

**2018 No. 909**

**ELECTRICITY**

**GAS**

**The Warm Home Discount (Miscellaneous Amendments)  
Regulations 2018**

*Made* - - - -

*25th July 2018*

*Coming into force in accordance with regulation 1*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 9, 10, 14(4) and 31(5) and (6) of the Energy Act 2010(a) with the consent of the Treasury(b) and with the agreement of the Scottish Ministers(c).

The Secretary of State has consulted the Gas and Electricity Markets Authority, licensed electricity suppliers, licensed gas suppliers and such other persons as the Secretary of State considers appropriate.

In accordance with section 31(2)(b) of the Energy Act 2010 a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Warm Home Discount (Miscellaneous Amendments) Regulations 2018 and come into force on the 21st day after the day on which they are made.

**Amendment of the Warm Home Discount Regulations 2011**

2. The Warm Home Discount Regulations 2011(d) are amended in accordance with regulations 3 to 28.

**Amendments to regulation 2 (interpretation)**

3. In regulation 2(1)—

(a) after the definition of “compulsory scheme electricity supplier” insert—

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(a) 2010 c. 27. Sections 9 and 31 of the Energy Act 2010 are amended by section 58 of the Scotland Act 2016 (c.11).  
(b) The consent of the Treasury is required by section 14(3) of the Energy Act 2010 to make regulations under section 9 of that Act.  
(c) Notwithstanding section 14A(1) and (2) of the Energy Act 2010, as inserted by section 58 of the Scotland Act 2016, the Secretary of State may, by virtue of section 14A(6)(a) of the Energy Act 2010, make any provision under section 9 of the Energy Act 2010 for the purposes of a scheme in relation to Scotland, with the agreement of the Scottish Ministers.  
(d) S.I. 2011/1033, amended by S.I. 2014/695, S.I. 2015/652 and S.I. 2016/806.

- ““compulsory smaller electricity supplier” has the meaning given in regulation 5(6);”;
- (b) after the definition of “dual fuel” insert—
- ““eligibility statement” means a document which describes the criteria adopted by the Secretary of State for the purpose of providing the prescribed rebate in a scheme year to persons living in fuel poverty or in a fuel poverty risk group;”;
- (c) in the definition of “eligible occupier of a mobile home”—
- (i) in paragraph (a), for “state pension credit, or” substitute “guarantee credit;”;
- (ii) after paragraph (a) insert—
- “(aa) who meets the criteria described in any eligibility statement for the scheme year consulted on and published by the Secretary of State before the start of the scheme year, or”;
- (d) after the definition of “energy advice” insert—
- ““fourth commencement date” means the date on which the Warm Home Discount (Miscellaneous Amendments) Regulations 2018 come into force;”;
- (e) before the definition of “industry initiative” insert—
- ““guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002(a);”;
- (f) in the definition of “the prescribed rebate”, for paragraph (d) substitute—
- “(d) in all other scheme years, £140;”;
- (g) for the definition of “scheme electricity supplier” substitute—
- ““scheme electricity supplier” means—
- (a) in relation to any of the scheme years 1 to 8, a compulsory scheme electricity supplier or a voluntary scheme electricity supplier;
- (b) in relation to a subsequent scheme year, a compulsory scheme electricity supplier, a compulsory smaller electricity supplier or a voluntary scheme electricity supplier;”;
- (h) in the definition of “scheme year”—
- (i) at the end of paragraph (c) omit “or”;
- (ii) after paragraph (d) insert—
- “(e) from the fourth commencement date to 31st March 2019 (“scheme year 8”);
- (f) from 1st April 2019 to 31st March 2020 (“scheme year 9”); or
- (g) from 1st April 2020 to 31st March 2021 (“scheme year 10”);”;
- (i) after the definition of “voluntary commitment” omit “and”;
- (j) in the definition of “voluntary scheme electricity supplier”, after “5(4)” insert “and (4A);”;
- (k) after the definition of “voluntary scheme electricity supplier” insert—
- ““working days” means any day other than—
- (a) a Saturday or Sunday; or
- (b) a day which is a bank holiday in England and Wales or in Scotland under section 1 of the Banking and Financial Dealings Act 1971(b).”.

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(a) 2002 c.16. Section 2 of that Act is amended by Schedule 24 to the Civil Partnership Act 2004 (c.33). Sections 1 and 2 of the State Pension Credit Act 2002 are prospectively amended by section 75 of, and Schedule 4 to, the Welfare Reform Act 2012 (c.5).

(b) 1971 c.80. Schedule 1 to that Act is amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (2007 asp 2). There are other amendments which are not relevant.

#### **Amendments to regulation 3 (name and duration of scheme)**

**4.** In regulation 3—

- (a) at the end of paragraph (4) insert “and during the period from the fourth commencement date to 31st March 2021 (“the third scheme period”)”;
- (b) in paragraph (5), after “second scheme period” insert “and after the end of the third scheme period”.

#### **Amendments to regulation 4 (notification by suppliers)**

**5.** In regulation 4—

- (a) in paragraph (2)(b), for “and 2017” substitute “, 2017, 2019 and 2020”;
- (b) after paragraph (2)(d) insert—
  - “(e) the 14th day after the fourth commencement date.”;
- (c) after paragraph (3B) insert—
  - “(3C) If, before the fourth commencement date, a supplier has notified the Authority of the number of that supplier’s domestic customers on 31st December 2017, the Authority shall treat that as the supplier’s notification for the purposes of paragraph (2)(e).”.

#### **Amendments to regulation 5 (scheme suppliers)**

**6.** In regulation 5—

- (a) in paragraph (4), for “any scheme year” substitute “any of the scheme years 1 to 7”;
  - (b) after paragraph (4) insert—
    - “(4A) A licensed electricity supplier is a voluntary scheme electricity supplier—
      - (a) in relation to scheme year 8, if—
        - (i) the supplier is not a compulsory scheme electricity supplier; and
        - (ii) the supplier gives notice to the Authority on or before the 14th day after the fourth commencement date that the supplier wishes Part 3 of these Regulations to apply to it;
      - (b) in relation to a subsequent scheme year, if—
        - (i) the supplier is not a compulsory scheme electricity supplier or a compulsory smaller electricity supplier; and
        - (ii) the supplier gives notice to the Authority by 14th February preceding the start of the scheme year that the supplier wishes Part 3 of these Regulations to apply to it.”;
  - (c) after paragraph (5) insert—
    - “(6) In relation to scheme year 9, or a subsequent scheme year, a person is a compulsory smaller electricity supplier if—
      - (a) that person—
        - (i) is a licensed electricity supplier;
        - (ii) is not a compulsory scheme electricity supplier; and
        - (iii) supplied electricity to domestic customers on the 31st December preceding the start of the scheme year; and
      - (b) at least one of the conditions in paragraph (7) is satisfied.
- (7) The conditions referred to in paragraph (6)(b) are that—
- (a) the supplier had at least the relevant number of domestic customers on the 31st December preceding the start of the scheme year; or

- (b) the supplier and any licensed electricity suppliers and licensed gas suppliers which were connected to the supplier on the 31st December preceding the start of the scheme year together had at least the relevant number of domestic customers on the 31st December preceding the start of the scheme year.
- (8) For the purposes of paragraph (7), the “relevant number” is—
  - (a) in relation to scheme year 9, 200,000;
  - (b) in relation to a subsequent scheme year, 150,000.”.

**New regulation 5A (suppliers no longer participating in the scheme)**

7. After regulation 5 insert—

**“Suppliers no longer participating in the scheme**

- 5A.**—(1) This regulation applies to a licensed electricity supplier in any scheme year if—
- (a) the supplier is not a scheme electricity supplier in relation to the scheme year; and
  - (b) the supplier was a scheme electricity supplier in relation to the preceding scheme year.
- (2) A licensed electricity supplier to which this regulation applies must—
- (a) place a statement on its website that the supplier is not participating in the Warm Home Discount scheme; and
  - (b) notify its former core group customers in writing that the supplier is not participating in the Warm Home Discount scheme.
- (3) The statement referred to in paragraph (2)(a) must—
- (a) be placed in a prominent and publicly accessible location on the licensed electricity supplier’s website on or before the relevant date; and
  - (b) remain in a prominent and publicly accessible location on the licensed electricity supplier’s website during the remainder of the scheme year.
- (4) The notification referred to in paragraph (2)(b) must, so far as is reasonably practicable, be made on or before the relevant date.
- (5) In this regulation—
- “former core group customer” means, in relation to a supplier, a person who—
    - (a) is a domestic customer of the supplier; and
    - (b) was a core group customer of the supplier in the preceding scheme year;
  - “relevant date” means the date falling one month after the date on which the scheme year starts.”.

**Amendments to regulation 6 (determination of scheme customers by the Secretary of State)**

8. In regulation 6—

- (a) at the beginning of paragraph (2) insert “In scheme years 1 to 7,”;
- (b) after paragraph (2) insert—
  - “(2A) In scheme year 8, a person may not be specified in a notice unless it appears to the Secretary of State that—
    - (a) the person is a domestic customer of the scheme electricity supplier; and
    - (b) the person, or the person’s partner, is in receipt of guarantee credit.
  - (2B) In scheme years 9 and 10, a person may not be specified in a notice unless it appears to the Secretary of State that—
    - (a) the person is a domestic customer of the scheme electricity supplier; and

- (b) either—
  - (i) the person meets the criteria described in any eligibility statement for the scheme year consulted on and published, before the start of the scheme year, by the Secretary of State; or
  - (ii) where, before the start of the scheme year, the Secretary of State has not consulted on and published an eligibility statement for the scheme year, the person, or the person’s partner, is in receipt of guarantee credit.”;
- (c) for paragraph (3) substitute—
 

“(3) A notice containing personal information (within the meaning of section 40(5) of the Digital Economy Act 2017<sup>(a)</sup>) may only be given if—

  - (a) the personal information is given with the consent of the persons to whom it relates;
  - (b) regulations are in force under section 142 of the Pensions Act 2008<sup>(b)</sup> and those regulations authorise the Secretary of State to provide the electricity supplier with the personal information contained in the notice; or
  - (c) the Secretary of State is authorised by section 36 of the Digital Economy Act 2017 to provide the electricity supplier with the personal information contained in the notice.”;
- (d) after paragraph (5) insert—
 

“(6) In scheme year 10, a notice may not be given after 1st March 2021.”.

**Amendments to regulation 9 (provision of information by suppliers)**

**9.** In regulation 9—

- (a) at the end of paragraph (2)(a) insert “, except for any scheme electricity supplier to whom information may not be disclosed under section 36(1) of the Digital Economy Act 2017”;
- (b) for paragraph (3) substitute—
 

“(3) A direction may only be given to a scheme electricity supplier if—

  - (a) regulations are in force under section 142 of the Pensions Act 2008 and those regulations authorise the scheme electricity supplier to disclose to the Secretary of State the information specified in the direction; or
  - (b) the scheme electricity supplier is authorised by section 37 of the Digital Economy Act 2017 to disclose to the Secretary of State the information specified in the direction.”;
- (c) in paragraph (7), for “6 and 7” substitute “6 to 10”;
- (d) in paragraph (8), after sub-paragraph (b) insert—
 

“(c) for each subsequent scheme year, the period following the end of the scheme year beginning on 1st April and ending on 31st August.”.

**Amendment to regulation 11 (Part 3: Interpretation)**

**10.** In regulation 11, for “except in regulation 8” substitute “except the second and third references in regulation 6(2B), the references in regulation 8”.

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(a) 2017 c.30.  
 (b) 2008 c.30.

### **Amendments to regulation 12 (determination and notification of non-core spending obligation)**

#### **11. In regulation 12—**

- (a) in paragraph (1)(b), for “4 and 7” substitute “4, 7, 9 and 10”;
- (b) after paragraph (1)(d) insert—
  - “(e) for scheme year 8, on or before the 7th day after the fourth commencement date,”;
- (c) at the end of paragraph (6)(a) omit “and”;
- (d) after paragraph (6)(b) insert—
  - “(c) for scheme year 8, on or before the 20th working day after the fourth commencement date,
  - (d) for scheme year 9, by 14th March 2019, and
  - (e) for scheme year 10, by 14th March 2020,”;
- (e) for paragraph (7)(b) substitute—
  - “(b) for a scheme year in which the aggregate non-core spending obligation exceeds £50 million, the amount of spending which the supplier is required to make under Chapter 2; and”;
- (f) in paragraph (7)(c), after “15(3A)(ba)(ii)” insert “or 15B(3)(b)”.

### **Amendment to regulation 13 (calculation of non-core spending obligation)**

- 12. In regulation 13(5), for “5, 6 and 7” substitute “5 to 10”.**

### **Amendments to regulation 14 (adjustments for banking and borrowing)**

#### **13. In regulation 14—**

- (a) in paragraph (1), for “2 to 7” substitute “2 to 10”;
- (b) in paragraph (3)(b)(iii), for “scheme years 5, 6 and 7” substitute “subsequent scheme years”;
- (c) in paragraph (3A), for “6 and 7” substitute “6 to 10”;
- (d) in paragraph (3B), after sub-paragraph (b) insert—
  - “(c) for each subsequent scheme year, the period following the end of the scheme year beginning on 1st April and ending on 31st August.”;
- (e) in paragraph (3C)—
  - (i) for “scheme year 7” substitute “scheme years 7 to 10”;
  - (ii) for “scheme year 6” substitute “the preceding scheme year”;
- (f) in paragraph (4), for “scheme year 7” substitute “scheme years 7, 9 and 10”;
- (g) after paragraph (5) insert—
  - “(6) In scheme year 8, the Authority must notify each compulsory scheme electricity supplier of the matters referred to in sub-paragraphs (a) and (b) of paragraph (4) by 30th September 2018, or within 2 months of the fourth commencement date, whichever is the later.”.

### **Amendments to regulation 15 (types and amounts of spending)**

- 14.—(1) In the heading of regulation 15, at the end insert “in scheme years 1 to 7”.**

#### **(2) In regulation 15—**

- (a) in paragraph (1), for “each scheme year” substitute “each of scheme years 1 to 7”;
- (b) in paragraph (3)(a), for “each scheme year” substitute “each of scheme years 1 to 7”.

## New regulations 15A and 15B (types and amounts of spending from scheme year 8)

### 15. After regulation 15 insert—

#### “Types and amounts of spending from scheme year 8

**15A.**—(1) This regulation applies to a scheme year commencing on or after the fourth commencement date (“a relevant scheme year”).

(2) In each relevant scheme year, a compulsory scheme electricity supplier must incur spending under this Part to the amount of its non-core spending obligation, and in doing so—

- (a) may include spending on industry initiatives under Chapter 4 and on specified activities under Chapter 5, subject to the limits in paragraphs (3) to (5);
- (b) in a scheme year in which the aggregate non-core spending obligation does not exceed £50 million, must not include spending under Chapter 2; and
- (c) in a scheme year in which the aggregate non-core spending obligation exceeds £50 million, must include spending under Chapter 2, which must be of no less than the relevant percentage of the amount calculated by subtracting £40 million from the aggregate non-core spending obligation, unless the Authority has notified the supplier under regulation 15B(3)(c) that it may incur spending below that amount.

(3) In each relevant scheme year in which the aggregate non-core spending obligation exceeds £5 million, the maximum amount of spending under Chapter 4 on an activity of a kind listed in the final row of the table in Schedule 4(a) that a compulsory scheme electricity supplier may count towards its non-core spending obligation is the relevant percentage of £5 million.

(4) In each relevant scheme year in which the aggregate non-core spending obligation exceeds £50 million, the maximum amount of spending under Chapters 4 and 5 combined that a compulsory scheme electricity supplier may count towards its non-core spending obligation is the relevant percentage of £40 million, unless the Authority has notified the supplier under regulation 15B(3)(c) that it may spend in excess of that amount to meet its non-core spending obligation.

(5) Subject to paragraph (6), the maximum amount of spending under Chapter 4 on debt write-off that a compulsory scheme electricity supplier may count towards its non-core spending obligation is the relevant percentage of—

- (a) £10 million in scheme year 8;
- (b) £8 million in scheme year 9;
- (c) £6 million in scheme year 10.

(6) Paragraph (5) does not apply in a scheme year in which the aggregate non-core spending obligation is equal to, or less than—

- (a) £10 million in scheme year 8;
- (b) £8 million in scheme year 9;
- (c) £6 million in scheme year 10.

(7) In this regulation—

“debt write-off” has the same meaning as in regulation 15(6); and

“the relevant percentage” means the percentage determined under regulation 13(2).

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(a) The final row of the table in Schedule 4 is inserted by regulation 28(2).

### **Adjustment of types and amounts of spending from scheme year 8**

**15B.**—(1) If an amount of spending is notified to a compulsory scheme electricity supplier under regulation 12(7)(b) for a relevant scheme year, the supplier must notify the Authority by 15th December in the scheme year if it considers that it will not incur at least that amount of spending under Chapter 2 for the scheme year.

(2) A notification under paragraph (1) must be in such form, and contain such information, as the Authority requires.

(3) The Authority must, within 20 working days of receiving a notification under paragraph (1)—

- (a) determine whether it is not reasonably practicable for the supplier to incur spending under Chapter 2 to at least the amount notified to the supplier under regulation 12(7)(b);
- (b) where the Authority determines that it is not reasonably practicable for the supplier to incur at least that amount of spending, determine—
  - (i) the extent to which the supplier may incur spending below that amount under Chapter 2; and
  - (ii) the maximum amount by which the supplier may increase its spending under Chapter 4 or 5; and
- (c) notify the supplier accordingly.

(4) A supplier must comply with a determination notified to it under paragraph (3)(c).

(5) In this regulation, “relevant scheme year” has the same meaning as in regulation 15A(1).”.

### **New regulation 17B (scheme year 8 spending before fourth commencement date)**

16. After regulation 17A insert—

#### **“Scheme year 8 spending before fourth commencement date**

**17B.** In scheme year 8, a compulsory scheme electricity supplier may treat as an amount of spending incurred under Chapter 4 any spending which—

- (a) takes place in the period beginning on 1st April 2018 and ending on the day before the fourth commencement date; and
- (b) would count towards its non-core spending obligation by virtue of Chapter 4 if the Warm Home Discount (Miscellaneous Amendments) Regulations 2018 had come into force on 1st April 2018.”.

### **Amendment to regulation 18 (broader group customers)**

17. In regulation 18(1), after “in each scheme year” insert “in which the aggregate non-core spending obligation exceeds £50 million”.

### **Amendments to regulation 19 (eligibility criteria and verification measures)**

18. In regulation 19—

- (a) in paragraph (4)(b), for “2 to 7” substitute “2 to 10”;
- (b) for paragraph (5)(a) substitute—
  - “(a) in the case of eligibility criteria notified for the purposes of any of scheme years 2 to 8, the eligibility criteria include all the descriptions of persons in Part 1 of Schedule 2;
  - (aa) in the case of eligibility criteria notified for the purposes of any of scheme years 9 and 10, the Authority is satisfied that the eligibility criteria include all the



descriptions of persons in Part 1 of Schedule 2 other than those persons meeting the criteria described in any relevant eligibility statement; and”;

- (c) in paragraph (6), for “2 to 7” substitute “2 to 10”;
- (d) after paragraph (7) insert—

“(8) In this regulation, “relevant eligibility statement” means an eligibility statement for the scheme year which has been consulted on and published by the Secretary of State before the start of the scheme year.”.

#### **Amendment to regulation 20 (provision of rebate to broader group customers)**

19. In regulation 20(1)(b)(ii), for “1 and 6” substitute “1, 6 and 8”.

#### **Amendment to regulation 21ZA (scope of Chapter 3)**

20. In regulation 21ZA, for “6 and 7” substitute “commencing on or after the third commencement date”.

#### **Amendments to regulation 26 (industry initiatives)**

21. In regulation 26—

- (a) in paragraph (1), for “any scheme year” substitute “any of scheme years 1 to 7”;
- (b) after paragraph (1) insert—

“(1A) Subject to regulation 15A(3) to (5), and to paragraphs (2) and (4), a compulsory scheme electricity supplier may in respect of any of scheme years 8 to 10 count towards its non-core spending obligation spending (excluding Value Added Tax) taking place in that scheme year on an industry initiative by—

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

- (c) after paragraph (3) insert—

“(4) Paragraph (1A) 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 takes place after the Authority has approved the industry initiative; or
- (ii) in scheme year 8, the spending takes place before the Authority has decided whether to approve the industry initiative, and the Authority subsequently approves it.”.

#### **Amendments to regulation 27A (activities specified by the Secretary of State)**

22. In regulation 27A, in paragraph (1)—

- (a) for “regulation 15(4)” substitute “regulations 15(4) and 15A(4)”;
- (b) for “6 and 7” substitute “6 to 10”.

#### **Amendments to regulation 28 (approvals by the Authority: procedure)**

23. In regulation 28—

- (a) in paragraph (4)(a), for “28 days” substitute “20 working days”;
- (b) in paragraph (5), for “28 days” substitute “20 working days”.

### **Amendment to regulation 29 (determination of amounts spent by scheme suppliers)**

24. In regulation 29(1)(c)(iii), for “6 and 7” substitute “6 to 10”.

### **Substitution of regulation 31 (reviews of the scheme)**

25. For regulation 31 substitute—

#### **“Reviews of the scheme**

**31.** The Secretary of State must conduct a review—

- (a) of the scheme, if the Secretary of State is satisfied that a review would be desirable because—
  - (i) the Scottish Ministers have consulted, or are consulting, the Secretary of State in accordance with section 14A(5)(a) of the Energy Act 2010 (consultation on proposed regulations under section 9 of the Energy Act 2010); or
  - (ii) there has been a significant change in circumstances since the fourth commencement date;
- (b) of the amount of the prescribed rebate, if the Secretary of State is satisfied that a review would be desirable because there has been a significant change in the gas or electricity costs incurred by persons in fuel poverty or in a fuel poverty risk group;
- (c) of regulation 5 (scheme suppliers), if the Secretary of State is satisfied that a review would be desirable in order to promote effective competition between suppliers or to protect the interests of domestic customers;
- (d) of Part 4 (non-core spending), if the Secretary of State is satisfied that a review would be desirable because the Secretary of State has proposed a significant increase to the number of persons to whom suppliers must provide the prescribed rebate under Part 3 (the core group);
- (e) of any aspect of the operation of the scheme, if the Secretary of State is satisfied that a review would be desirable—
  - (i) in order for the scheme to achieve greater reductions in fuel poverty; or
  - (ii) because that aspect of the scheme is not, or may not be, operating effectively or its effectiveness could be improved.”.

### **Amendments to Schedule 1 (aggregate non-core spending obligation)**

26. In Schedule 1—

- (a) after paragraph 3(c)(v) insert—
  - “(vi) £340 million for scheme year 8;
  - (vii) for scheme year 9, £340 million increased or, as the case may be, decreased by the percentage increase or decrease in the consumer prices index over the 9 month period ending with 31st December 2018 (the resulting figure being rounded to the nearest million pounds sterling, with half a million being rounded upwards);
  - (viii) for scheme year 10, £340 million increased or, as the case may be, decreased by the percentage increase or decrease in the consumer prices index over the 21 month period ending with 31st December 2019 (the resulting figure being rounded to the nearest million pounds sterling, with half a million being rounded upwards).”;
- (b) in paragraph 4, for “2 to 7” substitute “2 to 10”;
- (c) in paragraph 7, for “3 to 7” substitute “3 to 10”;
- (d) in paragraph 10, before the definition of “year t-1” insert—

““consumer prices index” means—

- (a) the consumer prices index (CPI) published by the Office for National Statistics, or
- (b) where the index is not published for a month, any substituted index or figures published by the Office for National Statistics;”.

#### **Amendments to Schedule 2 (broader group)**

**27.**—(1) In Part 1 of Schedule 2—

- (a) in paragraph 2, omit “work-related activity or”;
- (b) after paragraph 2 insert—

“**2A.** A person who is in receipt of income-related employment and support allowance and who is a member of the work-related activity group and—

- (a) has parental responsibility for a child under the age of 5 who ordinarily resides with that person; or
- (b) is in receipt of a qualifying component.”;
- (c) in paragraph 4—
  - (i) for “is not in work or self-employed” substitute “has an earned income of between £0 and £1,349 in at least one relevant assessment period”;
  - (ii) for sub-paragraph (a), substitute—

“(a) has limited capability for work or limited capability for work and work-related activity as determined in accordance with Part 5 of the Universal Credit Regulations 2013(a);”.

(2) In Part 3 of Schedule 2—

- (a) after the definition of “documentary evidence” insert—

““earned income” means a person’s earned income calculated in accordance with Chapter 2 of Part 6 of the Universal Credit Regulations 2013(b);

“member of the work-related activity group” means a person who has or is treated as having limited capability for work under Part 5 of the Employment and Support Allowance Regulations 2008(c) other than by virtue of regulation 30 of those Regulations;”;

- (b) after the definition of “qualifying component” insert—

““relevant assessment period” means an assessment period beginning on a date no earlier than 6 months before the date on which the scheme year starts, where “assessment period” has the meaning given in regulation 21 of the Universal Credit Regulations 2013(d);”.

#### **Amendment to Schedule 4 (industry initiatives)**

**28.**—(1) In the shoulder note for Schedule 4, for “Regulation” substitute “Regulations 15A(3) and”.

(2) At the end of Schedule 4 insert—

“Making, or funding the making by other persons of, payments towards the gas or electricity bills of domestic customers who	A supplier may not count— (a) the part of any payment in relation to a domestic customer that exceeds £140 in a
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(a) S.I. 2013/376. Part 5 is amended by S.I. 2014/597, S.I. 2015/1754 and S.I. 2016/678.

(b) Chapter 2 of Part 6 is amended by S.I. 2013/1508, S.I. 2014/2888, S.I. 2014/3255, S.I. 2015/67, S.I. 2015/345, S.I. 2015/1754, S.I. 2017/348 and S.I. 2018/65.

(c) S.I. 2008/794. Part 5 is amended by S.I. 2008/2428, S.I. 2010/840, S.I. 2010/1907, S.I. 2011/674, S.I. 2011/2425, S.I. 2012/3096, S.I. 2013/2536, S.I. 2014/884 and S.I. 2015/437.

(d) Regulation 21 is amended by S.I. 2014/2887 and S.I. 2018/65.

are—	scheme year;
(a) living in domestic premises which are non-gas fuelled;	(b) payments in relation to charges incurred by a domestic customer before the date on which the payment was made;
(b) living in a household with a person who has significant health problems or a disability;	(c) payments to domestic customers eligible for a rebate from the supplier under Part 3;
(c) living in a community where residents are wholly or mainly in fuel poverty, or in a fuel poverty risk group; or	(d) payments to domestic customers who meet any eligibility criteria determined by the supplier and approved by the Authority in accordance with Chapter 2 of Part 4.”
(d) supplied with gas or electricity through a pre-payment meter.	

### **Amendments to the Warm Home Discount (Reconciliation) Regulations 2011**

**29.**—(1) The Warm Home Discount (Reconciliation) Regulations 2011<sup>(a)</sup> are amended as follows.

(2) In regulation 1A, for “1 to 7” substitute “1 to 10”.

(3) In regulation 2(1), in the definition of “the Operator”, for “scheme year 7” substitute “scheme years 7 to 10”.

(4) In regulation 4—

(a) in paragraph (2A), for “scheme year 7” substitute “each of scheme years 7 to 10”;

(b) in paragraph (2B), for the words from “the date” to the end, substitute “the start of the scheme year”.

(5) In regulation 5(1)(b), for “scheme year 7” substitute “scheme years 7 to 10”.

(6) In regulation 7A(1)(b), for “scheme year 7” substitute “scheme years 7 to 10”.

(7) In regulation 8(1B), for “scheme year 7” substitute “scheme years 7 to 10”.

23rd July 2018

*Claire Perry*  
Minister of State  
Department for Business, Energy and Industrial Strategy

We consent.

24th July 2018

*Craig Whittaker*  
*Andrew Stephenson*  
Two of the Lords Commissioners of Her Majesty’s Treasury

The Scottish Ministers consent to the making of these Regulations.

25th July 2018

*Kevin Stewart*  
A member of the Scottish Government

<sup>(a)</sup> S.I. 2011/1414, as amended by S.I. 2013/519 and S.I. 2017/847.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into force on the 21st day after the day on which they are made, amend the Warm Home Discount Regulations 2011 (the “WHD Regulations”) and the Warm Home Discount (Reconciliation) Regulations 2011 (the “Reconciliation Regulations”). These Regulations extend to Great Britain.

The WHD Regulations established the Warm Home Discount scheme (“the Scheme”), which was in operation for seven years, until 31st March 2018. The Scheme placed obligations on licensed electricity suppliers who have 250,000 or more domestic customer accounts (or who are part of a group of electricity or gas supply companies which together have 250,000 or more domestic customer accounts) to incur spending on providing benefits to customers who are in, or are at risk of, fuel poverty.

The Scheme required those electricity suppliers to provide a rebate in each scheme year to customers specified in notices given by the Secretary of State (“the core group”). These were domestic customers who appeared to the Secretary of State to be, or to have a partner who is, in receipt of state pension credit guarantee credit. It also required those suppliers to incur “non-core spending” by providing the rebate to other domestic customers (“the broader group”) who met their eligibility criteria, and by undertaking “industry initiatives” for the benefit of energy consumers, such as the provision of energy advice or debt assistance.

Regulation 4 amends the WHD Regulations to reinstate the Scheme for a further three scheme years. Scheme year 8 will run from the coming into force of this instrument to 31st March 2019, scheme year 9 will run from 1st April 2019 to 31st March 2020 and scheme year 10 will run from 1st April 2020 to 31st March 2021.

A number of amendments are made to the WHD Regulations for the new scheme years.

Regulation 5 inserts provision into regulation 4 of the WHD Regulations to take into account notifications of domestic customer numbers made to the Gas and Electricity Markets Authority before this instrument comes into force.

Regulation 6 amends regulation 5 of the WHD Regulations to define a category of “compulsory smaller electricity supplier” for schemes years 9 and 10, which are obliged to provide rebates to the core group (under Part 3 of the WHD Regulations) but are not required to incur non-core spending (under Part 4 of the WHD Regulations). The threshold for this category of supplier is set as between 200,000 and 249,999 domestic customers for scheme year 9, with a reduction in the lower limit to at least 150,000 domestic customers in scheme year 10.

Regulation 7 inserts a new regulation 5A to require licensed electricity suppliers to notify their former core group customers and to place a statement on their website if the supplier participated in the scheme in the previous scheme year, but is not participating in the current scheme year.

Regulation 8 amends the process in regulation 6 of the WHD Regulations for the determination of core group customers by the Secretary of State. The person, or their partner, must appear to be in receipt of state pension credit guarantee credit, or in scheme years 9 and 10, where the Secretary of State has consulted upon and published eligibility criteria, the person must appear to the Secretary of State to meet those criteria.

Regulations 8 and 9 amend the circumstances in regulation 6 of the WHD Regulations in which the Secretary of State may give information about core group customers to electricity suppliers and the circumstances in regulation 9 of the WHD Regulations in which the Secretary of State may direct electricity suppliers to provide information to the Secretary of State about their domestic customers.

Regulation 15 inserts new regulations 15A and 15B to set out the types and amounts of non-core spending required by electricity suppliers under Part 4 of the WHD Regulations. It increases to £40 million the maximum amount of spending on industry initiatives and specified activities that may count towards meeting the non-core spending obligation in each scheme year. It lowers the

limit on spending on industry initiatives for debt write-off, to £10 million in scheme year 8, with further reductions in schemes years 9 and 10. It sets a £5 million limit in each scheme year on spending on industry initiatives for payments towards the future gas and electricity bills of domestic customers. It prevents spending on rebates to the broader group if the Secretary of State has determined the total amount to be spent under Part 4 of the WHD Regulations to be £50 million or less in a scheme year; and where that is the case, the £40 million spending limit on industry initiatives and specified activities will not apply.

Regulation 16 inserts a new regulation 17B to enable spending on industry initiatives taking place between 1st April 2018 and the coming into force of this instrument to count towards the non-core spending obligation in scheme year 8.

Regulation 21 amends regulation 26 of the WHD Regulations to require any spending on industry initiatives to take place in the scheme year and after the Authority has approved the industry initiative, except in scheme year 8 where spending taking place before that approval may be counted if it is subsequently approved.

Regulation 25 substitutes regulation 31 of the WHD Regulations to set out the circumstances in which the Secretary of State must conduct a review of the Scheme or of an aspect of it.

Regulation 26 amends Schedule 1 to the WHD Regulations to set the overall spending target for scheme year 8, and to adjust it in line with the consumer prices index for scheme years 9 and 10.

Regulation 27 amends the broader group eligibility criteria in Part 1 of Schedule 2 to the WHD Regulations.

Regulation 28 adds a new type of initiative to the list of industry initiatives in Schedule 4 to the WHD Regulations, together with an exception describing the spending on that type of industry initiative which may not be counted towards a supplier's obligations under the Scheme.

Regulations 5(b), 6(b), 8(d), 11(b) and (d), 13(g) and 23 change the deadlines for certain notifications and determinations under the Scheme. The remaining provisions in regulations 3 to 28 amend the WHD Regulations in consequence of the extension of the Scheme and the other changes described above.

The Reconciliation Regulations provide for the operation of a reconciliation mechanism in relation to spending by electricity suppliers under the Scheme. Regulation 29 amends the Reconciliation Regulations in consequence of the extension of the Scheme.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London, SW1H 0ET and is published with the Explanatory Memorandum alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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