EXPLANATORY MEMORANDUM TO

THE WARM HOME DISCOUNT (SCOTLAND) 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 Scotland, 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 Scotland 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 ("DWP"). That process requires data matching activities by DWP which can only take place once the instrument is in force and takes several weeks 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 14.[1] This requires the Secretary of State to notify the Authority of the aggregate non-core spending obligation.

[1] Under regulation 5(1) relevant suppliers must notify the Authority of their GB customer numbers by the 21st day after the commencement day. The same deadline applies to notifications under regulation 6(6) by suppliers wishing to be voluntary scheme electricity suppliers.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Scotland, with the exception of the consequential amendments to the Disclosure Regulations which extend to Great Britain.

4.2 The territorial application of this instrument is Scotland.

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 (Scotland) 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 Scotland, 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;
- the non-core spending obligation, under which the suppliers required to participate in the scheme:
    - must provide a rebate of £150 off electricity or gas bills to low income and vulnerable customers who meet the supplier's eligibility criteria and successfully apply ("the broader group"); and
    - may incur spending on a range of activities such as debt assistance, benefit entitlement checks, energy efficiency measures and energy advice to domestic customers in or at risk of fuel poverty ("industry initiatives" or "specified activities").

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 Many of the powers to make the scheme in relation to Scotland have been transferred to the Scottish Ministers by section 58 of the Scotland Act 2016. These powers are exercisable by the Secretary of State with the agreement of the Scottish Ministers.

6.5 This instrument and the Disclosure Regulations are two of a suite of three sets of Regulations which together establish and regulate the scheme in Scotland. 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, covering both the Warm Home Discount scheme in Scotland and the scheme in England and Wales.

6.6 On 12 May 2022, the Department laid the Warm Home Discount (England and Wales) Regulations 2022 to continue the scheme for England and Wales.

6.7 The scheme administrator is the Gas and Electricity Markets Authority ("the Authority").

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 across Great Britain. 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 2020 Energy White Paper, the Government committed to extending the scheme to 2025/26 and increasing its value to £475m (in 2020 prices) across Great Britain. Since then, the Government has laid Regulations for a reformed scheme in England and Wales the details of which are set out in the Government response to consultation, published on 1 April 2022. Similar proposals could not be replicated in Scotland, because the Valuation Office Agency data which will be used to identify homes which are high cost to heat, does not apply in Scotland.

7.2 Under the Scotland Act 2016, the Scottish Government has devolved powers to design and implement a Warm Home Discount for Scotland although the exercise of these powers requires the agreement of the Secretary of State, and some powers remain reserved, including determining the overall size of the obligation and the obligated parties. The Scottish Government has requested that the UK Government make provision for a continuation of the scheme in Scotland, hence the Department has laid these Regulations.

7.3 The main changes to the scheme in Scotland are:

- The scheme is extended until March 2026. This coincides with the length of the England and Wales scheme.
- Spending obligations in Scotland are increased proportionately in line with the GB-wide increase to the scheme and the value of the rebate is increased to £150 as per the England and Wales scheme. The scheme in Scotland will be 9.4% or £44.65m (in 2020 prices) of the overall scheme value. This apportionment of spending is based on the number of domestic gas and electricity meters averaged over a three-year period from 2017-2019, to ensure costs are spread evenly across customers in Great Britain.
- The scheme in Scotland will largely mirror the scheme previously in place across Great Britain in 2021/22 and include three parts: the Core Group; the Broader Group and Industry Initiatives. The current Core Group, of low-income pensioners, in receipt of the Guarantee Credit element of the Pension Credit is maintained. The Broader Group is expanded to include housing benefit as one of the mandatory eligibility criterion, as per the England and Wales scheme, and income thresholds for the criteria relating to Child Tax Credits and Universal Credit are slightly increased in 2022/23 and automatically updated for subsequent scheme years in line with inflation.

Overall, around 280,000 households will receive a rebate under the scheme in Scotland.

- The scheme participation threshold is lowered to 50,000 domestic customer accounts in 2022/23 and to 1,000 domestic customer accounts from 2023/24. This mirrors the scheme in England Wales;
- Energy suppliers required to participate in the scheme will be set a target for the minimum number of Broader Group customers that they must provide with rebates. Suppliers will be able to transfer up to 100% of their Broader Group rebate target to industry initiatives and specified activities, subject to approval from the Authority. This recognises that some suppliers may have few (or even zero) Broader Group customers in Scotland.
- Part of the permitted industry initiatives spending on debt-write off is ring-fenced, for customers with pre-payment meters, as these customers are particularly at risk of self-disconnection. Limits are imposed on boiler and central heating system installations supported under industry initiatives, to support decarbonisation objectives. The list of eligibility criteria for financial assistance under industry initiatives has been expanded to include the mandatory eligibility criteria for the Broader Group. No caps have been imposed on the amount of industry initiative spending that can be used for financial assistance.

7.4 There is a considerable level of 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 sixth 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 Government consulted on some significant changes relating to the scheme in Scotland in the consultation that also covered the scheme in England and Wales and ran for 8 weeks from 28 June 2021 to 22 August 2021. That consultation covered the size of the scheme, the principle of a separate scheme for Scotland and the method of apportionment. A subsequent consultation on the detail for the scheme in Scotland was launched on 9 May 2022 and closed on 22 May 2022. The Department considered that a 2-week consultation was sufficient for ensuring responses would come from a range of organisations and individuals, as the detailed changes proposed to the scheme in that second consultation were fairly minimal. Both consultations were hosted on gov.uk, with responses via an online portal and email. There were 35responses to the second consultation, including from energy suppliers, charities, consumer affairs organisations, local authorities, housing associations, public authorities, and members of the public.

10.2 Respondents to the first consultation which ran in 2021 agreed with expanding the scheme to support more households, however concerns were raised by some

respondents around the method for apportioning spending to Scotland and suggestions were made for higher apportionment of spending to reflect higher fuel poverty rates in Scotland. Some energy suppliers also expressed concern around the additional costs of running two separate schemes in England and Wales and in Scotland.

10.3 Most respondents to the second consultation agreed with the proposed extension of the current scheme to 2026, but there were calls for an earlier review of the scheme, and for all rebates to be provided via data matching, as will be the case in England and Wales.

10.4 Most respondents agreed with the main proposals, namely to i) set the obligation levels in Scotland on the basis of energy suppliers' GB-wide domestic market shares and ii) to allow greater flexibility between Broader Group and Industry Initiatives spending, subject to approval by the Authority.

10.5 Respondents also generally supported reducing the supplier participation thresholds. There were concerns around additional restrictions on specific types of Industry Initiative, for instance responses were evenly balanced on the debt-write off caps proposals, with many respondents asking for an increase or removal of the caps. The Government however decided to proceed with the caps, so as to maintain a broader range of help to more households.

10.6 Many respondents asked for the value of the rebates to be increased, however the Government decided to maintain the WHD rebate at the level proposed for consistency with the England and Wales scheme.

10.7 Having considered the responses to the consultation, the Government has decided to implement the main proposals consulted upon. The Government response to the first consultation was published on 1 April 2022.[2] The Government response to the second consultation was published on 27 June 2022.[3] As part of the consultation process, the Department discussed its proposals with Scottish Government.

11. Guidance

11.1 The Authority has previously published guidance for suppliers participating in the scheme. The Authority will publish updated guidance to reflect the changes made by this instrument for the continuation of the scheme in Scotland.

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 in Scotland are estimated to total around £4 million over the four years of the scheme (in 2022 prices, discounted to 2022), however there are likely to be some additional costs due to running two separate schemes in Scotland and in England and Wales. We estimate that suppliers will pass on the costs of the scheme to their customers, and this is estimated at around £19 per dual fuel account, an increase from the £14 of the current scheme.

[2] https://www.gov.uk/government/consultations/warm-home-discount-better-targeted-support-from-2022
[3] https://www.gov.uk/government/consultations/warm-home-discount-scotland

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 ~£1m over the four years of the scheme (in 2022 prices, discounted to 2022). The Authority will administer the scheme, monitor compliance and enforce the scheme. The Department, together with DWP, 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 The Department has not been able to undertake a full impact assessment for the scheme in Scotland as we do not have access to the required household-level data for Scotland. However, it is assumed that the scheme in Scotland will have impacts as shown in previous impact assessments of the WHD scheme in the proposed form (or similar) for Scotland at GB level. The impact on energy bills of increased spending on WHD were published alongside the Government response to the first consultation published on 1 April 2022. A supporting analytical annex, including an assessment of impacts of the scheme, is published alongside the Government Response to the second consultation (see paragraph 10.7 above).

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. In scheme year 12, the exemption is available for suppliers that have fewer than 50,000 domestic customer accounts in GB (and are not part of a group of electricity or gas supply companies which together have 50,000 or more domestic customer accounts in GB). In scheme year 13, the threshold is further reduced to 1,000 domestic customer accounts in GB. 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 33, to conduct a review of the scheme or of particular parts of it, if the circumstances set out in that regulation are met. It will be possible for the Scottish Ministers to amend the scheme, subject to the Secretary of State's agreement.

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 Carolina Valsecchi at the Department for Business, Energy and Industrial Strategy; Telephone: 07391864603 or email: carolina.valsecchi@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.