

2011 No.

ELECTRICITY

**The Electricity (Scheme for Reducing Fuel Poverty)
(Reconciliation) Regulations 2011**

<i>Made</i>	- - - -	<i>2011</i>
<i>Laid before Parliament</i>		<i>2011</i>
<i>Coming into force</i>	- -	<i>2011</i>

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 Electricity (Scheme for Reducing Fuel Poverty) (Reconciliation) Regulations 2011.

(2) These Regulations come into force on [] 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Energy Act 2010;

“the Scheme Regulations” means the Electricity and Gas (Scheme for Reducing Fuel Poverty) Regulations 2011(b);

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

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

(b) if the Operator has recalculated that percentage under regulation 11(5), the percentage as so recalculated;

(a) 2010 c.27.

(b)

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

“the Scheme” means the scheme for reducing fuel poverty established by the Scheme Regulations”;

“working day” means any day other than a Saturday, Sunday, bank holiday or public holiday.

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

“domestic customer”

“group of companies”

“the prescribed benefit”

“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, by [*date*], appoint a person to be the Operator for the purposes of these Regulations.

(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, by 30th April in each scheme year, notify 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 (2).

(2) The market share of a scheme electricity supplier (E) is X/Y %, where—

- (a) X is E’s number of domestic customers, unless sub-paragraph (b) or (c) applies;
- (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 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 suppliers, where 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.
- (d) Y is the total number of domestic customers of all scheme electricity suppliers and scheme gas suppliers.

(3) For the purposes of paragraph (2)—

- (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—
 - (i) notified by the supplier to the Authority in accordance with regulation 4(2) of the Scheme Regulations (or treated under regulation 4(3) of the Scheme Regulations as being so notified); or
 - (ii) determined by the Authority under regulation 4(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 lists of domestic customers to scheme electricity suppliers under regulation 7 of the Scheme Regulations; and
- (b) before the Authority has given a notification to the Operator under regulation 6 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.

(3) An interim reconciliation is, subject to regulation 11(4), 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 period for which an interim reconciliation is to be carried out;
- (b) notify the Operator of—
 - (i) the total number of customers, and
 - (ii) the number of customers of each scheme electricity supplier, that were identified as core group customers in that period; and
- (c) notify each scheme electricity supplier of—
 - (i) the direction;
 - (ii) the period for which the interim reconciliation is to be carried out;
 - (iii) the total number of customers notified to the Operator under sub-paragraph (b)(i); and
 - (iv) the number of customers of that scheme electricity supplier notified to the Operator under sub-paragraph (b)(ii).

(6) For the purpose of paragraph (5), a person is identified as a core group customer of a supplier in a period if the person is included on a list of customers given by the Secretary of State to the supplier in that period under regulation 7(2)(b) of the Scheme Regulations.

Calculation of interim reconciliation payments

6.—(1) If the Operator is given a direction under regulation 5, the Operator must—

- (a) calculate the amount to be received or paid by each scheme electricity supplier in accordance with paragraphs (2) and (3); and
- (b) notify each scheme electricity supplier of the amount so calculated.

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

(3) If the amount of E's interim liability for the period is less than the amount of E's interim market share liability for the period, E must make 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 benefit multiplied by N;
- (b) a supplier's interim market share liability for a period is the amount of the prescribed 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,

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

PART 3

Final reconciliation

Certification of customer numbers

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

- (a) certify the total number of domestic customers to whom a scheme electricity supplier provided the prescribed benefit under Part 3 of the Scheme Regulations in the scheme year, and notify that number to the Operator and each supplier; and
- (b) in relation to each scheme electricity supplier—
 - (i) certify the number of domestic customers to whom that supplier provided the prescribed benefit under Part 3 of the Scheme Regulations in the scheme year; and
 - (ii) notify that number to the Operator and that supplier.

(2) A scheme electricity supplier must, upon a request by the Authority, provide to the Authority such information as the Authority requires for the purpose of determining or verifying the numbers referred to in paragraph (1).

Calculation of final reconciliation payments

8.—(1) When the Operator receives a notification under regulation 7, the Operator must—

- (a) calculate the amount to be received or paid by each scheme electricity supplier in accordance with paragraphs (2) and (3); and
- (b) notify each scheme electricity supplier of the amount so calculated.

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

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

(4) For the purposes of this regulation—

- (a) a supplier's contribution for a scheme year is the prescribed benefit multiplied by the number certified under regulation 7(b) for that supplier;
- (b) a 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 supplier's market share contribution for a scheme year is M% of the number certified under regulation 7(a) multiplied by the prescribed benefit, 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 or a final reconciliation, it must give notice—

- (a) to each scheme electricity supplier which is liable to make or entitled to receive a payment, of the amount of that payment (“the specified amount”);
- (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).

(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 a scheme electricity supplier (“the defaulting supplier”) fails to make the whole or part of a reconciliation payment to the Operator by the date on which it is due (an “unpaid amount”).

(2) The Operator must—

- (a) apportion the unpaid amount between all the scheme electricity suppliers other than the defaulting supplier, 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 payment.

(4) The Operator may defer any payment due to a scheme electricity supplier under regulation 8, up to an amount equal to the unpaid amount, until it has received—

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

(5) If, after giving mutualisation notices to suppliers but before the suppliers have made a mutualisation payment, the Operator receives the unpaid amount from the defaulting supplier, the Operator must cancel the mutualisation notice.

(6) If, after receiving mutualisation payments from suppliers, the Operator receives an unpaid amount from the defaulting supplier, the Operator must within 7 days distribute the amount received from the defaulting supplier among the suppliers that have made mutualisation payments in proportion to their market shares.

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 interim or final reconciliation which takes place after the termination of its licence.

(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 interim or final reconciliation which takes place 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 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.

Appeals

12.—(1) Subject to paragraphs (6) and (7), a scheme electricity supplier may appeal to the Secretary of State against a determination by the Operator upon an interim reconciliation or a final reconciliation, on the ground that the Operator has made an error in its determination.

(2) An appeal under paragraph (1) must be made in writing within 14 days after the supplier is notified of the determination.

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

- (a) dismiss the appeal; or
- (b) allow the appeal and substitute a different determination.

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

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

(5) If the Secretary of State substitutes a different determination, the Operator must give to scheme electricity suppliers such notices under regulation 8 as are necessary to give effect to that determination.

(6) Paragraph (7) applies if—

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

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

- (a) arises only after the dispute resolution arrangements established 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 the person established or appointed under the Balancing and Settlement Code to resolve the dispute.

(8) 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.

(9) 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 under section 6(1) of the Electricity Act 1989; and

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