

FOR CONSULTATION PURPOSES ONLY

November working draft – text for The Electricity and Gas (Energy Companies Obligation) Order

Made - - - - *****
Coming into force - - *in accordance with article 1*

The Secretary of State makes this Order in exercise of the powers conferred by section 33BC of the Gas Act 1986(a), section 33BD of the Gas Act 1986(b), section 41A of the Electricity Act 1989(c), section 41B of the Electricity Act 1989(d), section 103 of the Utilities Act 2000(e) and section 103B of the Utilities Act 2000(f).

The Secretary of State has consulted the Gas and Electricity Markets Authority, the National Consumer Council(g), electricity generators, electricity distributors, electricity suppliers, gas transporters, gas suppliers and such other persons as the Secretary of State considers appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 33BC(12) of the Gas Act 1986, section 41A(12) of the Electricity Act 1989 and section 103(5) of the Utilities Act 2000.

PART 1

Introduction

Citation and commencement

1. This Order may be cited as the Electricity and Gas (Energy Companies Obligation) Order 2012 and comes into force on the day after the day on which this Order is made.

Interpretation

2. In this Order—

“2008 Order” means the Electricity and Gas (Carbon Emissions Reduction) Order 2008(h);

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- (a) 1986 c.44. Section 33BC was inserted (as section 33BB) by section 10(1) of, and Schedule 3, paragraph 36 to, the Gas Act 1995 (c.45). Section 33BB was substituted for (and renumbered as) section 33BC by section 99 of the Utilities Act 2000 (c.27). This section was also amended by sections 15 and 17 of, and the Schedule to, the Climate Change and Sustainable Energy Act 2006 (c.19) and section 79 of, and Schedule 8 to, the Climate Change Act 2008 (c.27).
- (b) 1986 c.44. Section 33BD was inserted by section 68 of the Energy Act 2011 (c. 16).
- (c) 1989 c.29. Section 41A was substituted for section 41 by section 70 of the Utilities Act 2000 and amended by sections 16 and 17 of, and the Schedule to, the Climate Change and Sustainable Energy Act 2006 and section 79 of, and Schedule 8 to, the Climate Change Act 2008.
- (d) 1989 c.29. Section 41B was inserted by section 69 of the Energy Act 2011 (c.16).
- (e) 2000 c.27. This section has also been amended by section 79 of, and Schedule 8 to, the Climate Change Act 2008.
- (f) 2000 c.27. Section 103B was inserted by section 70 of the Energy Act 2011 (c.16).
- (g) The National Consumer Council replaced the Gas and Electricity Consumer Council, see section 30 of the Consumer, Estate Agents and Redress Act 2007 (c.17).
- (h) S.I. 2008/188, as amended by the Electricity and Gas (Carbon Emissions Reduction) (Amendment) Order 2009 (S.I. 2009/1904) and the Electricity and Gas (Carbon Emissions Reduction) (Amendment) Order 2010 (S.I. 2010/1958).

“2009 Order” means the Electricity and Gas (Community Energy Saving Programme) Order 2009(a);

“affordable warmth group” has the meaning given in article 10;

“carbon emissions reduction target” means the target determined for a supplier under Part 3 for each carbon year;

“carbon qualifying action” has the meaning given in article 9(3);

“carbon savings” means the amount in tonnes of CO₂ that a qualifying action will save per year;

“carbon year” means the twelve months ending with 31st March except in the year [2012 when it means the 6 months ending 31st March 2013];

“cost savings” means the amount in pounds by which a qualifying action will reduce the cost of heating a home per year;

“domestic customer” means a person living in domestic premises in Great Britain who is supplied with electricity or gas at those premises wholly or mainly for domestic purposes;

“excess action” has the meaning given by article 17;

“heating qualifying action” has the meaning given in article 11(3);

“home heating cost reduction target” means the target determined for a supplier under Part 3 for each carbon year;

“householder” has the meaning given in Schedule 2;

“Green Deal advice report” means a report produced by a green deal assessor pursuant to regulation 33 of the Green Deal Framework (etc.) Regulations [·](b);

“Green Deal Code of Practice” means the code of practice issued by the Secretary of State pursuant to section 3(3)(d) of the Energy Act 2011 [on date];

“group of companies” means a holding company and the wholly-owned subsidiaries of that holding company where “holding company” and “wholly-owned” subsidiary have the same meaning as in section 1159 of the Companies Act 2006(c);

“overall carbon emissions reduction target” has the meaning given in article 3(1) and which represents the total amount of carbon emission reductions which suppliers must collectively achieve by [31st March 2015];

“overall home heating cost reduction target” has the meaning given in article 3(2) and which represents the total amount of heating cost reductions which suppliers must collectively achieve by [31st March 2015];

“overall obligation period” has the meaning given in article 5;

“qualifying action” means a carbon qualifying action or a heating qualifying action;

“Reduced Data Standard Assessment Procedure” means the Government’s Reduced Data Standard Assessment Procedure for energy ratings of dwellings (2009 Edition, as amended in October 2010(d));

“running carbon emissions reduction target” means in respect of a supplier, the sum total of carbon emissions reduction targets for each carbon year which have been determined for that supplier;

“running home heating cost reduction target” means in respect of a supplier, the sum total of home heating cost reduction targets for each carbon year which have been determined for that supplier;

(a) S.I. 2009/1905.

(b) S.I. xxxx/xxxx.

(c) 2006 c.46.

(d) The Government’s Reduced Standard Data Assessment Procedure for Energy Rating of Dwellings (2009 Edition) can be found at http://www.bre.co.uk/filelibrary/SAP/2009/SAP-2009_9-90.pdf.

“solid wall insulation” means internal or external insulation which lowers the U-value of the treated walls to 0.35 or less;

“Standard Assessment Procedure” means the Government’s Standard Assessment Procedure for energy rating of dwellings (2009 Edition, as amended in October 2010)(a);

“total carbon emissions reduction obligation” means the running carbon emissions reduction target determined for a supplier under Part 3 in [February 2014];

“total home heating cost reduction obligation” means the running home heating cost reduction target determined for a supplier under Part 3 in [February 2014];

“U-value” means the measure in W/m^2K of heat transmission through a wall.

PART 2

Overall carbon emissions reduction target and overall home heating cost reduction target

Overall carbon emissions reduction target and home heating cost reduction target

3.—(1) The overall carbon emissions reduction target for the period [1st October 2012 to 31st March 2015] is 0.52mtCO₂/yr.

(2) The overall home heating cost reduction target for the period [1st October 2012 to 31st March 2015] is £3.4bn.

(3) The [Authority or Administrator] must divide the overall carbon emissions reduction target and the overall home heating cost reduction target amongst suppliers in accordance with Part 3.

Definition of supplier

4.—(1) Where a person holds a supply licence under—

(a) section 6(1)(d) of the Electricity Act 1989 only (“an electricity licence-holder”), or section 7A of the Gas Act 1986 only (“a gas licence-holder”), paragraph (2) applies; or

(b) both those sections (“a dual-licence holder”), paragraph (4) applies.

(2) An electricity licence-holder or a gas licence-holder is a supplier where—

(a) the licence-holder supplies more than 250,000 domestic customers on [31st December in any of the years 2011, 2012 or 2013]; or

(b) the licence-holder is a company that belongs to a group of companies and that group has a total number of domestic customers, both electricity and gas, of more than 250,000 on [31st December in any of the years 2011, 2012 or 2013].

(3) A dual-licence holder is a supplier where—

(a) the licence-holder supplies more than 250,000 domestic customers, both electricity and gas, on [31st December in any of the years 2011, 2012 or 2013]; or

(b) the licence-holder is a company that belongs to a group of companies and that group has a total number of domestic customers, both electricity and gas, of more than 250,000 on [31st December in any of the years 2011, 2012 or 2013].

(4) A new supplier is a supplier to whom paragraph (2) or (3) applies for the first time on [31st December 2012 or 31st December 2013].

(a) The Government’s Standard Assessment Procedure for Energy Rating of Dwellings (2009 Edition) can be found at http://www.bre.co.uk/filelibrary/SAP/2009/SAP-2009_9-90.pdf.

(5) For the purposes of determining the number of domestic customers of a licence-holder under this Order, a domestic customer who receives electricity and gas from a dual-licence holder is a separate domestic customer under each licence.

Overall obligation period

5.—(1) The overall obligation period is the period—

- (a) commencing [1st October 2012], except for a new supplier; and
- (b) ending on [31st March 2015].

(2) For a new supplier the overall obligation period commences on [1st April] of that year in which a supplier is first required to notify the [Authority or Administrator] of its domestic customers under article 6.

Notification by suppliers

6.—(1) A supplier must notify the [Authority or Administrator]—

- (a) by [1st September 2012] of that supplier's domestic customers on [31st December 2011];
- (b) by [14th February 2013] and [14th February 2014] of that supplier's domestic customers on the previous [31st December].

(2) Where a supplier fails to do so, the [Authority or Administrator] may determine that number.

(3) A number determined under paragraph (2) is to be treated as if it were notified by the supplier.

(4) Where a person is a supplier by virtue of article 4(2)(b) or 4(3)(b), that person must also notify the [Authority or Administrator] by the applicable date in paragraph (1) of the names of the other companies in the group of companies to which it belonged on [31st December] of the relevant year.

(5) Where a supplier fails to provide the information in paragraph (4), the [Authority or Administrator] may regard the supplier as belonging to a particular group of companies.

PART 3

Determining carbon emissions reduction targets and home heating cost reduction targets for suppliers

Determining carbon emissions reduction targets and home heating cost reduction targets

7.—(1) The [Authority or Administrator] must determine for each carbon year a supplier's—

- (a) carbon emissions reduction target for that carbon year; and
- (b) home heating cost reduction target for that carbon year,

and notify a supplier of that determination.

(2) A determination under paragraph (1) must be made—

- (a) no later than [14th September 2012] for the carbon year commencing on the [1st April] immediately following that date;
- (b) for each subsequent carbon year, no later than the last day of February immediately before the commencement of that year.

(3) The determination required in paragraph (1) must be carried out in accordance with the following formula—

$$A \times \left(\frac{B}{C} \right) = Y$$

(4) In paragraph (3)—

A is, as applicable,—

- (a) in respect of a supplier's carbon emissions reduction target—
 - (i) 0.104 mtCO₂/yr for the carbon year commencing [1st October 2012];
 - (ii) 0.208 mtCO₂/yr for the carbon year commencing [1st April 2013];
 - (iii) 0.208 mtCO₂/yr for the carbon year commencing [1st April 2014]; or
- (b) in respect of a supplier's home heating cost reduction target—
 - (i) £0.68bn for the carbon year commencing [1st October 2012];
 - (ii) £1.36bn for the carbon year commencing [1st April 2013];
 - (iii) £1.36bn for the carbon year commencing [1st April 2014].

B is the number of domestic customers of the supplier on [31st December] of the year immediately prior to the date of the determination under this article;

C is the total number of domestic customers of all suppliers on [31st December] of the year immediately prior to the date of the determination under this article;

Y is, as applicable,—

- (a) a supplier's carbon emissions reduction target for the relevant carbon year;
- (b) a supplier's home heating cost reduction target for the relevant carbon year.

Determining running carbon emissions reduction targets and home heating cost reduction targets

8. By the last day of [February of 2013] and of [February 2014], the [Authority or Administrator] must determine a supplier's—

- (a) running carbon emissions reduction target;
- (b) running home heating cost reduction target,

and notify a supplier of that determination no later than [14th March] immediately following the date of the determination.

PART 4

Achievement of obligations, determining savings and excess actions

Achievement of carbon emissions reduction targets and obligation

9.—(1) A supplier must achieve—

- (a) *by [31st March 2014], no less than [70%] but no more than [130%] of its running carbon emissions reduction target; and*
- (b) its total carbon emissions reduction obligation by [31st March 2015].

(2) A supplier must achieve the target and obligation in paragraph (1) by promoting carbon qualifying actions to domestic customers.

(3) Subject to paragraph (4) and (5), a carbon qualifying action is the promotion and installation of solid wall insulation where the requirements of paragraph (6) are met.

(4) A measure, other than solid wall insulation, is a carbon qualifying action if that measure—

- (a) is promoted for the purposes of—
 - (i) achieving improvements in energy efficiency;
 - (ii) reducing energy consumption; or
 - (iii) reducing the amount of heat that would otherwise be lost from the property.

- (b) is installed at the same property where solid wall insulation is installed as a qualifying action;
- (c) is installed no earlier than six months before and no later than six months after the date of installation of the solid wall insulation; and
- (d) meets the requirements of paragraph (6).

(5) Where solid wall insulation is not the only measure to be promoted and installed at a property, the insulation must be applied to at least 50% of the external walled area of the property which has the potential to be treated with insulation at the time of installation.

- (6) The requirements referred to in paragraph (3) and (4)(d) are that the measure—
- (a) would not have been installed had the supplier not promoted it;
 - (b) is—
 - (i) where a Green Deal advice report has been produced in respect of the property, a measure recommended in it; or
 - (ii) a measure recommended by a chartered surveyor and which the [Authority or Administrator] considers to be appropriate for installation; and
 - (c) is installed by a person of appropriate skill and experience and in accordance with those conditions contained in the Green Deal Code of Practice which apply to that measure.

Affordable Warmth Group

10.—(1) A supplier must achieve [10%] of its overall carbon emissions reduction obligation by promoting carbon qualifying actions to domestic customers who are members of the affordable warmth group.

(2) A person is a member of the affordable warmth group if that person satisfies one of the requirements listed in paragraph 1 of Schedule 1.

Achievement of home heating cost reduction targets and obligation

- 11.—(1) A supplier must achieve—
- (a) *by [31st March 2013], no less than [%] of its running home heating cost reduction target;*
 - (b) *by [31st March 2014], no less than [%] of its running home heating cost reduction target;*
and
 - (c) its total home heating cost reduction obligation by [31st March 2015].

(2) A supplier must achieve the targets and obligations in paragraph (1) by promoting heating qualifying actions to householders who are members of the affordable warmth group.

(3) A heating qualifying action is the promotion and installation of a measure that will reduce the cost of heating a home and meets the requirements of paragraph (4).

- (4) The requirements are that the measure—
- (a) would not have been installed had the supplier not promoted it; and
 - (b) is installed by a person of appropriate skill and experience and in accordance with any applicable conditions referred to in the Green Deal Code of Practice.

Brokerage

12.—(1) The [Authority or Administrator] must establish a brokerage service.

(2) A supplier [must] achieve [X%] of its total carbon emissions reduction obligation by arranging for qualifying action to be installed by—

- (a) *[a minimum number] of Green Deal providers; [or*
- (b) *persons of appropriate skill and experience and in accordance with any applicable conditions referred to in the Green Deal Code of Practice].*

(3) A supplier [may] use the brokerage service to identify Green Deal providers who are prepared to promote and install qualifying actions on its behalf.

(4) A brokerage service must enable—

- (a) a supplier to submit to the [Authority or Administrator] information relating to—
 - (i) the type or types of qualifying action which it intends to promote and install;
 - (ii) the terms upon which it is prepared to contract with a Green Deal provider;
- (b) a Green Deal provider to access the information provided under paragraph (a);
- (c) a Green Deal provider to submit to the [Authority or Administrator] information relating to—
 - (i) the type of qualifying action which it is able to promote and install; and
 - (ii) the terms upon which it is prepared to contract with a supplier.
- (d) A supplier able to access the information provided under (c).

Notifications of qualifying actions

13.—(1) A supplier must by the end of each month in the overall obligation period notify the [Authority or Administrator] of each qualifying action promoted and installed in the month prior to the notification.

(2) In respect of each qualifying action, a notification must, so far as applicable, include all of the information listed in Schedule 3.

Determining savings for qualifying actions

14.—(1) The [Authority or Administrator] must determine whether the carbon savings or cost savings of a qualifying action notified under paragraph 1(d) or (e) of Schedule 3 have been accurately calculated.

(2) Only carbon savings or cost savings determined to be accurately calculated contribute, as applicable, towards meeting a supplier’s total carbon emissions reduction obligation or total home heating cost reduction obligation.

(3) If the Authority determines that the carbon savings or cost savings have not been accurately calculated, it must, within 28 days of receiving a notification, inform the supplier in writing of the reasons why it is not satisfied that the calculation of carbon savings or cost savings, as applicable, is accurate.

Approval of alternative methodology for carbon savings or cost savings

15.—(1) The [Authority or Administrator] may approve a methodology other than the Standard Assessment Procedure or the Reduced Data Standard Assessment Procedure (“an alternative methodology”) for the purpose of determining the carbon savings or the cost savings of a qualifying action or excess action.

(2) An alternative methodology may be approved if the [Authority or Administrator] is satisfied that it provides a more appropriate assessment of the carbon savings or cost savings of a qualifying action compared to the assessment provided by the Standard Assessment Procedure or the Reduced Data Standard Assessment Procedure.

(3) The [Authority or Administrator] may approve an alternative methodology for the purposes of determining the carbon savings or cost savings of a qualifying action only in relation to a particular type of property or measure.

(4) The [Authority or Administrator] must within 56 days of receiving a request for an approval of an alternative methodology notify a supplier of its decision under this article.

Transfers

16.—(1) A qualifying action achieved by a supplier (“A”) may be regarded as achieved by another supplier (“B”) if it is approved by the Authority.

(2) A and B must—

- (a) apply for approval in writing to the [Authority or the Administrator] by [31st March 2015]; and
- (b) provide to the [Authority or Administrator] such information, including the number and type of qualifying actions in question, as the [Authority or Administrator] may reasonably require.

(3) The [Authority or Administrator] must not approve a transfer where it has reasonable grounds to believe that, if the transfer were approved, the total carbon emissions reduction obligation or total home heating cost reduction obligation would not be achieved by A.

(4) If the [Authority or Administrator] decides not to approve a transfer under paragraph (3) it must notify A and B of the reasons for that decision.

(5) If a transfer is approved the completed qualifying action is treated as achieved by B and not A.

Excess Actions

17.—(1) Not later than [14th February 2013] a supplier may apply to the [Authority or Administrator] to credit towards its—

- (a) running carbon emissions reduction target [for the carbon year ending 31st March 2014]; or
- (b) running home heating cost reduction target [for the carbon year ending 31st March 2014],

the carbon savings or cost savings achieved by excess action.

(2) An application under this article must—

- (a) give details of the type of measures which the supplier considers constitute excess action;
- (b) indicate whether the supplier intends the excess action to be credited towards its—
 - (i) running carbon emissions reduction target for the carbon year ending [31st March 2014]; or
 - (ii) total home heating cost reduction target; and
- (c) provide a calculation of the carbon savings or cost savings of the excess action.

(3) Excess action means a measure which was—

- (a) approved and installed under the 2008 Order and which—
 - (i) exceeded the number required by a supplier to meet its obligation under that Order;
 - (ii) was installed after 1st January 2012; and
 - (iii) [in the case of a measure installed between [1st October 2012] and 31st December 2012 was installed by a person of appropriate skill and experience and in accordance with any applicable conditions referred to in the Green Deal Code of Practice;]
 - (iv) in the case of a measure intended to contribute towards the total carbon emissions reduction target, meets the requirements in paragraph (4)(a) or (b);
 - (v) in the case of a measure intended to meet the total home heating cost reduction target, meets the requirements of paragraph (5).
- (b) approved and installed under the 2009 Order and which—
 - (i) exceeded the number required by a supplier to meet its obligation under that Order;
 - (ii) was installed after 1st January 2012; and
 - (iii) in the case of a measure installed between [1st October 2012] and 31st December 2012 is installed by a person of appropriate skill and experience and in accordance

with those conditions contained in the Green Deal Code of Practice which apply to that measure].

(4) The requirements referred to in paragraph (3)(a)(iv) are that the measure is—

- (a) promoted and installed under the 2008 Order to a member of the super priority group where “super priority group” has the same meaning as under the 2008 Order; or
- (b) is solid wall insulation promoted and installed under the 2008 Order to a householder.

(5) The requirements referred to in paragraph (3)(a)(v) are that the measure is promoted and installed under the 2008 Order to a householder who was a member of the super priority group.

(6) For the purposes of this article, “carbon savings” and “cost savings” mean the savings produced by excess action when that action is assessed using the—

- (a) the Standard Assessment Procedure;
- (b) the Reduced Data Standard Assessment Procedure; or
- (c) an alternative methodology approved under article 15.

(7) The [Authority or Administrator] must consider an application and notify the supplier of its decision within [28] days of receiving that application.

PART 5

Enforcement

Compliance notices

18.—(1) The Administrator may request a person to provide it with such information as it believes it requires in relation to monitoring compliance with Parts 2, 3 and 4 of this Order.

(2) The Administrator must request the information referred to in paragraph (1) by written notice (“a compliance notice”) served on the person to whom it is addressed.

(3) A compliance notice may be in such form as the Administrator sees fit but must state the date by which compliance with the notice is required.

(4) A compliance notice may be varied or revoked in writing by the Administrator at any time.

(5) Where a person—

- (a) fails to comply with a compliance notice; or
- (b) in the opinion of the Administrator, supplies incomplete or inaccurate information,

the Administrator may instead determine the information requested.

Inspections

19.—(1) Subject to the following paragraphs, the Administrator may inspect any premises and anything in or on those premises in order to monitor compliance with Parts 2, 3 or 4 of this Order.

(2) Reasonable prior notice must be given before exercising the power of inspection.

(3) A person in control of the premises to which the Administrator requires access must allow the Administrator to have access to those premises.

(4) A person acting on behalf of the Administrator may, when inspecting those premises—

- (a) require the production of any record;
- (b) take measurements, photographs, recordings or copies of anything;
- (c) require any person at the premises to provide facilities and assistance to the extent that is within that person’s control.

(5) The power of inspection does not apply to—

- (a) a prohibited place for the purposes of the Official Secrets Act 1911(a); or
- (b) any other premises to which the Crown restricts access on the grounds of national security,

except to the extent agreed by the person in control of such a place or premises.

Powers of the Administrator in respect of enforcement

20. The powers of enforcement in this Part may be exercised where the Administrator reasonably believes that there has been a failure (except in respect of this article), or is likely to be a failure to comply with a provision of this Order.

Authorised persons

21. The Administrator may—

- (a) exercise the powers of entry and inspection in Schedule 4 and authorise in writing such persons (“authorised persons”) who appear suitable to act on its behalf to do so;
- (b) make such authorisation subject to any limitations or conditions as the Administrator sees fit.

Notices to provide information

22.—(1) The Administrator may, by a written notice served on a supplier, require the supplier to furnish information in relation to a failure or suspected failure to—

- (a) fulfil any of the notification requirements in article 6(1);
- (b) *achieve its running carbon emissions reduction target in article 9(1)(a);*
- (c) achieve its total carbon emissions reduction obligation in article 9(1)(b);
- (d) *achieve its running home heating cost reduction target in article 11(1)(a);*
- (e) *achieve its running home heating cost reduction target in article 11(1)(b);*
- (f) achieve its total home heating cost reduction obligation under article 11(1)(c);
- (g) *achieve [X%] of its total carbon emissions reduction obligation by arranging for qualifying action to be promoted and installed by a minimum of [Y] Green Deal providers under article 12.*

(2) A notice served under this article may require the supplier to provide the information in the form specified in the notice and within such period following service of the notice or at such time as is specified in the notice.

Enforcement notices

23.—(1) The Administrator may serve an enforcement notice on any person who fails to comply with a provision of this Order.

(2) An enforcement notice must be in writing and must specify—

- (a) the provision of this Order in respect of which there has been a failure;
- (b) the matters constituting the failure;
- (c) the steps that must be taken to remedy the failure; and
- (d) the period within which those steps must be taken.

(3) An enforcement notice may be withdrawn at any time.

(4) If a person fails to comply with an enforcement notice, the Administrator—

(a) 1911 c.28.

- (a) may do what that person was required to do; and
- (b) may recover from a supplier the costs of doing so.

Civil penalties

24.—(1) The Administrator—

- (a) may impose a civil penalty as set out in this Part; and
- (b) where it does so, it must give written notice of such penalty to the person affected.

(2) In respect of a financial penalty, a notice of such penalty must state—

- (a) the amount due;
- (b) where the amount includes a daily penalty, what that daily rate is; and
- (c) to whom the penalty must be paid.

Recovery of civil penalties

25.—(1) Except for a financial penalty, a civil penalty has effect once the notice of that penalty is given unless that notice provides otherwise.

(2) A financial penalty—

- (a) is due 60 days after the notice of that penalty is given; and
- (b) if unpaid, is recoverable as a civil debt by the Administrator.

Waiver and modification of civil penalties

26.—(1) Paragraph (2) applies in respect of a person (“A”) on whom a civil penalty may be or has been imposed and where the Administrator is satisfied that A has provided evidence to the Administrator within a reasonable time that—

- (a) A took all reasonable steps—
 - (i) to comply with the relevant provisions of this Order; or
 - (ii) to rectify any failure in compliance as soon as it came to A’s notice;and
- (b) in all the other circumstances it is reasonable to exercise the powers in paragraph (2) in relation to A.

(2) Where this paragraph applies, the Administrator may—

- (a) waive a penalty;
- (b) allow additional time to pay; or
- (c) impose a lower penalty or substitute a lower financial penalty where one has already been imposed.

Failures in respect of notifications under articles 6 and 13

27.—(1) The penalties in paragraph (2) apply where a supplier fails to notify the Administrator of—

- (a) its total domestic customers under article 6; or
- (b) each qualifying action promoted and installed under article 13

(2) The penalties are the financial penalties of—

- (a) £5,000; and
- (b) £500 for each day until a supplier notifies the Administrator as required under article 6, subject to a maximum of 90 days.

Failures in respect of *affordable warmth* group, carbon emissions reduction targets, home heating cost reduction targets, total carbon emissions reduction obligation and total home heating cost reduction obligation.

28.—(1) The penalties in paragraph (3) apply where a supplier fails to achieve its—

- (a) running carbon emissions reduction target in article 9(1)(a);
- (b) total carbon emissions reduction obligation in article 9(1)(b);
- (c) *obligation in article 10 to achieve [10%] of its overall carbon emissions reduction obligation by promoting carbon qualifying actions to domestic customers who are members of the affordable warmth group;*
- (d) running home heating cost reduction target in article 11(1)(a);
- (e) running home heating cost reduction target in article 11(1)(b);
- (f) total home heating cost reduction obligation under article 11(1)(c);
- (g) *achieve [X%] of its total carbon emissions reduction obligation by arranging for qualifying action to be promoted and installed by a minimum of [Y] Green Deal providers under article 12*

(2) Where paragraph (1) applies, the penalty is the financial penalty of a maximum amount equivalent to 10% of a supplier's annual turnover or, where a supplier belongs to a group of companies containing suppliers, 10% of that group's annual turnover.

Offences

29.—(1) It is an offence for a person—

- (a) intentionally to obstruct an authorised person in the exercise of powers or duties of the authorised person under Schedule 4; or
- (b) to make a statement—
 - (i) which that person knows to be false or misleading in a material particular; or
 - (ii) recklessly and which is false or misleading in a material particular,where the statement is made in purported compliance with a provision of this Order.

(2) It is an offence for a person—

- (a) to fail to comply with an enforcement notice;
- (b) where an authorised person exercises the powers or duties under Schedule 4—
 - (i) to fail or refuse to provide facilities or assistance or to permit any inspection when reasonably required by an authorised person; or
 - (ii) to prevent any other person from appearing before an authorised person or answering any question to which an authorised person may require an answer.

(3) It is a defence for a person charged with an offence under paragraph (2) to prove that such person had a reasonable excuse for the matters charged.

(4) It is an offence for a person to pretend to be an authorised person.

(5) It is an offence for a person in control of any premises to refuse to allow the Administrator access to those premises contrary to article 18 where such access is reasonably required.

Penalties

30.—(1) A person guilty of an offence under article 31(1)(b) or article 31(2)(a) is liable—

- (a) in England and Wales—
 - (i) on summary conviction to a fine not exceeding £50,000 or to a term of imprisonment not exceeding 3 months, or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both;

- and
- (b) in Scotland—
 - (i) on summary conviction to a fine not exceeding £50,000 or to a term of imprisonment not exceeding 12 months or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both.
- (2) A person guilty of an offence under article 31(1)(a), (2)(b), (4) or (5) is liable—
- (a) in England and Wales—
 - (i) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 3 months, or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both;
- and
- (b) in Scotland—
 - (i) on summary conviction to a fine not exceeding the [statutory maximum] or to a term of imprisonment not exceeding 12 months or both;
 - (ii) on conviction on indictment, to a fine or to a term of imprisonment not exceeding 2 years, or both.

Bodies corporate

31.—(1) Where an offence under this Part is committed by a body corporate and—

- (a) it is committed with the consent or connivance of an officer; or
- (b) is attributable to any neglect on the officer’s part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) “Officer”, in relation to a body corporate, means a director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts or defaults of a member in connection with that member’s functions of management as if the member were a director of the body corporate.

Scottish Partnerships

32.—(1) Where an offence under this Part is committed by a Scottish partnership and—

- (a) it is committed with the consent or connivance of a partner; or
- (b) it is attributable to any neglect on the partner’s part,

the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “partner” includes a person purporting to act as a partner.

SCHEDULE 1

Article 10

AFFORDABLE WARMTH GROUP ELIGIBILITY

1. The requirements referred to in the definition of affordable warmth group in article 10(2) are that the person is in receipt of—

- (a) *child tax credit*^(a) and has a relevant income of £16,190 or less (where “relevant income” has the same meaning as in Part 1 of the Tax Credits Act 2002^(b)).
- (b) *income-related employment and support allowance*, which must include a work-related activity or support component, and—
 - (i) has parental responsibility for a child under the age of five who ordinarily resides with that member; or
 - (ii) is in receipt of a qualifying component;
- (c) *income-based job seeker’s allowance* and—
 - (i) has parental responsibility for a child under the age of five who ordinarily resides with that member; or
 - (ii) is in receipt of a qualifying component;
- (d) *income support* and—
 - (i) has parental responsibility for a child under the age of five who ordinarily resides with that member; or
 - (ii) is in receipt of a qualifying component; or
- (e) *state pension credit*.

2. In paragraph 3 “qualifying component” means—

- (a) *child tax credit which includes a disability or severe disability element*;
- (b) *a disabled child premium*;
- (c) *a disability premium, enhanced disability premium or severe disability premium*; or
- (d) *a pensioner premium, higher pensioner premium or enhanced pensioner premium*.

SCHEDULE 2

Articles 2 and 11

MEANING OF HOUSEHOLDER

1. In relation to England and Wales, householder means a person who is—

- (a) a freeholder;
- (b) in the case of England only, a leaseholder with a term of 21 years or more unexpired at the time the specified reduction is promoted; or
- (c) a tenant, including a sub-tenant, who has—
 - (i) a protected occupancy or statutory tenancy under the Rent (Agriculture) Act 1976^(c); 1976^(c);
 - (ii) a statutory tenancy under the Rent Act 1977^(d);
 - (iii) a secure tenancy under Part IV of the Housing Act 1985^(e) or an introductory tenancy under Chapter I of Part V of the Housing Act 1996^(f);

(a) Child tax credit and working tax credit are provided for in Part I of the Tax Credits Act 2002 (c.21).

(b) 2002 c.21.

(c) 1976 c.80; sections 2 and 3 make provision for protected occupancy and section 4 for statutory tenancy. Section 3 has been amended by section 76(3) of the Housing Act 1980 (c.51) and section 81 of and Schedule 8 to the Civil Partnership Act 2004 (c.33), section 4 by those provisions and section 155 and paragraph 72 of Schedule 23 to the Rent Act 1977 (c.42) and sections 39 and 140 of and Schedule 4 (Part II) and Schedule 18 to the Housing Act 1988 (c.50). Section 5 was last amended by sections 128 and 137 of and Schedule 6 to the Criminal Justice and Police Act 2001 (c.16). There are other amendments to the 1976 Act not relevant to these Regulations.

(d) 1977 c.42, as last amended by paragraph 94 of Part I of Schedule 4 to the Constitutional Reform Act 2005 (c.4).

(e) 1985 c.68.

(f) 1996 c.52, as last amended by paragraphs 256 to 258 of Part 1 of Schedule 4 to the Constitutional Reform Act 2005.

- (iv) a licence to occupy which meets the conditions in paragraph 12(a) and (b) Schedule 1 to the Housing Act 1985(a) (almshouse licences); or
- (v) an assured agricultural occupancy under Part I of the Housing Act 1988(b), at the time the action is promoted to him.

2.—(1) In relation to Scotland, householder means a person who is the owner or tenant of a dwelling.

(2) For the purposes of this paragraph—

- (a) “owner” includes any person who under the Land Clauses Acts(c) would be enabled to sell and convey land to promoters of an undertaking;
- (b) “tenant” includes a person who—
 - (i) is a service occupant;
 - (ii) has a licence to occupy a dwelling; or
 - (iii) is a cottar within the meaning of section 12(5) of the Crofters (Scotland) Act 1993(d),and, in any case, a sub-tenant.

SCHEDULE 3 NOTIFICATIONS

Article 13

1. A notification under article 13 must contain—

- (a) the supplier’s name;
- (b) a description of the type of carbon qualifying action or heating qualifying action which is being promoted and installed;
- (c) a reference to which obligation or target the qualifying action is intended to count against, *[including any information about whether the action is intended to meet a distributional safeguard group obligation]*;
- (d) if applicable, the carbon savings which the proposed carbon qualifying action will save as measured by—
 - (i) the Standard Assessment Procedure;
 - (ii) the Reduced Data Standard Assessment Procedure; or
 - (iii) a methodology which the [Authority or Administrator] has approved under article 15.
- (e) if applicable, the cost savings which the proposed heating qualifying action will save as measured by—
 - (i) the Standard Assessment Procedure;
 - (ii) Reduced Data Standard Assessment Procedure; or
 - (iii) a methodology which the [Authority or Administrator] has approved under article 15.
- (f) the EPC number of the assessment carried out in relation to the property where the qualifying action is installed where “EPC number” means the unique reference number provided to an energy performance certificate under regulation 31 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007(e);

(a) Paragraph 12 of Schedule 1 to the Housing Act 1985 was amended by section 78(1) of and paragraph 12 of Schedule 6 to the Charities Act 1992 (c.41).
 (b) 1988 c.50.
 (c) Defined in Schedule 1 to the Interpretation Act 1978 (c.30).
 (d) 1993 c.44.
 (e) S.I. 2007/991

- (g) the before and after Standard Assessment Procedure or Reduced Data Standard Assessment Procedure rating of the property where the carbon or heating qualifying action is promoted and installed;
- (h) details of the person who installed the measure;
- (i) the date the qualifying action was installed;
- (j) the address and Unique Property Reference Number of the property where the qualifying action was installed where “Unique Property Reference Number” means the twelve digit number assigned to a property by [name of assignor];
- (k) details of how the qualifying action and its installation was financed;
- (l) information relating to how the domestic customer was selected to receive the proposed qualifying action;
- (m) *[if applicable, a Brokerage transaction number]*.

SCHEDULE 4

Article 21

POWERS OF ENTRY AND INSPECTION

1. The powers of the Administrator and any authorised person are—
 - (a) to enter, at any reasonable time any premises, which the Administrator or an authorised person has reason to believe it is necessary to enter;
 - (b) on entering any premises by virtue of sub-paragraph (a), to—
 - (i) be accompanied by any other person and, if the Administrator or authorised person has reasonable cause to apprehend any serious obstruction in the execution of the inspector’s duty, a constable; and
 - (ii) take any equipment or materials that the Administrator or authorised person considers may be required for any purpose for which the power of entry is being exercised;
 - (c) to make such examination and investigation as the Administrator or authorised person considers necessary, and for this purpose to install or maintain monitoring or other apparatus on the premises;
 - (d) to direct that those premises or any part of them, or anything in or on them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
 - (e) to take such measurements and photographs and make such recordings as the Administrator or authorised person considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (f) to take samples or cause samples to be taken of any thing found in or on the premises or in any air, water, land in, on or in the vicinity of, the premises;
 - (g) in the case of any thing found in or on the premises, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is necessary);
 - (h) in the case of any thing mentioned in sub-paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes—
 - (i) to examine it, or cause it to be examined and do to it anything which the Administrator or authorised person has power to do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before the examination of it is completed; and
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Order;
 - (i) to require any person who the Administrator or authorised person has reasonable cause to believe is able to give any information relevant to any examination or investigation under sub-paragraph (c)—

- (i) to attend at a place and time specified by the Administrator or authorised person;
- (ii) to answer (in the absence of any person other than persons whom the Administrator or authorised person may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the Administrator or authorised person thinks fit to ask; and
- (iii) to sign a declaration of truth of that person's answers;
- (j) to require the production of (or where the information is recorded in computerised form, the furnishing of extracts from), and inspect and take copies of or of any entry in—
 - (i) any records which are required to be kept by virtue of any provision of any licence or storage permit;
 - (ii) any records which the Administrator or authorised person considers it necessary to see for the purposes of any examination or investigation under sub-paragraph (c); and
- (k) to require any person to afford the Administrator or authorised person such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the Administrator or authorised person considers are necessary to enable the Administrator or authorised person to exercise any of the powers conferred by these Regulations and this Schedule.

2. Where an Administrator or authorised person proposes to exercise the power conferred by paragraph 1(g) in the case of a thing found on any premises, the Administrator or authorised person must, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

3. Before exercising the power conferred by paragraph 1(g), an Administrator or authorised person must consult—

- (a) such persons having duties on the premises where the thing is to be dismantled or subjected to the process or test; and
- (b) such other persons,

as appear to the Administrator or authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the Administrator or authorised person proposes to do or cause to be done under the power.