

2011 No. 1414

ELECTRICITY

The Warm Home Discount (Reconciliation) Regulations 2011

Made - - - - *6th June 2011*

Laid before Parliament *10th June 2011*

Coming into force - - *1st July 2011*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 11 and 31(5) and (6) of the Energy Act 2010(a).

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

PART 1

Introduction

Title and commencement

1.—(1) These Regulations may be cited as the Warm Home Discount (Reconciliation) Regulations 2011.

(2) These Regulations come into force on 1 July 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Energy Act 2010;

“Bank of England base rate” means—

(a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or

(b) where an order under section 19 of the Bank of England Act 1998(b) is in force, any equivalent rate determined by the Treasury under that section;

“market share”, in relation to a scheme electricity supplier and a scheme year, means—

(a) unless regulation 11 applies, the market share of the supplier, expressed as a percentage, as notified by the Authority to the Operator under regulation 4(1)(b); or

(a) 2010 c.27.

(b) 1998 c.11.

(b) if regulation 11 applies, the market share of the supplier, expressed as a percentage, as recalculated by the Operator under regulation 11(6);

“the Operator” means the person for the time being appointed by the Secretary of State under regulation 3;

“the Scheme Regulations” means the Warm Home Discount Regulations 2011(a);

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or public holiday in England and Wales or in Scotland.

(2) In these Regulations the following expressions have the same meaning as in the Scheme Regulations—

“core group customer”

“domestic customer”

“group of companies”

“the prescribed rebate”

“scheme electricity supplier”

“scheme gas supplier”

“scheme year” (and “scheme year” followed by a number).

Appointment of the Operator

3.—(1) The Secretary of State must, in relation to each scheme year in which the Secretary of State gives one or more notices under regulation 6 of the Scheme Regulations—

- (a) appoint a person to be the Operator for the purposes of these Regulations; and
- (b) notify the Authority, and each licensed electricity supplier which is a scheme electricity supplier in that scheme year, of the appointment.

(2) The Secretary of State—

- (a) may terminate the appointment of a person as the Operator; and
- (b) must, as soon as reasonably practicable after such a termination, appoint another person to be the Operator.

Provision of information to the Operator

4.—(1) The Authority must, in relation to each scheme year for which a person is appointed to be the Operator, notify to the Operator—

- (a) which licensed electricity suppliers are scheme electricity suppliers in that scheme year;
- (b) the market share of each scheme electricity supplier as at the preceding 31st December, as determined by the Authority in accordance with paragraph (3).

(2) The Authority must give the notification under paragraph (1)—

- (a) for scheme years 2, 3 and 4, by 1st April in the scheme year if the Authority has been notified of the appointment of the Operator before that date; or
- (b) in any other case, as soon as reasonably practicable after the date on which the Authority is notified of the appointment of the Operator.

(3) For the purposes of paragraph (1)(b), the market share of a scheme electricity supplier (E) is $\frac{X \times 100}{Y}$ %, where—

- (a) X is E’s number of domestic customers, unless sub-paragraph (b) or (c) applies;

(a) S.I. 2011/1033.

- (b) if E is connected to one or more scheme gas suppliers but not to any other scheme electricity suppliers, X is the combined number of domestic customers of E and its connected scheme gas suppliers;
 - (c) if E is connected to one or more scheme gas suppliers and to one or more other scheme electricity suppliers, X is equal to Z% of the combined number of domestic customers of E and its connected scheme electricity suppliers and scheme gas suppliers; and
 - (d) Y is the total number of domestic customers of all scheme electricity suppliers and scheme gas suppliers.
- (4) In paragraph (3)(c), “Z%” is E’s number of domestic customers as a percentage of the combined number of domestic customers of E and its connected scheme electricity suppliers.
- (5) For the purposes of paragraph (3)—
- (a) references to a supplier’s number of domestic customers are to the supplier’s number of domestic customers on the 31st December preceding the start of the scheme year, as notified by the supplier or determined by the Authority under regulation 4 of the Scheme Regulations; and
 - (b) a supplier (E1) is to be treated as connected to another supplier (E2) if E1 and E2 belonged to the same group of companies on the 31st December preceding the start of the scheme year (but not otherwise).

PART 2

Interim reconciliation

Direction to carry out interim reconciliation

- 5.—(1) This regulation applies, in relation to a scheme year, at any time—
- (a) after the Secretary of State has given one or more notices to scheme electricity suppliers under regulation 6 of the Scheme Regulations; and
 - (b) before the Authority has given a notification to the Operator under regulation 7 of these Regulations.
- (2) The Secretary of State may direct the Operator to carry out an interim reconciliation for the scheme year or any part of the scheme year (an “interim reconciliation period”).
- (3) An interim reconciliation is a determination of amounts to be paid or received by scheme electricity suppliers on account of final reconciliation payments for that scheme year.
- (4) The Secretary of State may give more than one direction to the Operator under paragraph (2) in relation to different parts of the scheme year.
- (5) If the Secretary of State gives a direction under paragraph (2), the Secretary of State must—
- (a) specify the interim reconciliation period (which must be a period ending on or before the date on which the direction is given);
 - (b) notify the Operator of—
 - (i) the total number of eligible domestic customers, and
 - (ii) the number of eligible domestic customers of each scheme electricity supplier, to be used for the purpose of calculating interim reconciliation payments; and
 - (c) notify each scheme electricity supplier of the direction, specifying—
 - (i) the interim reconciliation period;
 - (ii) the total number of eligible domestic customers notified to the Operator under sub-paragraph (b)(i); and
 - (iii) the number of eligible domestic customers of that scheme electricity supplier notified to the Operator under sub-paragraph (b)(ii).

(6) For the purposes of paragraph (5), the number of eligible domestic customers of a scheme electricity supplier to be used for the purpose of calculating interim reconciliation payments is $A - B$ where—

- (a) A is the number of persons specified in notices under regulation 6(1) of the Scheme Regulations given to the supplier during the interim reconciliation period; and
- (b) B is the number of those persons whom, in accordance with regulation 9(5) of the Scheme Regulations, the supplier has within the interim reconciliation period notified the Secretary of State are not core group customers or the supplier is unable to identify as core group customers.

Calculation of interim reconciliation payments

6.—(1) If the Operator is given a direction under regulation 5, the Operator must calculate the amount to be received or paid by each scheme electricity supplier in accordance with paragraphs (2) and (3).

(2) If the amount of the interim liability of a scheme electricity supplier (E) for the interim reconciliation period exceeds the amount of E's interim market share liability for the period, E is entitled to receive in accordance with regulation 9 an interim reconciliation payment equal to the difference between those amounts.

(3) If the amount of E's interim liability for the interim reconciliation period is less than the amount of E's interim market share liability for the interim reconciliation period, E must make in accordance with regulation 9 an interim reconciliation payment equal to the difference between those amounts.

(4) For the purposes of this regulation—

- (a) a supplier's interim liability for a period is the amount of the prescribed rebate for the scheme year in which the period falls, multiplied by N;
- (b) a supplier's interim market share liability for a period is the amount of the prescribed rebate for the scheme year in which the period falls, benefit multiplied by M% of T,

where—

M is that supplier's market share,

N is the number notified to the Operator under regulation 5(5)(b)(ii) for that supplier, and

T is the number notified to the Operator under regulation 5(5)(b)(i).

PART 3

Final reconciliation

Notification of amounts of rebates provided

7. As soon as reasonably practicable after the end of a scheme year the Authority must—

- (a) notify to the Operator—
 - (i) the total amount of rebates provided to domestic customers in the scheme year, or treated as being provided in the scheme year, under Part 3 of the Scheme Regulations by each scheme electricity supplier (as determined by the Authority in accordance with regulation 29(1)(a) of the Scheme Regulations); and
 - (ii) the sum of the amounts so determined for all scheme electricity suppliers; and
- (b) notify to each scheme electricity supplier—
 - (i) the amount notified to the Operator under sub-paragraph (a)(i) for that scheme electricity supplier; and
 - (ii) the amount notified to the Operator under sub-paragraph (a)(ii).

Calculation of final reconciliation payments

8.—(1) When the Operator receives a notification under regulation 7, the Operator must calculate the amount to be received or paid by each scheme electricity supplier in accordance with paragraphs (2) and (3).

(2) If the adjusted contribution of a scheme electricity supplier for the scheme year was greater than its market share contribution, the supplier is entitled to receive in accordance with regulation 9 a final reconciliation payment equal to the difference between those amounts.

(3) If the adjusted contribution of a scheme electricity supplier for the scheme year was less than its market share contribution, the supplier must make in accordance with regulation 9 a final reconciliation payment equal to the difference between those amounts.

(4) For the purposes of this regulation—

- (a) a scheme electricity supplier's contribution for a scheme year is the amount determined by the Authority under regulation 29(1)(a) of the Scheme Regulations for that supplier;
- (b) a scheme electricity supplier's adjusted contribution for a scheme year is the supplier's contribution adjusted by—
 - (i) adding the amounts of any interim reconciliation payments made by the supplier; and
 - (ii) subtracting the amounts of any interim reconciliation payments received by the supplier;
- (c) a scheme electricity supplier's market share contribution for a scheme year is M% of the amount notified to the Operator under regulation 7(a)(ii), where M is that supplier's market share.

PART 4

General

Interim and final reconciliation: payments

9.—(1) After the Operator carries out an interim reconciliation under Part 2 or a final reconciliation under Part 3, it must give notice—

- (a) to each scheme electricity supplier which is liable to make or entitled to receive a payment, of—
 - (i) the amount of that payment (“the specified amount”); and
 - (ii) the supplier's market share, as used in carrying out the reconciliation; and
- (b) to each scheme electricity supplier which is liable to make a payment, of—
 - (i) the date by which the payment is to be made; or
 - (ii) if the supplier has authorised the Operator to debit money from its bank account, the date on which the payment is to be taken,

which (in either case) must be not less than 3 working days from the date on which the notice is given;

- (c) to each scheme electricity supplier which is entitled to receive a payment, of the date on which the payment is to be made, which must be not more than 10 working days after the date specified under sub-paragraph (b) (or if, under sub-paragraph (b), different dates are specified to different scheme electricity suppliers, not more than 10 working days after the latest of those dates).

(2) A scheme electricity supplier which is given a notice that it is liable to make a payment must—

- (a) pay the specified amount to the Operator by the date specified in the notice; or

- (b) if the supplier has authorised the Operator to debit money from its bank account, ensure that there are sufficient funds in that account to enable payment to be taken on the date specified in the notice.

(3) The Operator must, subject to regulation 10(4), pay the specified amount to a scheme electricity supplier which is given a notice that it is entitled to receive a payment by the date specified in the notice.

Mutualisation

10.—(1) This regulation applies if one or more scheme electricity suppliers fail to make the whole or part of a reconciliation payment to the Operator by the date on which it is due.

(2) The Operator must—

- (a) apportion the total of any unpaid amounts between all the scheme electricity suppliers other than the defaulting suppliers, in proportion to their market shares;
- (b) give notice to each of those suppliers (a “mutualisation notice”) that it is liable to make a payment of the amount apportioned to it (a “mutualisation payment”), and specify in relation to that payment the matters referred to in regulation 9(1)(b).

(3) Regulation 9(2) applies in relation to a mutualisation notice.

(4) The Operator may defer the whole or part of any payments due to scheme electricity suppliers under these Regulations, up to an amount equal to the total of any unpaid amounts, until up to 10 working days after it has received—

- (a) the unpaid amounts from the defaulting suppliers; or
- (b) mutualisation payments from the other scheme electricity suppliers.

(5) If, after giving mutualisation notices to scheme electricity suppliers but before any of the suppliers have made a mutualisation payment, the Operator receives any unpaid amount from a defaulting supplier, the Operator must—

- (a) cancel the mutualisation notice; and
- (b) if any amounts still remain unpaid, issue a new mutualisation notice under paragraph (2) in relation to those amounts.

(6) If, after receiving mutualisation payments from scheme electricity suppliers, the Operator receives an unpaid amount from a defaulting supplier, the Operator must within 10 working days distribute the amount received from the defaulting supplier among the suppliers that have made mutualisation payments in proportion to their market shares.

(7) In this regulation—

“defaulting supplier” means a scheme electricity supplier which has failed to make the whole or part of a reconciliation payment to the Operator by the date on which it is due;

“unpaid amount” means an amount which a defaulting supplier has failed to pay by the date on which it is due.

Termination of supply licence

11.—(1) This regulation applies in relation to a scheme year if, between the date on which the Authority gives the Operator a notification under regulation 4(1) and the date on which the Authority gives the Operator a notification under regulation 7, the electricity supply licence of a scheme electricity supplier (E) is terminated.

(2) The Authority must as soon as practicable notify the Operator of the termination of E’s licence.

(3) E is not to be treated as a scheme electricity supplier for the purposes of any of the following events which takes place after the termination of its licence—

- (a) an interim or final reconciliation;
- (b) a mutualisation; or

(c) a distribution of interest under regulation 12(4) or 13.

(4) If, before the termination of E's licence, it has been determined upon an interim reconciliation that E is entitled to receive or liable to pay an amount—

- (a) to the extent that the amount is unpaid, E remains subject to that entitlement or liability notwithstanding the termination of its licence; and
- (b) in relation to E, the determination upon the interim reconciliation is to be treated as final.

(5) Regulation (6) applies for the purposes of any event mentioned in paragraph (3) which takes places after the termination of E's licence.

(6) The Operator must recalculate the market share of each remaining scheme electricity supplier in accordance with the formula—

$$M2 = M1 \times \frac{100}{100 - E1}$$

where—

M2 is the supplier's recalculated market share;

M1 is the supplier's market share as notified to the Operator under regulation 4(1)(b);

E1 is E's market share as notified to the Operator under regulation 4(1)(b).

(7) If, before the termination of E's licence, E received an interim reconciliation payment in relation to the scheme year (£P)—

- (a) any amount that a supplier is entitled under regulation 8(2) to receive upon the final reconciliation is to be adjusted by subtracting M2% of £P; and
- (b) any amount that a supplier is liable under regulation 8(3) to pay upon the final reconciliation is to be adjusted by adding M2% of £P.

(8) If, before the termination of E's licence, E paid an interim reconciliation payment in the scheme year (£P)—

- (a) any amount that a supplier is entitled under regulation 8(2) to receive upon the final reconciliation is to be adjusted by adding M2% of £P; and
- (b) any amount that a supplier is liable under regulation 8(3) to pay upon the final reconciliation is to be adjusted by subtracting M2% of £P.

(9) For the purposes of this regulation an electricity supply licence is "terminated" if—

- (a) it is revoked by the Authority in accordance with the terms of the licence;
- (b) it is surrendered by the licensee; or
- (c) it expires by effluxion of time.

Interest on late payments

12.—(1) A scheme electricity supplier which fails to make the whole or part of a payment under these Regulations by the date on which it is due must pay interest ("late payment interest") calculated in accordance with paragraph (2) on the unpaid amount from the date on which the payment falls due to the date on which it is paid.

(2) Late payment interest is to be calculated at a rate of two percentage points above the Bank of England base rate.

(3) Any payment under these Regulations that is made by a scheme electricity supplier after the date on which it is due will be applied first to any late payment interest that is payable under paragraph (1).

(4) Where a scheme electricity supplier pays late payment interest to the Operator, the Operator must distribute the amount of the late payment interest among all other scheme electricity suppliers in proportion to their market shares.

Interest accrued by the Operator

13.—(1) The Operator must distribute to scheme electricity suppliers in proportion to their market shares the amount of any interest accrued by the Operator on payments made to it by scheme electricity suppliers under these Regulations.

(2) The Operator—

- (a) must, if it has accrued any interest, make a distribution under paragraph (1) in each year from scheme year 2 onwards at the same time as it makes final reconciliation payments; and
- (b) may make additional distributions at such times as it determines.

Appeals against errors in determinations

14.—(1) Subject to paragraphs (8) and (9), a scheme electricity supplier may appeal to the Secretary of State against a determination by the Operator—

- (a) upon an interim reconciliation or a final reconciliation; or
- (b) of the amounts of mutualisation payments which scheme electricity suppliers are liable to make,

on the ground that the Operator has made an error in its determination.

(2) An appeal must be made in writing within 10 working days after the scheme electricity supplier is notified of the determination.

(3) Before determining an appeal by a scheme electricity supplier, the Secretary of State must provide an opportunity to make representations to—

- (a) each other scheme electricity supplier; and
- (b) the Operator.

(4) On an appeal under paragraph (1) the Secretary of State may—

- (a) dismiss the appeal; or
- (b) allow the appeal and direct the Operator to make a fresh determination.

(5) If the Secretary of State directs the Operator to make a fresh determination, the Secretary of State may give instructions to the Operator in relation to the making of that determination, and the Operator must make the fresh determination in accordance with any such instructions.

(6) The Secretary of State must notify the decision upon an appeal to—

- (a) every scheme electricity supplier; and
- (b) the Operator.

(7) Paragraph (8) applies if—

- (a) the Operator is a BSC Company; and
- (b) the Balancing and Settlement Code provides for arrangements for the resolution of disputes about determinations by the Operator under these Regulations.

(8) The right of appeal under paragraph (1)—

- (a) arises only after the dispute resolution arrangements under the Balancing and Settlement Code have been exhausted, and
- (b) applies with the modification that references in paragraph (1) to the Operator are to be treated as including a reference to a person established or appointed under the Balancing and Settlement Code to resolve the dispute.

(9) The making of an appeal against a determination that a supplier is liable to make a payment does not suspend the supplier's liability to make the payment.

(10) In this regulation—

“the Balancing and Settlement Code” means the code for governance of electricity balancing and settlement in Great Britain which is maintained in accordance with the conditions of licences granted under section 6(1) of the Electricity Act 1989(a); and

“BSC Company” has the same meaning as in the Balancing and Settlement Code.

Make-right amounts

15.—(1) This regulation applies if, in relation to the Operator’s determination on an interim or final reconciliation or a mutualisation—

- (a) the Operator substitutes a different determination in accordance with a direction of the Secretary of State upon an appeal; or
- (b) a person established or appointed to resolve disputes under arrangements mentioned in regulation 14(7) determines that an error has been made in the determination; or
- (c) the Operator, on its own initiative, identifies that an error has been made in the determination.

(2) The Operator must calculate the amount (“the make-right amount”) that each scheme electricity supplier is liable to pay, or is entitled to receive (having regard to payments already made or received) to give effect to the substituted determination or to correct the error.

(3) The make-right amount is the sum of—

- (a) the difference between the amount already paid or received by the scheme electricity supplier, and the amount which the supplier would have been liable to pay or entitled to receive if the error had not been made; and
- (b) interest on that amount from the date of the payment or receipt, calculated at a rate of two percentage points above the Bank of England base rate.

(4) Regulation 9 applies in relation to payments under this regulation as it does in relation to payments upon an interim or final reconciliation.

Non-performance of obligations

16.—(1) If the Operator fails to carry out any obligation under these Regulations, any scheme electricity supplier affected by that failure may appeal to the Secretary of State.

(2) If the Secretary of State is satisfied that the Operator has failed to carry out an obligation under these Regulations, the Secretary of State must secure that the Operator carries out the obligation.

(3) For the purposes of this regulation, failing to carry out an obligation does not include making an error in a determination.

6th June 2011

Greg Barker
Minister of State
Department of Energy and Climate Change

(a) 1989 c.29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c.27) and subsection (1) of section 6 was amended by sections 136(1), 145(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c.20).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the establishment and operation of a reconciliation mechanism for the purposes of the Warm Home Discount scheme established by the Warm Home Discount Regulations 2011 (S.I. 2011/1033) (“the Scheme Regulations”). The Scheme Regulations place obligations on electricity suppliers to incur spending in each scheme year (as defined in regulation 2 of those Regulations) on the provision of benefits, including rebates, to customers in or at risk of fuel poverty.

The reconciliation mechanism provides for payments to be made to, or by, each electricity supplier which provides rebates to customers (“core group customers”) as directed by the Secretary of State under Part 3 of the Scheme Regulations, so that the cost to each electricity supplier of providing rebates to core group customers is proportionate to its market share.

In Part 1, regulation 3 provides for the appointment of an Operator to administer the reconciliation mechanism. Regulation 4 includes provision about the calculation of market shares.

Part 2 (regulations 5 and 6) makes provision for interim reconciliations to be carried out during a scheme year, under which each scheme electricity supplier will make or receive a payment on account of its liability or entitlement for that scheme year.

Part 3 (regulations 7 and 8) makes provision for final reconciliations to be carried out following the end of each scheme year.

Part 4 (regulations 9 to 16) contains general provisions. These include provision about making of payments (regulation 9), ‘mutualisation’ among the remaining scheme electricity suppliers in the event of a supplier’s default in making payments (regulation 10), adjustments to be made in the event of a scheme electricity supplier’s licence being revoked or otherwise terminated (regulation 11), payment of interest (regulations 12 and 13) and appeals and correction of errors (regulations 14 to 16).

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 Fuel Poverty Team, Department of Energy & Climate Change, 3 Whitehall Place, London SW1A 2AW and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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STATUTORY INSTRUMENTS

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£5.75