EXPLANATORY MEMORANDUM TO
THE DISCLOSURE OF STATE PENSION CREDIT INFORMATION (WARM HOME DISCOUNT) REGULATIONS 2011

2011 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations allow the Secretary of State to disclose information to licensed electricity suppliers about certain persons and their partners, where one of those persons is in receipt of State Pension Credit. Whether or not information can be shared in any particular year will depend upon the age of the person (or their partner) and which elements of pension credit that person (or their partner) is in receipt of.

2.2 These Regulations allow the Secretary of State and energy suppliers to exchange information for the purposes of requiring, under the Warm Home Discount Regulations (S.I. 2011/1033), those electricity suppliers to give those persons an automatic rebate on their electricity bills and to allow for testing matching arrangements. Suppliers may also use information about those persons to offer them advice and assistance in relation to energy and thermal efficiency, reducing energy consumption, the use of microgeneration equipment or wood burning appliances. Suppliers may also offer to place the customer on the priority services register (a register of vulnerable customers). In addition, suppliers may use the information to provide advice and assistance in relation to debt and disconnection (including, for example, suppliers using that information to decide not to withdraw electricity supply in the case of significant arrears).

2.3 The Regulations also allow electricity suppliers to provide information about their domestic electricity customers to the Secretary of State. This is so that the Secretary of State can match that information against the DWP's records and then confirm to each supplier which of its customers are required to be paid the rebate. This ensures that suppliers' will only be notified that Pension Credit is in payment in relation to their own customers. Suppliers can only supply information about their customers for the purposes of enabling the Secretary of State to ascertain what information should ultimately be supplied to suppliers, or for the purposes of testing matching arrangements. Suppliers can also only supply information where required to by the Secretary of State, again under powers given in the Warm Home Discount Regulations. These Regulations also make unauthorised disclosure of the information a criminal offence. This has been done to strengthen the security of the data being handled and transferred,

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument is made under Section 142 of the Pensions Act 2008, which conferred power on the Secretary of State to make regulations allowing for State Pension Credit information to be shared with electricity suppliers, and suppliers to provide information about their customers to the Secretary of State, for the purpose of providing assistance to eligible customers. These disclosures of information would be unlawful without legislation.

4.2 The information will be shared to allow for the delivery of a scheme, the Warm Home Discount scheme, to provide rebates and other support to customers who are fuel poor or vulnerable to fuel poverty. These Regulations therefore need to be read alongside the Warm Home Discount Regulations (made under Section 9 of the Energy Act 2010) which set out that scheme. Regulation 9 of those Regulations set out the Secretary of State's power to direct energy suppliers to provide information about their domestic electricity customers to the Secretary of State. The requirement to provide a rebate to customers is set out in Regulations 6 to 8 of the Warm Home Discount Regulations.

4.3 This instrument also revokes The State Pension Credit (Disclosure of Information) (Electricity Suppliers) Regulations 2010 No. 227.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Gregory Barker, Minister of State at the Department of Energy and Climate Change, has made the following statement regarding Human Rights:

In my view the provisions of the Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Warm Homes and Energy Conservation Act 2000[1] committed Government to implementing a strategy to tackle fuel poverty and led to publication of the UK Fuel

[1] The Warm Homes and Energy Conservation Act 2000 extends to England and Wales. The Housing (Scotland) Act 2001 contains similar provisions in relation to Scotland.

Poverty Strategy in 2001. The Government's target is to eradicate fuel poverty in England, as far as is reasonably practicable, by 2016. Similar targets have been set by the devolved administrations in Wales, Scotland and Northern Ireland.

7.2 A household is defined as being in fuel poverty if that household would need to spend at least 10% of its income to heat its home to an adequate level of warmth. The latest figures suggest that in 2008 there were 4.5 million households in fuel poverty in the United Kingdom. There are three main factors that impact on fuel poverty: energy performance of the dwelling, household income and energy prices.

7.3 Until March 2011, electricity and gas suppliers provided help to customers under a voluntary agreement which Government negotiated separately with each of them in 2008. The combined spending by suppliers will be at least £150 million in April 2010 to March 2011. Part 2 of the Energy Act 2010 sets a framework for the voluntary agreement to be replaced by a statutory scheme for the purpose of reducing fuel poverty. This scheme was established by the Warm Home Discount Regulations 2011.

7.4 Subject to a degree of flexibility permitted by this instrument, the Warm Home Discount scheme will require spending by suppliers totalling £250 million in 2011/12, increasing annually to £310 million in 2014/15. Details can be found in the Explanatory Memorandum to the Warm Home Discount Regulations 2011 No. 1033 (available at http://www.legislation.gov.uk/uksi/2011/1033/memorandum/contents).

7.5 One of the groups to be afforded assistance under that scheme is the 'Core Group'. The Core Group focuses on older pensioners on low incomes. Electricity suppliers will be required to provide rebates to these customers, and it is for the Secretary of State to determine who they are, although they must be persons who are in receipt of state pension credit. These Regulations provide for a legislative gateway that will permit information sharing between the Secretary of State and the energy suppliers to assist in determining who those customers are and to enable the Secretary of State to tell the suppliers about customers who he believes are in receipt of state pension credit It is estimated that about 4.5 million rebate payments will be made over the four years of the scheme. The rebate will be £120 in year one of the scheme, rising each year to £140 by year four.

7.6 In addition to providing the rebate, these Regulations also allow the energy supplier to identify these customers in order to offer them other specified forms of assistance.

7.7 This Core Group and the delivery mechanism is based on the successful data sharing pilot, the Energy Rebate Scheme. Information about the pilot is available at http://www.dwp.gov.uk/docs/outcome-energy-rebate-scheme.pdf. The Energy Rebate scheme was underpinned by The State Pension Credit (Disclosure of Information) (Electricity Suppliers) Regulations 2010 No. 227 which these Regulations revoke.

8. Consultation outcome

8.1 The Department carried out a public consultation on the Warm Home Discount Scheme, including the Core Group, from 2 December 2010 to 14 January 2011. This included detailed proposals for the use of information sharing and data matching to target the Core Group, eligibility for the Core Group, the proposed value of the rebate and what additional uses the data could be put to.

8.2 The consultation proposals were broadly welcomed by the majority of respondents who agreed that the move to a mandated scheme from the current voluntary arrangements would provide greater certainty and accountability over the distribution of support. There was also wide support for using information sharing and data matching to target the Core Group element of the scheme. There was also support for including advice on debt and disconnection as one of the reasons energy suppliers could contact their customers, as determined by the Secretary of State, to provide additional advice. This has been included in this instrument. Further details of respondents' views, together with Government's response, are available at www.decc.gov.uk/en/content/cms/consultations/warmhome/warmhome.aspx

9. Guidance

9.1 Mechanisms will be put in place to inform potentially eligible customers about the Scheme, and to make available contact details for obtaining further information. Information about who is eligible, including the date on which a customer needs to be in receipt of Pension Credit, will also be made publically available, including on Direct Gov. Government will work with external stakeholders who represent pensioner groups in developing the communications strategy.

9.2 Government will work closely with energy suppliers and other interested parties on guidance for how the data matching arrangements will be put in place. Ofgem will provide energy suppliers with guidance on compliance with the requirements of the Warm Home Discount scheme. This guidance will focus on the type of information suppliers and the Secretary of State need to submit to Ofgem both for approval during the scheme year and for reporting purposes at the end of the scheme year. This is provided for under Regulations 9 and 10 of the Warm Home Discount Regulations 2011.

10. Impact

10.1 These Regulations provide a permissive gateway to allow for legal data sharing between energy suppliers and the Secretary of State for the purposes of providing a rebate and additional support to customers who are fuel poor or at risk of fuel poverty. As a result, there are no costs associated with these Regulations. However, the Warm Home Discount scheme will impact on business by requiring licensed electricity suppliers to provide support to households in fuel poverty or in a fuel poverty risk group. Each individual supplier's obligation will be set in line with their market share to ensure costs are not incurred disproportionately to the size of each business. It is anticipated that suppliers will also incur costs in administering the scheme; however these are estimated to be small relative to the size of the scheme.

10.2 The impact on the public sector is limited to the cost borne by Government of administering the scheme, including costs in relation to data matching for the Core Group which is underpinned by these Regulations. These costs are estimated to be small relative to the size of the scheme.

10.3 An Impact Assessment for the Warm Home Discount Scheme, including the data sharing elements, is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation does not impact on small businesses. Only licensed electricity companies with in excess of 250,000 customers are required to participate in the Warm Home Discount scheme. If licensed electricity suppliers who are below the threshold for mandatory participation wish to take part in the Core Group of the scheme they may do so on a voluntary basis.

12. Monitoring & review

12.1 These Regulations will be revoked on 1st April 2015 as the Warm Home Discount scheme will end on 31st March 2015.

13. Contact

Charlotte Middleton at the Department of Energy and Climate Change Tel: 0300 068 5663 or email: charlotte.middleton@decc.gsi.gov.uk can answer any queries regarding the instrument.