EXPLANATORY MEMORANDUM TO

THE WARM HOME DISCOUNT (ENGLAND AND WALES) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument continues, for England and Wales, the Warm Home Discount scheme ("the scheme") originally established by the Warm Home Discount Regulations 2011. The scheme is re-enacted with amendments, and is to run from the coming into force of this instrument until 31 March 2026. The scheme requires licensed electricity suppliers to incur spending on providing benefits to customers in England and Wales who are in, or are at risk of, fuel poverty. This instrument also makes consequential amendments to the related Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011 ("the Disclosure Regulations").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument will come into force on the day after the day on which it is made. This is because an essential part of electricity suppliers providing eligible customers with their core group rebates is the process of data matching with the Department for Work and Pensions. That process requires extensive testing which can only begin once the instrument is in force and takes several months before suppliers can start to provide the rebates. The policy intent is that rebates reach the customers before the winter period and recipients will expect them in time for winter when homes most need to be heated. Any delay to commencement will lead to knock-on delays in when rebates to the core group can start to be provided.

3.2 The deadlines for compliance with any requirement imposed by the instrument all fall at least 21 days after the commencement of the instrument, with the exception of the 7-day deadline that applies to the Secretary of State under regulation 15. This requires the Secretary of State to notify the Authority of the aggregate non-core spending obligation.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 Lord Callanan has made the following statement regarding Human Rights:

"In my view the provisions of the Warm Home Discount (England and Wales) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The scheme established by the Warm Home Discount Regulations 2011 ran for 11 scheme years, up to 31 March 2022. This instrument re-enacts the scheme for England and Wales, with changes, and so that the scheme runs for another 4 scheme years (scheme years 12 to 16) from the commencement of this instrument until 31 March 2026.

6.2 The scheme, as continued by the instrument, will be made up of the following parts:

- the core group: electricity suppliers participating in the scheme provide a rebate of £150 off electricity or gas bills:
  - to their eligible customers in receipt of state pension credit guarantee credit; and
  - to their customers meeting criteria set out in an eligibility statement published by the Secretary of State;
- the non-core spending obligation: the suppliers required to participate in the scheme must incur spending on industry initiatives. These are activities such as debt assistance, benefit entitlement checks, energy efficiency measures and energy advice to domestic customers in, or at risk of, fuel poverty.

6.3 The instrument also makes consequential amendments to the Disclosure Regulations. These authorise the sharing of data between the Secretary of State and electricity suppliers for the purpose of providing core group rebates to eligible customers in receipt of state pension credit.

6.4 This instrument and the Disclosure Regulations are two of a suite of three sets of Regulations which together establish and regulate the scheme. The third set was the Warm Home Discount (Reconciliation) Regulations 2011, which set out the process through which core group expenditure is reconciled between electricity suppliers. The Department intends to make a new set of Reconciliation Regulations later this year.

6.5 The Department intends to lay a separate set of regulations to continue the Warm Home Discount scheme for Scotland. Under section 58 of the Scotland Act 2016, many of the powers to make regulations for the scheme in Scotland were transferred to the Scottish Ministers and can be exercised by the Secretary of State in specified circumstances only.

7. Policy background

What is being done and why?

7.1 Section 9 of the Energy Act 2010 allows the Secretary of State to make schemes for the purpose of reducing fuel poverty. The Warm Home Discount scheme is a key policy in the Government's approach to tackling fuel poverty and reducing the energy costs of low-income and vulnerable households. Under the scheme, participating energy suppliers provide support to households who are in, or at risk of, fuel poverty, primarily through rebates on their energy bills every year. In the Energy White Paper 2020, the Government committed to extend the scheme from 2022 to 2026, expand the scheme to reach around 3 million households, and consult on reforms to improve the fuel poverty targeting of the scheme in England and Wales. There will be a

separate Warm Home Discount scheme in Scotland, in part due to the data underpinning the reforms of the scheme in England and Wales not being available in Scotland.

7.2 Over the summer of 2021, the Department consulted on reforms that would enable more rebates to go to fuel poor households and for the vast majority of rebates to be awarded automatically. The Impact Assessment models an improvement to the fuel poverty targeting rate of the scheme from 39% to 47%.

7.3 The main changes to the scheme in England and Wales are as follows:

- Expand the scheme's annual spending envelope across England, Wales, and Scotland to £475 million (in 2020 prices) per year, and increase the value of the core group rebate from £140 to £150. 90.6% of the spending envelope is apportioned to the scheme in England and Wales. As a result, around 2.8 million households in England and Wales will receive a Warm Home Discount rebate each scheme year;
- Maintain the current Core Group – renamed Core Group 1 – of low-income pensioners, in receipt of the Guarantee Credit element of the Pension Credit;
- Replace the application-based Broader Group, which to date has been run by each energy supplier, with a new and standardised Core Group 2. Eligibility for the Core Group 2 is based on criteria set out in an eligibility statement to be published by the Secretary of State. It is intended that the new Core Group 2 will consist of low-income households with highest energy costs. Eligible households would be identified by those on a qualifying means-tested benefit or Tax Credit and with high energy costs, estimated using property characteristic data. This will enable the majority of eligible households to be identified automatically and awarded a rebate, without having to take any action;
- Lower the scheme participation threshold to 50,000 domestic customer accounts in 2022/23 and to 1,000 domestic customer accounts from 2023/24;
- Make spending on Industry Initiatives mandatory for those suppliers required to participate in the scheme, in recognition of the value that these activities provide for wider financial and energy-related support to fuel poor households.
- Set a minimum for the amount of spending on financial assistance payments under Industry Initiatives, while maintaining the cap on the total amount of such spending, and set the maximum financial assistance payment to an individual customer as £150, in order to maximise the number of households supported. Ring-fence part of the permitted Industry Initiatives spending on debt-write off, for customers with pre-payment meters, as these customers are particularly at risk of self-disconnection. Limits on boiler and central heating system installations supported under industry initiatives, to ensure Industry Initiatives spending is distributed across a range of activities and to support decarbonisation objectives.

7.4 There is a considerable level of public interest from energy suppliers who deliver the scheme, fuel poverty groups, and the public in the scheme.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 This instrument is the fifth to make amendments to the Disclosure Regulations and a consolidation of those regulations is not considered necessary at present.

10. Consultation outcome

10.1 The consultation on the scheme was launched on 28 June 2021 and closed on 22 August 2021. The Department considered that an 8-week consultation was sufficient for ensuring responses would come from a range of organisations and individuals. The consultation was hosted on gov.uk, with responses via an online portal and email. There were 87 responses to the consultation, including from energy suppliers, charities, consumer affairs organisations, local authorities, housing associations, public authorities, and members of the public.

10.2 There was broad support from consultation respondents to the proposals. Respondents to the consultation agreed with expanding the scheme to support more households, focusing on improving the fuel poverty targeting rate of the scheme, and enabling more rebates to be awarded automatically. Respondents also supported standardising the eligibility criteria for rebates across energy suppliers and generally supported reducing the supplier participation thresholds. The largest concerns were around: the use of an algorithm to estimate energy costs and therefore determine eligibility for a rebate, and the factors that are used in the algorithm; the impact on households where a person has a disability, as fewer households where a person is in receipt of a disability benefit will receive a rebate; and additional restrictions on specific types of Industry Initiative, for instance on financial assistance.

10.3 Having considered the responses to the consultation, the Government has decided to implement the main proposals consulted upon. The Government has made several changes in response to the consultation, such as: including Housing Benefit in the qualifying benefits under Core Group 2; requiring the scheme administrator, the Authority, to monitor levels of spending under each Industry Initiative in relation to households where a person has a disability or health condition; not proceeding with proposals for an in-year adjustment to the overall value of Industry Initiatives; and maintaining the current caps on using Industry Initiatives spending to write off customer debt.

10.4 A formal Government response was published on the gov.uk website on 1 April 2022.[1] As part of the consultation process, the Department discussed its proposals with the devolved administrations in Wales and Scotland.

11. Guidance

11.1 The Authority, which is the scheme administrator, has previously published guidance for suppliers participating in the scheme. The Authority has published draft updated guidance to reflect the changes made by this instrument for the continuation of the scheme in England and Wales.[2]

[1] https://www.gov.uk/government/consultations/warm-home-discount-better-targeted-support-from-2022
[2] https://www.ofgem.gov.uk/publications/draft-warm-home-discount-supplier-guidance-version-8-england-and-wales

12. Impact

12.1 The impact on business, charities or voluntary bodies is mainly that participating energy suppliers are likely to recoup their costs of providing support under the scheme and their administration costs through their charges to domestic customers. Administration costs for participating energy suppliers are estimated in the Impact Assessment to total £26 million. We estimate that suppliers will pass on the costs to their customers at around £19 per dual fuel account, an increase from the £14 of the current scheme.

12.2 The impact on the public sector is mainly the costs to the Authority and Government in administering the scheme and in the process for issuing notices to electricity suppliers identifying the customers eligible for a core group rebate. These costs are estimated at around £22 million. The Authority will administer the scheme, monitor compliance and enforce the scheme. The Department, together with the Department for Work and Pensions, enables the delivery of the scheme through verifying the eligibility of core group rebate recipients. The Department is also responsible for the design of the scheme and has oversight of its impact and effectiveness.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to exempt the very smallest electricity suppliers, based on their number of domestic customer accounts. The exemption is being reduced on a gradual basis, to give smaller suppliers additional preparation time and as the increase in the core group part of the scheme is expected to reduce the administration costs that smaller suppliers would otherwise incur from participating in the scheme. In scheme year 12, the exemption is available for suppliers that have fewer than 50,000 domestic customer accounts (and are not part of a group of electricity or gas supply companies which together have 50,000 or more domestic customer accounts). In scheme year 13, the threshold is further reduced to 1,000 domestic customer accounts. Licensed electricity suppliers below the threshold may apply to the Authority to participate voluntarily.

14. Monitoring & review

14.1 The Secretary of State will be under a duty, set out in regulation 30, to conduct a review of the scheme or of particular parts of it, if the circumstances set out in that regulation are met.

14.2 The Authority is under a duty, set out in section 13 of the Energy Act 2010, to keep the operation of the scheme under review. Energy suppliers who participate in the scheme will be required to demonstrate to the Authority that they have complied with the requirements of the scheme. The Authority will publish an annual report on the scheme.

14.3 The instrument provides for the scheme to run until 31 March 2026. Consultation with the Authority, electricity and gas suppliers and other appropriate persons, and new regulations requiring the approval of Parliament will be needed to extend the scheme beyond that date.

14.4 As the instrument extends the scheme for less than 5 years, a statutory review clause is not required by the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Jack Ramsden at the Department for Business, Energy and Industrial Strategy; Telephone: 07901 885617 or email: jack.ramsden@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Olivia Haslam, Deputy Director for Warm Homes, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.