

Overview of Responses to Ofgem's Consultation on the WHD: Draft Guidance for Licensed Electricity Suppliers and Licensed Gas Suppliers

Final decision

Publication date: 19 May 2011

Contact WHD Team
:
Team: Environmental Programmes
Tel: 020 901 7000
Email: WHD@ofgem.gov.uk

Overview:

This document summarises the issues and suggestions raised in the responses Ofgem received to its consultation on the "Warm Home Discount: Draft Guidance for Licensed Electricity Suppliers and Licensed Gas Suppliers" document published on 16 March 2011. The consultation closed on 19 April 2011.

The document also explains the changes we have made to the final and published "Warm Home Discount: Guidance for Licensed Electricity Suppliers and Licensed Gas Suppliers" document having duly considered the responses to the consultation, and where we were unable to incorporate suggestions and comments made by respondents.

Context

The Energy Act 2010 provides the Secretary of State with powers to make regulations which introduce one or more support schemes for the purpose of reducing fuel poverty. These powers have been exercised through the Warm Home Discount Regulations 2011 to establish the Warm Home Discount (WHD) scheme. These regulations are now in force. Section 13 of the Energy Act 2010 places an obligation on the Authority to keep under review the operation of any such support scheme and suppliers' compliance with it.

The Warm Home Discount Regulations 2011 (the "WHD Regulations") and the forthcoming Reconciliation Regulations further extend the Authority's role by requiring it to undertake a number of compliance related tasks. These include receiving information, providing information, making calculations and pre-approving scheme activities before suppliers provide eligible benefits under the scheme.

In March 2011 we published a draft guidance document for consultation. The purpose of the consultation document was to explain and seek views on Ofgem's role and responsibilities in the WHD scheme, propose how Ofgem would undertake its duties and provide instructions as to how suppliers are to provide information to Ofgem for the purpose of complying with the scheme's requirements.

The consultation closed on 19 April 2011 and we have now published the final guidance document. This overview document looks to summarise the responses we received and explain where and why we have chosen to amend or retain sections of the draft guidance document.

Associated documents

Warm Home Discount: Guidance for Licensed Electricity Suppliers and Licensed Gas Suppliers (published alongside this document)

<http://www.ofgem.gov.uk/SUSTAINABILITY/ENVIRONMENT/WHDS/Pages/WHDS.aspx>

- Warm Home Discount: Draft Guidance for Licensed Electricity Suppliers and Licensed Gas Suppliers. – Consultation document

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=267&refer=Sustainability/SocAction/Suppliers/CSR>

Contents

1. Introductions	4
Consultation process	4
2. Amendments made to the guidance	5
Legal Framework	5
Compulsory and Voluntary Scheme Suppliers	5
Fraud Prevention	5
Customer declaration	6
Documentary evidence	6
Record Keeping	6
Value added tax (VAT)	7
Eligibility criteria – paying partners	7
Pre-approval across multiple scheme years	7
Legacy Spend accounts	7
Customers benefiting from Industry Initiatives	7
Joint Industry Initiatives	8
Third parties and service providers	8
Internal Auditors	8
External Auditors	8
Timelines	8
Core Group reporting template	8
3. Other proposals	9
Adjustments for under and overspend	9
Clarification on the proposed changes to the benefit system	9
How to assess eligibility criteria	10
Using Core Group and Broader Group rebates to reduce or remove existing debts on a customer's account	10
Promoting specific vulnerable and low income customers	10
Pre-approval for Legacy Spend	10
Reporting templates for Legacy Spend	11
Appendices	12
Appendix 1 - Consultation Respondents	13
Appendix 2 – List of sections with significant changes	14
Appendix 3 – Glossary	15
Appendix 4 - Feedback Questionnaire	17

1. Introductions

Chapter Summary

This chapter gives a broad overview of the consultation process

Consultation process

1.1. We received 9 responses to the consultation. 6 responses were received from energy companies, 1 from an industry body and 2 responses from third sector organisations.

1.2. In addition to the consultation document we also hosted a round table for likely compulsory suppliers soon after the draft WHD regulations were laid in Parliament and a forum for all Licensed Electricity Suppliers and Licensed Gas Suppliers as part of the consultation process. Comments made at these events and through regular contact with key stakeholders, have informed this consultation exercise.

2. Amendments made to the guidance

Chapter Summary

This chapter looks to highlight the changes made from the draft guidance document and explain why those changes were made.

Legal Framework

- 2.1. A new paragraph has been added to this section to reflect the fact that further regulations are being developed by DECC, and that we will issue guidance on those regulations as appropriate.

Compulsory and Voluntary Scheme Suppliers

- 2.2. From the responses received it became apparent that consistency was needed in the terminology used to describe the threshold for Compulsory Scheme Supplier, and in particular whether the threshold was 250,000 domestic customers or 250,000 domestic customer accounts. The term “domestic customers” was taken directly from the WHD Regulations and is therefore retained in the guidance document. However additional text has been added to provide clarification as to what this means.

Fraud Prevention

- 2.3. Both suppliers and Ofgem have a responsibility to ensure that, as far as possible, benefits which are provided under the WHD scheme do reach their intended targets. However concerns were expressed that the guidance document did not make clear where Ofgem were stating statutory requirements and where we were providing recommendations, which suppliers could choose to accept or ignore.
- 2.4. Following discussions with several suppliers we were encouraged by the number of good fraud prevention measures which are currently in place or have been proposed. This has allowed us to be more flexible with the language we have used in the final guidance document in order to ensure measures undertaken by suppliers are not overly burdensome and create unnecessary barriers to vulnerable customers. Changes have therefore been made in the Fraud Prevention sections in Chapter 3, 4 and 6 and to the Verification section in Chapter 4.

- 2.5. However, given the significant impact fraudulent behaviour could have on the cost to consumers or the reputation of the energy industry we will closely monitor this aspect of the scheme.
- 2.6. We have also reworded paragraph 4.28 to make clear that this paragraph relates to a supplier's requirement to obtain documentary evidence from at least 5% of customers to receive a Broader Group rebate, before the rebate is paid.

Customer declaration

- 2.7. Following requests from respondents we have sought and gained clarification on how long a customer declaration can be used. Declarations are required to be gained from the customer in the year in which the Broader Group rebate is to be made. This means that customers will not be able to provide a declaration in the latter part of one scheme year and use it for the following scheme year. This also means that existing eligible customers will need to provide an annual declaration before they receive their Broader Group rebate. New text has therefore been added to paragraph 4.14, second bullet point to provide this clarity.
- 2.8. Given that declarations and documentary evidence must be obtained in the year in which the Broader Group rebate is to be paid, we have retained the statement that we would expect DWP letters confirming receipt of Government benefit to have been issued in the scheme year.

Documentary evidence

- 2.9. We have added a new paragraph 4.24 to advise that third parties are able to collect documentary evidence on behalf of suppliers. However each supplier must demonstrate how it will assure itself that the evidence has been obtained and the correct procedures have been followed.
- 2.10. We have also added a new paragraph 2.25 to advise suppliers on what is expected to happen on site visits where original documentary evidence can be viewed but copies prove difficult to obtain.
- 2.11. We have also confirmed in paragraph 4.26 that documentary evidence that is collected as part of the application process may count towards the 5% sampling requirement.

Record Keeping

- 2.12. Respondents requested guidance on how long records should be kept. We have advised that records should be kept until at least the 31 December 2015 to enable Ofgem to undertake its planned compliance activities. We have also

suggested to suppliers that they may want to keep records beyond this point in order to deal with any issues which may come to light following the end of the scheme. New paragraphs have therefore been added at 3.16, 4.34, 5.14 and 6.35.

Value added tax (VAT)

2.13. The draft guidance did not clarify how VAT was to be treated in each of the scheme elements. We have therefore added new paragraphs 4.3 and 6.34.

Eligibility criteria – paying partners

2.14. More than one supplier raised a query of how partners of eligible customers should be treated in the Broader Group. If a supplier was to use one of the predefined eligibility criteria set out in the WHD Regulations, then we are required to accept the eligibility criteria. However this eligibility criterion would not stretch to include partners of those who qualify. Instead if a supplier would like to pay rebates to a customer whose partner would have qualified under a predefined eligibility criteria, then it would need to submit a separate Broader Group proposal for pre-approval. In such cases we will not question the selection of the eligibility criteria but would seek clarification of how partners are to be verified. New text has been added to paragraph 4.10

Pre-approval across multiple scheme years

2.15. New paragraphs 4.32 and 6.24 have been added to confirm that scheme proposals can seek and gain pre-approval for more than one year.

Legacy Spend accounts

2.16. As requested we have provided clarity on the number of accounts that can benefit from Legacy Spend. We have added new text to paragraphs 5.3, 5.4 and 5.5. This is based on the clarification provided by DECC and circulated to suppliers.

Customers benefiting from Industry Initiatives

2.17. A new paragraph 6.4 has been added to confirm that there are no restrictions on a customer benefiting under the Core Group, Broader Group or Legacy Spend elements of the scheme and also benefiting from an Industry Initiative.

Joint Industry Initiatives

- 2.18. We are supportive of true industry initiatives which are undertaken jointly by one or more suppliers. However the WHD regulations require each individual licensee to submit their own proposal and end of year report in order for the spend to count towards a supplier's non core obligation. New paragraph 6.25 has been added to make this clear. However we do state that we are willing to work with third parties to formulate their proposals once we receive confirmation from supplier(s) that they support the initiative.

Third parties and service providers

- 2.19. We want to make clear with new paragraph 6.26 that we are open to meeting potential third party partners to discuss how they may contribute to the WHD scheme. However such third parties must understand that we can not instruct or persuade suppliers what proposals to take forward.

Internal Auditors

- 2.20. New text has been added to paragraph 7.4 to confirm that in-house auditors may carry out the required internal audits of a supplier's processes and practices if they are sufficiently independent of the company's management.

External Auditors

- 2.21. New text has been added to paragraph 7.9 to confirm that external audits of a supplier's processes and system may involve a site visit. This had always been envisaged and we will work with suppliers to ensure that any such visit is effective.

Timelines

- 2.22. Now that the WHD Regulations have come into force and our consultation on our guidance has come to a close, we are able to include a summary of known key dates and deadlines. This has been attached at Appendix 1.

Core Group reporting template

- 2.23. A new declaration has been added which seeks to gain confirmation from reporting suppliers that Core Group customers were notified that the rebate was provided as part of the Warm Home Discount scheme.

3. Other proposals

Chapter Summary

This chapter outlines where and why we have not been able to adopt changes proposed by respondents, or why certain parts of the guidance remain incomplete.

Adjustments for under and overspend

- 3.1. There was some misconception that any overall scheme under or over spend from a previous scheme year could be used to adjust a supplier's non core spending obligation after it has been set on 14 March prior to the start of the scheme year. This misconception led to concerns that the 30 September date was too late for Ofgem to confirm a supplier's non core spending obligation.
- 3.2. However once a scheme year's overall non core spending obligation is set by the Secretary of State on the 14 February preceding a scheme year, it will not be changed by DECC. Ofgem will then calculate the relevant market share, and non core spending obligation for each supplier by 14 March. It can only then be adjusted by Ofgem to reflect a supplier's individual over or under spend on their non core spending obligation in the previous year. New text has been added to paragraph 2.11 and 2.17, and the "Adjustment for under and overspend" has been moved to emphasise this point.
- 3.3. Given that the adjustment is limited to only 1% of a supplier's non core spending obligation from the previous year, and that this potential variance should be known to suppliers when they provide their end of year reports in late May, we do not believe it will be problematic to only confirm the adjusted non core spending obligation in late September. For example if a supplier's non core spending obligation in scheme year 1 is £10 million, and they, through choice or non compliance, under spend on that obligation, the maximum adjustment in its scheme year 2 non core spending obligation is £100,000. If the under spend is through choice then the supplier would be aware that their scheme year 2 non core obligation will be adjusted at the time of submitting their end of year reports, if not sooner.

Clarification on the proposed changes to the benefit system

- 3.4. We received a request to provide clarity as to how Government proposals to change the benefit system may affect Broader Group eligibility criteria, especially the predefined list in the WHD Regulations. However this is an ongoing process and we do not know what effect it will have on the WHD scheme. We will work with DECC and DWP and once those changes have

been confirmed we will look to inform suppliers of the potential effect they will have on the scheme. A new paragraph 4.11 has been added to note this task.

How to assess eligibility criteria

- 3.5. We received several requests to provide clarification of how different eligibility criteria should be assessed in the Broader Group (for example what constitutes a valid DWP letter or when in a scheme year does a child have to be under 5 in order to qualify). We understand DECC and DWP are in the process of providing further information and guidance on this area. We will continue to work with officials to ensure this guidance is provided and included in future editions of the guidance document. A new paragraph 4.18 has been added to note this task.

Using Core Group and Broader Group rebates to reduce or remove existing debts on a customer's account

- 3.6. A number of respondents requested that we remove the phrase "credit against future energy use". However the phrase has been taken directly from the WHD Regulations and will therefore be retained. We have confirmed with DECC that the policy intention is that rebates can be used to reduce debts on electricity accounts. We have therefore added a new paragraph 3.6 and 4.4 to reflect that understanding.

Promoting specific vulnerable and low income customers

- 3.7. It had been suggested that Ofgem should do more to promote the merits of suppliers helping specific at risk groups. However it would not be appropriate for Ofgem to 'champion' one set of vulnerable customers over another. It would also be inappropriate for Ofgem to encourage a particular supplier to adopt a proposal to help a certain group. Our role is to facilitate supplier compliance and ensure suppliers remain within the parameters of the regulations. How they do this is entirely their choice.

Pre-approval for Legacy Spend

- 3.8. We received a suggestion that we set out a timetable for approving changes to a supplier's discounted tariffs and rebates which were used in the final year of the Voluntary Agreement. The WHD Regulations do not provide Ofgem with a statutory role to pre-approve such changes. Therefore we believe it would be inappropriate to put forward a timeframe for when suppliers were required to submit their proposals. However, we agree with the sentiment and have stated in the new paragraph 5.12 that should a supplier want confirmation by the start of a scheme year that the changes it is making to its discounted tariffs and rebates is within the scheme regulations, then Ofgem will provide

such confirmation if the supplier submits their proposal on or before the 14 February.

Reporting templates for Legacy Spend

- 3.9. It is our intention to provide a template in order to facilitate the end of year Legacy Spend reporting by suppliers. However we would like to wait until the Voluntary Agreement reporting has been completed for the final year so that we are able to incorporate any lessons learned.

Appendices

Index

Appendix	Name of Appendix	Page Number
1	Consultation Respondents	13
2	List of sections with significant changes	14
3	Glossary	15
4	Feedback Questionnaire	16

Appendix 1 - Consultation Respondents

List	Name
1	British Gas
2	Citizens Advice Bureau
3	E.ON Energy UK
4	EDF Energy
5	Energy Retail Association
6	Macmillan Cancer UK
7	RWE Npower
8	Scottish and Southern Energy
9	Scottish Power

Appendix 2 – List of sections with significant changes

Chapter	Paragraph(s)
Summary	Readers are advised to read the whole section
1	1.7, 1.8
2	2.5, 2.11, 2.17
3	3.10, 3.11, 3.15
4	4.3, 4.10, 4.11, 4.14-4.28, 4.32, 4.34
5	5.3, 5.4, 5.5, 5.12, 5.13
6	6.4, 6.24-6.26, 6.30, 6.34, 6.35
7	7.4, 7.9
Appendix 1	New – Readers are advised to read whole section

Appendix 3 – Glossary

B

BEC

Benefit entitlement check

C

CERT

Carbon Emissions Reduction Target

CESP

Community Energy Savings Programme

CSR

Corporate Social Responsibility

D

DECC

Department of Energy and Climate Change

DD

Direct Debit

DWP

Department for Work and Pensions

H

Home Heat Helpline


The Home Heat Helpline is a free, central phone number offering practical energy advice for people concerned about paying their energy bills.

P

Prepayment meter (PPM)

Prepayment meters currently use electronic tokens, keys or cards to enable an amount of energy to be bought by the consumer to be used. The consumer needs to be provided with a network of outlets where tokens can be purchased or cards and keys can be charge up. This network of outlets needs to be linked to a payment settlement system for suppliers.

Priority Service Register (PSR)



Overview of Responses to Ofgem's Consultation on the WHD: Draft Guidance for Licensed Electricity Suppliers and Licensed Gas Suppliers

Suppliers are required by their licence to establish and maintain a list of domestic customers who by virtue of being of pensionable age or disabled or chronically sick require information and advice in respect of services specified in the licence.

S

SC

Standard Credit

Appendix 4 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

Andrew MacFaul
Consultation Co-ordinator
Ofgem
9 Millbank
London
SW1P 3GE
andrew.macfaul@ofgem.gov.uk