EXPLANATORY MEMORANDUM TO

THE ENERGY BILLS SUPPORT SCHEME AND ENERGY PRICE GUARANTEE PASS-THROUGH REQUIREMENT (ENGLAND AND WALES AND SCOTLAND) REGULATIONS 2022

2022 No. 1102

AND

THE ENERGY BILL RELIEF SCHEME PASS-THROUGH REQUIREMENT (ENGLAND AND WALES AND SCOTLAND) REGULATIONS 2022

2022 No. 1103

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 His Majesty.

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

2. Purpose of the instrument

2.1 These instruments require intermediaries, such as landlords, to pass on benefits received from the Energy Price Guarantee, Energy Bills Support Scheme, and/or Energy Bill Relief Scheme, as appropriate, to end users, such as tenants, who are the intended beneficiaries of the relevant schemes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These instruments will come into force on 1 November, the day after they are laid. The Department considers this necessary to facilitate the delivery of measures in response to exceptional global circumstances affecting energy prices, which has resulted in soaring wholesale gas prices. It is important that these instruments come into force quickly to ensure that businesses and consumers receive the support that they need this winter.

3.2 These instruments implement pass-through requirements on intermediaries under the powers set out in Section 19 of the Energy Prices Act 2022 ("the Act"). These powers are being exercised for the first time in response to exceptional circumstances.

4. Extent and Territorial Application

4.1 The extent of both these instruments is Great Britain (England and Wales, and Scotland).

4.2 The territorial application of both these instruments (that is, where the instrument produces a practical effect) is Great Britain (England, Scotland and Wales).

5. European Convention on Human Rights

5.1 The Rt Hon Graham Stuart, the Minister for Climate has made the following statement regarding Human Rights:

"In my view the provisions of the Energy Bills Support Scheme and Energy Price Guarantee Pass-through Requirement (England and Wales and Scotland) Regulations 2022 and the Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 19 of the Act enables the Secretary of State to impose pass-through requirements on persons to whom energy price support is provided ("intermediaries") by regulations.

6.2 These instruments make provision for pass-through requirements on intermediaries in Great Britain in respect of the Energy Price Guarantee, Energy Bills Support Scheme and/or Energy Bill Relief Scheme.

6.3 These instruments are part of a wider package of instruments which give effect to the Act. In particular, the Energy Bill Relief Scheme Pass-through Requirement (England and Wales and Scotland) Regulations 2022 cross-refer to the Energy Bill Relief Scheme Regulations 2022 and the Energy Bill Relief Scheme Pass-through Requirement (Heat Suppliers) (England and Wales and Scotland) Regulations 2022. Together these regulations ensure that pass-through requirements are in place for the relevant energy support schemes outlined in the Act.

6.4 Further regulations are expected to be made in respect of energy support schemes in Northern Ireland that will work similarly to those in Great Britain, providing pass-through of those support schemes.

7. Policy background

What is being done and why?

7.1 The Act provides statutory underpinning for, or enables the creation of, energy support schemes to help households, businesses and others with energy costs for winter 2022 and future periods. Failing to offer support could result in financial turmoil for businesses and consumers, with energy bills estimated to increase significantly without intervention. The support schemes enabled by the Act will see a typical household pay significantly less for energy, while businesses will be paying less than half of predicted wholesale costs this winter.

7.2 The purpose of section 19 of the Act (Requirement to pass on energy price support to end users) is to enable the government to ensure that intermediaries who have received energy price support pass through the benefit obtained to end users (who are the intended beneficiaries of the relevant schemes). For example, the legislation will require landlords with all-inclusive contracts to pass support to their tenants as appropriate. These instruments ensure that pass-through requirements for the Energy Price Guarantee, Energy Bills Support Scheme and/or Energy Bill Relief Scheme are put in place in Great Britain. The Energy Price Guarantee will reduce the unit cost of electricity and gas so that a typical household in Great Britain will save around £700 this winter, based on what energy prices would have been under the current price cap. In addition to this, the Energy Bills Support Scheme provides £400 of assistance with

energy costs to all electricity customers with a domestic contract, in monthly instalments from October 2022 to March 2023, via their electricity supplier. The Energy Bill Relief Scheme will provide a price reduction to ensure that all businesses and other non-domestic customers are protected from excessively high energy bills over the winter period.

7.3 Relevant intermediaries are any individual or organisation that is party to an electricity and/or gas contract and passes on the costs of the energy supplied under this contract to an end user of the energy supplied. This would also cover intermediaries supplying a product (or service) where contractually a component of the price relates directly to the use of energy. Intermediaries may include but are not limited to landlords, sublets, student accommodation managers, local authorities (for council housing), site owners (for park homes), marinas if using shore power (for boat homes), electric vehicle charging operators and other residential building managers.

7.4 Intermediaries should pass on the discount irrespective of how the end user pays for their energy use. The intermediary should pass the discount in a just and reasonable way and must follow the regulations in calculating the pass-through amount. The instruments set out what must be taken into account in determining a just and reasonable amount in various circumstances depending on how energy costs are borne by the end user and whether the intermediary itself bears energy costs related to the benefit concerned, for example for common services provided.

7.5 If an intermediary does not pass through the whole of the scheme benefit provided to them, then they must demonstrate to the end user that the amount they are passing on is just and reasonable, including taking into account the extent to which the intermediaries' charges to end users reflect the increased cost of energy as a result of the energy crisis. The intermediary must follow the regulations in calculating the pass-through amount.

7.6 The intermediary must, within 30 days of a scheme benefit being provided, provide information to the end user in writing. This includes but is not limited to the amount of scheme benefit received, the amount that the intermediary intends to pass through to the end user, when and how they will pass-through the benefit, and that the end user can recover amounts to which they are entitled to but do not receive as a civil debt. In the case of tariff adjustments, the intermediary must notify the user of that adjustment and how to seek more information.

7.7 The intermediary must ensure the end user receives the pass-through amount as soon as reasonably practicable. The instruments set out the ways in which a pass-through can be effected.

7.8 Where an intermediary fails to effect a pass-through to which an end user is entitled, that end user may recover the amount from the intermediary as a civil debt. In such cases the end user may claim interest to be paid by the relevant intermediary at a rate of 2% per annum above the Bank of England base rate from 60 days after the intermediary receives the scheme benefit.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No consolidation is necessary as this is the first exercise of the power.

10. Consultation outcome

10.1 No formal public consultation has taken place on these instruments given the urgency of ensuring households, businesses and other organisations receive the support they need this winter. We will continue to review these instruments as necessary following their implementation based on stakeholder feedback.

11. Guidance

11.1 The Department for Business, Energy and Industrial Strategy is developing guidance to explain these instruments in further detail for key stakeholders, including individuals and organisations who may be intermediaries or end users. We aim to publish this guidance alongside these instruments being laid in parliament.

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal, as the instruments do not change the energy price support to which they are entitled under each of the relevant schemes; rather the instruments ensure that support they receive as intermediaries is passed on to the end user. Intermediaries will be required to provide information to end users which may involve minimal administrative costs for these bodies.

12.2 The impact on the public sector is minimal. Some public sector bodies, such as Local Authorities, may be classed as intermediaries. Civil courts will be impacted if end users decide to claim civil debts from intermediaries.

12.3 Full Impact Assessments for the Energy Price Guarantee, the Energy Bills Support Scheme, and the Energy Bill Relief Scheme have been published and can be found online here: https://bills.parliament.uk/bills/3341/publications at Annexes B, C and E respectively.

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 provide guidance to relevant intermediaries, including small businesses, to help them understand and implement the requirements under these instruments.

14. Monitoring & review

14.1 The Department will continue to monitor these instruments following their implementation, including any feedback from stakeholders, and will review as necessary.

14.2 These instruments do not include a statutory review clause by virtue of section 28(3)(d) of the Small Business, Enterprise and Employment Act 2015. This is because these instruments will only have effect for the duration of the each of the schemes to which they relate. The Rt Hon Graham Stuart, the Minister for Climate has made the following statement:

"A review provision in these Regulations is not included given the urgent need to ensure businesses and consumers receive the support they need, including ensuring this is passed on by intermediaries to end users as appropriate."

14.3 The Energy Price Guarantee will last as designed until 31 March 2023. It is the Government's intention that after this winter support is better focused on the most vulnerable households and those least able to pay, with greater incentives to improve energy efficiency. A Treasury-led review will consider how best to deliver these objectives. The Energy Bill Relief Scheme will also last as designed until 31 March 2023. The Government will publish a review of the scheme in 3 months. This review will consider how best to offer further support to customers who are the most vulnerable to energy price increases. The Energy Bills Support Scheme will be paid in monthly instalments from October 2022 to March 2023.

15. Contact

15.1 Sewek Gasiorek (Sewek.Gasiorek@beis.gov.uk) and Ruth Womersley (Ruth.Womersley@beis.gov.uk) at the Department for Business, Energy and Industrial Strategy.

15.2 Ben Pledger, Deputy Director for Energy Affordability, Strategy, Devolution & Legislation, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Graham Stuart, the Minister for Climate can confirm that this Explanatory Memorandum meets the required standard.