EXPLANATORY MEMORANDUM TO

THE 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 This instrument establishes a scheme, the Warm Home Discount scheme, which is to have effect until March 2015. The scheme will oblige energy suppliers to provide benefits to domestic customers for the purpose of reducing fuel poverty. The benefits are to include, in particular, rebates to electricity customers of £120 in 2011/12, increasing to £140 in 2014/15. The rebates are to be provided both to customers determined by the Secretary of State and to customers selected by electricity suppliers.

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

3.1 Regulation 8, which gives the Secretary of State power to determine that in certain circumstances the obligation in regulation 7 for electricity suppliers to provide rebates to customers determined by the Secretary of State is not to apply, is made under section 10(6) of the Energy Act 2010. In the event of this power being exercised, a memorandum will be laid before Parliament in accordance with section 10(7).

3.2 Regulations 19 and 27 contain requirements for suppliers to notify Ofgem of their proposals, and obtain its approval, before incurring certain types of spending under the scheme. Regulation 28 makes provision about the procedure for obtaining that approval, and paragraphs (3) to (5) specify time periods for Ofgem to make decisions or request further information. In the event of Ofgem failing to make a decision within these time limits, it will be open to an affected supplier to seek judicial review as a means of securing a prompt decision.

4. Legislative Context

4.1 This instrument is made principally under the powers in section 9 of the Energy Act 2010. Obligations placed on electricity and gas suppliers by this instrument are "relevant requirements", as defined in section 25(8) of the Electricity Act 1989 and section 28(8) of the Gas Act 1986 (as amended by the Schedule to the Energy Act 2010), and are enforceable by Ofgem under its powers in those Acts.

4.2 It is intended to make further Regulations under section 11 of the Energy Act 2010 to establish a "reconciliation mechanism", under which electricity suppliers which provide rebates to customers under Part 3 of this instrument will be required to make or receive payments so that the amounts of benefits provided by suppliers under Part 3, after such adjustments, are proportionate to their market shares. A consultation draft of these regulations is published on the Department's website.PP[1]

4.3 It is also intended to make further Regulations under section 142 of the Pensions Act 2008 to authorise, and prescribe safeguards in connection with, the sharing of data between electricity suppliers and the Secretary of State. The purpose of the data sharing will be to facilitate the exercise of the Secretary of State's powers under Part 3 of this instrument by enabling the Secretary of State to identify which of a supplier's customers are recipients of state pension credit. Those Regulations will be subject to affirmative resolution and it is envisaged that they will be similar in form to the State Pension Credit (Disclosure of Information) (Electricity Suppliers) Regulations 2010 (S.I. 2010/227).

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 Warm Home Discount Regulations 2011 are compatible with the Convention rights.

7. Policy background

7.1 The Warm Homes and Energy Conservation Act 2000[2] committed Government to implementing a strategy to tackle fuel poverty and led to publication of the UK Fuel 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. Rising energy prices is the key factor behind recent increases in fuel poverty, and measures to reduce

[1] http://www.decc.gov.uk/en/content/cms/consultations/warmhome/warmhome.aspx.
[2] 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.

household energy bills can provide immediate support to a significant number of fuel poor and vulnerable households.

7.3 Electricity and gas suppliers currently provide help to customers under a voluntary agreement which Government negotiated with them in 2008. The combined spending by suppliers will be at least £150 million in April 2010 to March 2011. Suppliers are free to choose the level and type of assistance offered to vulnerable customers within a broad framework monitored by Ofgem.

Need for legislation

7.4 The voluntary agreement ends in March 2011, and Part 2 of the Energy Act 2010 sets a framework for it to be replaced by a statutory scheme for the purpose of reducing fuel poverty. The scheme established by this instrument is needed to ensure that customers in or at risk of fuel poverty continue to receive support, and to improve the targeting and distribution of this support.

What is being done and why

7.5 Subject to a degree of flexibility permitted by this instrument, the scheme will require spending by suppliers totalling £250 million in 2011/12, increasing annually to £310 million in 2014/15. There are four sections to the scheme.

7.6 A **Core Group** focuses on older pensioners on low incomes. Electricity suppliers will be required to provide rebates to customers determined by the Secretary of State. It is intended that in each year of the scheme suppliers will be directed to provide rebates to a subset of state pension credit recipients or their partners, increasing each year in number, with priority being given to the oldest and to those in receipt of guarantee credit. This group has a high propensity to be in fuel poverty. For the purpose of determining who is to be provided with a rebate, it is intended that Government will compare electricity suppliers' customer databases and DWP's data on pension credit recipients via a secure data-match and sweep-up process.

7.7 In addition to the obligation to provide rebates to customers identified by the Secretary of State, an spending obligation will be imposed on electricity suppliers in each year for the provision of other benefits and initiatives. As part of this, suppliers must provide rebates to customers within a **Broader Group** . These will include other types of customers who are fuel poor or at risk of fuel poverty. Suppliers must establish their own eligibility criteria, which may include criteria selected from a list specified in the Regulations or, subject to Ofgem's approval, other criteria proposed by the suppliers.

7.8 Suppliers already providing rebates or discounted tariffs under the voluntary agreement will be allowed to continue providing these types of support as part of a **Legacy Spending** allowance in the first three years of the scheme. The maximum amount of spending allowed on this portion of the scheme is to be reduced each year, with suppliers' spending on the Broader Group increasing in consequence.

7.9 **Industry Initiatives** cover support other than direct financial benefits to consumers – for example funding energy advice services for vulnerable consumers, benefit entitlement checks, or providing energy efficiency measures. Suppliers will be provided with a degree of flexibility over the distribution of their spending between Industry Initiatives and Legacy Spending.

8. Consultation outcome

8.1 The Department carried out a public consultation on the scheme from 2 December 2010 to 14 January 2011. Formal public consultation could not be commenced earlier as development of the policy was dependent on the level of funding available for the scheme being confirmed in the Spending Review. The consultation period was reduced to approximately 6 weeks to enable the scheme to be implemented in or as soon as possible after April 2011, in order to ensure continuity in the provision of support following the end of the voluntary agreement.

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. Many respondents suggested that Government should increase the range of people eligible for a rebate in the Core Group, for example by including those with a terminal illness or low income families. Government has decided that this would not be feasible, due to the level of funding available for the scheme and the absence of data sharing powers for such groups. Further details of respondents' views, together with Government's response, are available on the Department's website.

9. Guidance

9.1 Ofgem will provide energy suppliers with guidance on compliance with the requirements of the scheme. This guidance will focus on the type of information suppliers need to submit to Ofgem both for approval during the scheme year and for reporting purposes at the end of the scheme year.

10. Impact

10.1 The scheme will impact on business by requiring licensed electricity suppliers to provide support to households in fuel poverty or 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 the process of matching energy

companies' customer databases and DWP's data on pension credit recipients under the Core Group. These costs are estimated to be small relative to the size of the scheme.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not impose obligations on small businesses. If licensed electricity suppliers who are below the threshold for mandatory participation wish to take part in the Core Group of the scheme (explained above in section 7.6) they may do so on a voluntary basis.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that a threshold based on the number of customer accounts that a licensed energy supplier serves has been introduced for mandatory participation in the scheme. This threshold has been set at 250,000 customer accounts for this scheme.

11.3 The basis for the final decision on what action to take to assist small business was a consultation carried out by DECC on the appropriate threshold for participation in the range of schemes through which DECC places social and environmental obligations on energy suppliers.

12. Monitoring & review

12.1 Energy suppliers who participate in the Warm Home Discount scheme will be required to demonstrate to Ofgem on an annual basis that they have complied with the requirements of the scheme – this is because compliance is a relevant requirement of the suppliers' licences. Ofgem will publish an annual report on the scheme.

12.2 During the scheme period, the regulations enable the Secretary of State to review the scheme, if he considers it desirable, following a significant change in circumstances since the commencement of the scheme. The Secretary of State may also review any aspect of the operation of the scheme if he considers that it is not, or may not be, operating effectively or if its effectiveness could be improved. Under section 14(5) of the Energy Act 2010, the Secretary of State may only amend the scheme following a review.

13. Contact

Rachel Cooper at the Department of Energy and Climate Change Tel: 0300 0685693 or email: rachel.cooper@decc.gsi.gov.uk can answer any queries regarding the instrument.