EXPLANATORY MEMORANDUM TO

THE WARM HOME DISCOUNT (RECONCILIATION) (AMENDMENT) REGULATIONS 2024

2024 No. 893

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Miatta Fahnbulleh, Parliamentary Under Secretary of State (Minister for Consumers) at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

2.2 Charlotte DuBern and Julie McLynchy, Deputy Directors for Warm Homes, Fuel Poverty Strategy and Green Deal, at the Department for Energy Security and Net Zero confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Richard Crowton at the Department for Energy Security and Net Zero Telephone: 07788 334851 or email: richard.crowton@energysecurity.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Warm Home Discount (Reconciliation) Regulations 2022 ("the Reconciliation Regulations"), which established and provided for the operation of a reconciliation mechanism for the purposes of the schemes made by the Warm Home Discount (England and Wales) Regulations 2022 and the Warm Home Discount (Scotland) Regulations 2022 ("the Scheme Regulations"). The purpose of the reconciliation mechanism is to achieve, so far as reasonably practicable, an equitable distribution among energy suppliers of the aggregate amount of rebates which they provide under Part 3 of each of the Scheme Regulations.

4.2 This instrument corrects an error in the wording of the reconciliation mechanism calculation, thereby ensuring that the Gas and Electricity Markets Authority ("Ofgem"), as the operator of the reconciliation mechanism, can undertake the reconciliations as intended.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales, and Scotland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, and Scotland.

5. Policy Context

What is being done and why?

5.1 Section 9 of the Energy Act 2010 enables the Secretary of State to make schemes for the purpose of reducing fuel poverty. The Warm Home Discount scheme was introduced in 2011 to support low-income households at risk of fuel poverty. Energy suppliers above a certain size are obligated to participate and must provide support to households who are in, or at risk of, fuel poverty, primarily through rebates on their energy bills every year. Under Part 3 of each of the Scheme Regulations, energy suppliers are required to provide an electricity or gas bill rebate to their core group customers. These are customers specified in notices given to the supplier by the Secretary of State and who meet certain eligibility criteria.

5.2 The number of eligible customers for each supplier varies, which means that some suppliers are obligated to provide a larger or smaller number of core group rebates proportionate to other suppliers. Therefore, the government introduced a reconciliation mechanism to balance the differences across suppliers, with the intended outcome that the required spending on core group rebates each scheme year from each supplier is proportionate to their share of the domestic energy market.

5.3 A fuller explanation about the Warm Home Discount and the reconciliation mechanism can be found in the Explanatory Memorandum of the Reconciliation Regulations, available at: https://www.legislation.gov.uk/uksi/2022/1162/memorandum/contents

5.4 The amendments correct an error to ensure that the Reconciliation Regulations are consistent with how the reconciliations are intended to work.

What was the previous policy, how is this different?

5.5 Under Parts 2 and 3 of the Reconciliation Regulations, Ofgem must conduct the 'final reconciliation' after each scheme year has concluded. The Secretary of State may direct Ofgem to conduct an 'interim reconciliation' based on how much spending each energy supplier has been instructed to incur on core group rebates for all or part of a scheme year. The intention of the final reconciliation is to ensure that, as soon as reasonably practicable after a scheme year has ended, each supplier's spending on core group rebates in that scheme year is made proportionate to their domestic market share compared to other participating energy suppliers. This is achieved by Ofgem comparing the amount each energy supplier has spent on core group rebates with how much they would have spent had their spending been proportionate to their market share. As part of the final reconciliation, energy suppliers who have spent less than is proportionate to their market share make a payment to the reconciliation fund administered by Ofgem; meanwhile, energy suppliers who have spent more receive a payment from this fund. The final reconciliation takes into account any payments made or received as part of any interim reconciliation.

5.6 Regulation 9 of the Reconciliation Regulations requires Ofgem to estimate the number of undelivered rebates, defined as the rebates which an energy supplier has attempted to provide to a customer, but the customer has not accepted the payment or has not accepted the credit. The intended outcome is to exclude the value of undelivered rebates from the calculations in the final reconciliation, as a supplier who has provided a rebate that is undelivered has not incurred spending on that rebate.

5.7 However, regulation 10 of the Reconciliation Regulations incorrectly requires Ofgem to calculate the difference between: the amount each supplier has actually spent on

rebates, which excludes the undelivered rebates; and the amount each supplier would have spent had their spending been their proportion, based on their market share, of the spending on the total amount of rebates provided, which includes undelivered rebates. This is an error as each supplier's proportion should be based on their market share of the aggregate amount of delivered rebates.

5.8 The outcome of this discrepancy is that each supplier would either have to make a larger payment or receive a smaller payment from Ofgem's reconciliation fund. There would be a surplus remaining in the fund equivalent to the aggregate value of the undelivered rebates.

5.9 This instrument corrects that error. As a result, under the Reconciliation Regulations as amended by this instrument, Ofgem will be required to calculate in the final reconciliation the difference between: the amount each supplier has actually spent on rebates, which excludes the undelivered rebates; and the amount each supplier would have spent had their spending been their proportion, based on their market share of the spending on aggregate rebates provided, with the value of the undelivered rebates deducted.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is made under the powers in sections 11 and 31(5) of the Energy Act 2010.

6.2 The Warm Home Discount schemes made by the Scheme Regulations will continue in 2024/25 and 2025/26. The Reconciliation Regulations, as amended by this instrument, will apply to these periods.

Why was this approach taken to change the law?

6.3 As the Reconciliation Regulations do not currently reflect the intended operation of the reconciliation mechanism, this instrument will ensure that those Regulations produce the intended outcome of the reconciliation mechanism.

7. Consultation

Summary of consultation outcome and methodology

7.1 As required under subsection 14(1) of the Energy Act 2010, the Department for Energy Security and Net Zero has consulted with Ofgem and licensed electricity and gas suppliers participating in the Warm Home Discount schemes. The consultation ran for two weeks via email and there were no responses to the consultation.

8. Applicable Guidance

8.1 Ofgem provides energy suppliers participating in the Warm Home Discount schemes with guidance on compliance with the requirements of the reconciliation mechanism. Ofgem produces separate guidance under the scheme in England and Wales and the scheme in Scotland, available at: https://www.ofgem.gov.uk/environmental-and-social-schemes/warm-home-discount-whd/suppliers.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the changes are to correct an error in the Reconciliation Regulations and to ensure that the legislation is consistent with how the reconciliation mechanism is intended to be conducted.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the changes are to correct an error to ensure that the Reconciliation Regulations are consistent with how the reconciliation mechanism is intended to be conducted.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the changes are to correct an error to ensure that the regulations are consistent with how the reconciliation mechanism is intended to be conducted.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 There is no monitoring required of this instrument. Ofgem share their core group reconciliation results with the Department for Energy Security and Net Zero on completion.

10.2 The instrument does not include a statutory review clause, as it is a straightforward correction of an error in the wording of the reconciliation mechanism calculation, thereby ensuring that Ofgem, as the operator of the reconciliation mechanism, can undertake the reconciliations as intended.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Consumers has made the following statement regarding Human Rights:

"In my view the provisions of the Warm Home Discount (Reconciliation) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").