefits of any “excess actions” and consequently help keep down the costs of delivery of the scheme.

7.7 Article 9 of this Order makes some changes to Schedule 1 to the ECO Order. Schedule 1 sets out which persons are eligible for support under the home heating cost reduction obligation (“HHCRO”) – known as the “affordable warmth group”. Firstly, in light of the impact of wider welfare reform this Order provides that certain persons in receipt of Universal Credit are included in the affordable warmth group. The Government has taken an approach which is as close as practicably possible to that within the existing affordable warmth group criteria, without narrowing the number of persons that would be eligible for support. As such, as Universal Credit is a monthly benefit, the amendment provides that persons claiming Universal Credit are members of the affordable warmth group if in one month of the preceding twelve they are at or below a net monthly earned income threshold of £1167 and are responsible for a child or have a disability.

7.8 In addition article 9 of this Order makes some further minor changes to Schedule 1, in order to align the ECO Order more closely with existing legislation governing benefits and tax credits. This Order therefore amends the definition of “qualifying child” to include children under the age of 20 who are attending a full time government approved training scheme, as well as those in full time non-advanced education. In addition, Schedule 1 is amended so that, where previously a person needed to have “parental responsibility for a qualifying child”, it will instead provide that a person must be “responsible for a qualifying child”, as provided for in the Child Tax Credit Regulations (S.I. 2002/2007). These changes are consistent with the Government’s original policy intent, and mean that if a person is in receipt of one of the benefits/tax credits listed in Schedule 1 to the ECO Order and is responsible for a child under 16, or under 20 if the child is in education or training, that person is a member of the affordable warmth group.

Consolidation

- No consolidation is proposed at present. This is the first instrument to make amendments to the ECO Order.

8. Consultation outcome

8.1 On 24 July 2013, the Department of Energy and Climate Change launched a consultation on these technical updates to the Energy Company Obligation (ECO). The consultation proposals were published on the DECC website.

8.2 The consultation sought views across England, Wales and Scotland on all aspects of the proposals. The consultation closed on 16 September 2013 and the Department received 52 responses from key stakeholders within the supply chain.

8.3 Feedback from the consultation was used to inform a number of changes to the policy, particularly on the chosen solution for void periods. The most popular proposal answered by respondents was the proposal on ‘void’ periods. Of the 52 respondents to the consultation, 49 responded on this proposal, and all were in favour of clarifying the ECO Order to ensure installation can take place during a void period. Following engagement with key stakeholders in the private rented sector (PRS) the final policy solution was amended in a way which saw the removal of the short time frame which was identified as a key barrier to the delivery of measures in void periods. The resulting amendments to the ECO Order, described at paragraph [7.4] above will enable ECO measures to be installed in domestic properties at all times. This will help to facilitate the delivery of more complex measures such as SWI or large scale retrofits, in these scenarios an empty property is often the most suitable time to install these types of measures.

8.4 The government response to the consultation was published on the Department’s website on the 3rd of February,

<https://www.gov.uk/government/consultations/updates-to-the-electricity-and-gas-energy-companies-obligation-order-2012> .

9. Guidance

9.1 After this Order is made, an updated version of the non-statutory guidance for obligated suppliers will be published by the Energy Company Obligation Administrator, Ofgem.

9.2 Copies of the published guidance will be circulated to all energy suppliers and other key stakeholders. The guidance will be available free of charge from the website of the Administrator.

10. Impact

10.1 Due to the minor and technical nature of the proposed changes, no significant impact on business, charities or voluntary bodies is foreseen. Please refer to the original Impact Assessment of June 2011 for an assessment of the overall impact of the Green Deal and ECO policies,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42984/5533-final-stage-impact-assessment-for-the-green-deal-a.pdf .

10.2 There is no significant impact on the public sector. The administrator, Ofgem (a public body), will be required to produce new guidance.

11 Regulating small business

11.1 The ECO Order does not apply to small business. Energy suppliers with fewer than 250,000 customers are not required to participate in the Energy Company Obligation.

12. Monitoring and review

12.1 Monitoring of ECO is being undertaken throughout the duration of the scheme. The Administrator submits monthly reports to the Secretary of State setting out the progress energy suppliers are making towards meeting their obligations.

13. Contact

Lottie Jones at the Department of Energy and Climate Change can answer any queries regarding the instrument, Tel: 0300 068 5632 or email: lottie.jones@decc.gsi.gov.uk.