

Interested Parties

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Email: WHD@ofgem.gov.uk

Date: 30 March 2015

Dear Sir/Madam

Open Letter Guidance- Warm Home Discount (WHD) Regulations 2011((as amended)¹ WHD Regulations 2011): regulation, 15(3)(a)

The recent amendments made to the WHD Regulations are now in force. Regulation 15 (3)(a) makes provision for a supplier to notify Ofgem² that it will not meet its spending obligation as set out in regulation 12(5)(b). The appendix to this letter explains how we will undertake our duties and the type of information that we will expect from suppliers so we can determine the level of spend under regulations 15 (3A)(b)(i) and (ii). It provides guidance on the notification timescales and how we will determine spend levels. In addition we have enclosed the specific regulations that underpin this process.

We have updated our WHD Guidance for Licensed Electricity Suppliers and Licensed Gas Suppliers (version 4) to take account of this open letter.

Please send any queries to Barbara Birrell at whd@ofgem.gov.uk.

Yours sincerely

David Fletcher
Interim Associate Director Environmental and Social Programmes

¹ As amended by the Warm Home Discount (Miscellaneous Amendments) Regulations 2015, (2015 Regulations), which came into force on 11 March 2015. Set out in full at Part 1 to this open letter

² Ofgem is the office of the Gas and Electricity Markets Authority (GEMA) and the terms "Ofgem" and "GEMA" are used interchangeably in this letter

Appendix: guidance on making an application under regulation 15(3A)(a)

Introduction

This section of the appendix sets out our approach and the type of information that we will ask for and use to make a determination under regulations 15(3A)(b)(i) and (b)(ii).

The new provisions in regulation 15(3A) provide a mechanism for a supplier to notify us if they are at risk of not being able to deliver the spend under the Broader Group, where it has not been reasonably practicable to do so. And for Ofgem to determine alternate spend under Industry Initiatives, if we accept the supplier's application under regulation 15(3A)(a).

Broader Group

1. We do not expect a CSES that has achieved its Broader Group obligation in a previous scheme year to "notify us that it will not incur" its SY5 spending obligation. A supplier who had previously complied with its Broader Group obligation would have to provide clear evidence of a substantial alteration to its customer base, in particular in relation to its Broader Group and fuel poor customer pool, before notifying us under regulation 15(3A)(a).
2. The minimum information that we will ask for as part of the assessment and determination process is set out below.
 - (i) The Broader Group criteria adopted by the supplier, if and when the criteria had been extended beyond the mandatory criteria set out in Schedule 2 to the WHD Regulation 2011, and any subsequent amendments.
 - (ii) Details of the marketing and targeting strategy implemented by the supplier, which will include:- any analysis of their customer base, information from its priority services register and any other relevant customer data sets. Additionally, we expect information about marketing through the supplier's web site, mailshots and other campaigns. The supplier should also provide their marketing strategy with key milestones, targets, monitoring information and any responses/actions.
 - (iii) The implementation plan for the Broader Group – including the assumptions behind the number of broader Group applications required, the likely number of eligible applicants, the verification sample size and likely attrition rate and the payment schedule. We will also expect to receive the monitoring framework that is in place and any corresponding actions.
 - (iv) The forward plan of action for the Broader Group from the date of the notification to the end of SY5; and confirmation that recruitment/payment will continue to the end of the year even if the supplier is exceeding its obligation.

This section of the appendix summarises the information that we will need to determine any increase in Industry Initiatives spend.

Industry Initiatives

3. To support the determination of spend that can be increased as spending under Chapter 4 we will require the following information on the relevant Industry Initiative:
 - (v) confirmation that Ofgem has been approved the Industry Initiative(s)
 - (vi) the Industry Initiative(s) is either a current and operational initiative or is ready to start operation on the determination date
 - (vii) details of the targets, outcomes and spend profile of the initiative, and any reports that show the initiative has met existing targets and spend
 - (viii) plans, targets and milestones that prove the initiative has the capability to meet the additional outputs and incur the spend targets from the determination date to 31 March 2016.

Determining spend levels

4. The determination of underspend in Broader Group and the increase in spend under Industry Initiatives are linked. In determining the amount of spend undertaken through regulation 15(3A)(b)(ii), we will consider the Industry Initiatives' capacity to achieve the increase in spend and output before the end of SY5.
5. It may be that the projected shortfall in the supplier's Broader Group is greater than the capacity of a supplier's Industry Initiatives to deliver. This will mean that a supplier may still not meet their non-core obligation despite having notified us and adjustments being made to spend under regulation 15(3A)(b)(ii). Therefore whilst a supplier may project a shortfall in their Broader Group spend, it cannot be assumed that we will exercise our discretion to accept in full all applications under regulation 15(3A)(a).
6. Therefore, it is essential that a supplier anticipating a notification under regulation 15(3A)(a) has robust plans to ensure that their non-core obligation is met through their Broader Group implementation and their increased Industry Initiatives spend.

Notification Timescales

7. A supplier must make any notification under regulation 15(3A)(a) by no later than midnight on 15 December 2015. An application can be submitted through: whd@ofgem.gov.uk
8. In order to facilitate our administration of the scheme, suppliers are requested to contact us at an early stage in the process.
9. Once an application has been submitted to Ofgem, an acknowledgement will be sent to suppliers. Suppliers should retain this for their records, and/or contact the WHD team urgently if this is not sent out by us as required.
10. Note that suppliers will be notified of Ofgem's decision within 28 days of the receipt of any application under regulation 15(3A)(a).

Part 2

The new regulation 15 is set out below. The new provisions are shown by reference to the highlighted text in bold.

15 Types and amounts of spending

(1) *In each scheme year a compulsory scheme electricity supplier must, subject to paragraph (2), incur spending under this Part to the amount of its non-core spending obligation.*

(2) *In relation to scheme year 1, 2 or 3, a compulsory scheme electricity supplier is not in breach of paragraph (1) if the amount of spending incurred by the supplier under this Part (as determined by the Authority in accordance with regulation 29(d)) is equal to or greater than 99% of its non-core spending obligation.*

(3) *The spending to be incurred by a compulsory scheme electricity supplier under this Part—*

*(a) must, in each scheme year, include the provision of rebates to broader group customers under Chapter 2 **and in scheme year 5 must, where reasonably practicable, be no less than the amount notified to the supplier under regulation 12(5)(b);***

(3A) In scheme year 5—

(a) a compulsory scheme electricity supplier must notify the Authority by 15th December 2015 if it considers that it will not incur at least the spending notified to it under regulation 12(5)(b);

(b) the Authority must, within 28 days of receiving such a notification—

(i) determine whether, and if so the extent to which, the supplier may incur spending below that amount;

(ii) where the Authority determines that the supplier may incur spending below that amount, determine the amount by which the supplier must increase its spending under Chapter 4; and

(iii) notify the supplier accordingly; and

(c) a supplier must comply with a determination notified to it under sub-paragraph (b)(iii).

(b) under Chapter 4—

(i) in scheme years 1 to 4, is the relevant percentage of £30 million; and

(ii) in scheme year 5 is the relevant percentage of £30 million, unless the Authority has notified the supplier under paragraph (3A)(b)(iii) that spending in excess of that amount is necessary to meet the supplier's non-core spending obligation; and

"(4A) In scheme year 5, the amount of spending that a compulsory scheme electricity supplier must aim to make under Chapter 2 is the relevant percentage of the amount calculated by subtracting £30 million from the aggregate non-core spending obligation

(c) may include spending on industry initiatives under Chapter 4, subject to the limits in paragraph (4)(b) and (c).

(4) The maximum amount of spending that a compulsory scheme electricity supplier may count towards its non-core spending obligation—

(b) under Chapter 4, in any scheme year, is the relevant percentage of £30 million; and

*(5) In **paragraphs (4) and (4A).**, "the relevant percentage" means the percentage determined under regulation 13(2).*