EXPLANATORY MEMORANDUM TO

THE ENERGY PRICES (DESIGNATED DOMESTIC ENERGY PRICE REDUCTION SCHEMES FOR GREAT BRITAIN AND DESIGNATED BODIES) REGULATIONS 2022

2022 No. 1104

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 This simple instrument designates the Energy Price Guarantee scheme in Great Britain, which means legally recognising the Scheme Documents (contracts) entered into with energy suppliers and gas suppliers as the 'domestic electricity and gas price reduction schemes' as defined in the Energy Prices Act 2022 ("the Act"). This instrument also designates certain district councils for the purposes of section 15 of the Act, which means they are legally recognised as a body able to provide support for meeting energy costs.

2.2 Regulation 2 designates the Scheme Document for the Energy Price Guarantee for Domestic Electricity Consumers in Great Britain dated 29th September 2022 (including any related arrangements) as they have effect from time to time as a domestic electricity price reduction scheme for Great Britain for the purposes of section 2 of the Act.

2.3 Regulation 3 designates the Scheme Document for the Energy Price Guarantee for Domestic Gas Consumers in Great Britain dated 29th September 2022 (including any related arrangements) as they have effect from time to time as a domestic gas price reduction scheme for Great Britain for the purposes of section 3 of the Act.

2.4 Designating a domestic electricity price reduction scheme for Great Britain enables the provisions set out in clause 2 of the Act to be applied in relation to the designated scheme. This includes the duties on electricity suppliers to apply to join the designated scheme, and when joined to remain in and comply with the scheme (unless they leave in accordance with the scheme). Ofgem is empowered to enforce compliance with these duties using their existing statutory enforcement powers (under Part 1 of the Electricity Act 1989).

2.5 Designating a domestic gas price reduction scheme for Great Britain enables the provisions set out at clause 3 of the Act to be applied in relation to the designated scheme. This includes the duties on gas suppliers and certain gas shippers to apply to join the designated scheme, and when joined to remain in and comply with the scheme (unless they leave in accordance with the scheme). Ofgem is empowered to enforce compliance with these duties using their existing statutory enforcement powers (under Part 1 of the Gas Act 1986).

2.6 Regulation 4 designates district councils for an area in England for which there is a county council as a designated body for the purposes of section 15 of the Act. The purpose of this designation is to correct an oversight in failing to refer to such a district council in section 15 (9) of the Act. The effect of designation is that these district councils can now take action to support steps taken by the Secretary of State to meet energy costs under section 13 of the Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument comes into force on 1 November 2022, the day after it is laid, breaching the convention that an instrument should not come into force until a minimum of 21 calendar days after laying. The Department appreciates the importance of Parliamentary scrutiny and that Parliamentary Committees should normally have sufficient time to consider an instrument before it comes into force. It has not taken its decision on the commencement date for this instrument lightly.

3.2 This is being made in response to exceptional global circumstances affecting energy prices, which has resulted in soaring wholesale gas prices. Without intervention of this kind, the wider negative effects of this economic pressure would be severe and materialise very quickly

3.3 Specifically, designating the schemes triggers the statutory obligations on suppliers under clauses 2 and 3 of the Act. The instrument coming into immediate force means the duties on suppliers, enforceable by Ofgem, are in place in a timely manner. This provides more secure statutory footing which is essential for a scheme of this scale.

4. Extent and Territorial Application

4.1 The extent of this instrument is England, Wales, Scotland, and Northern Ireland.

4.2 The territorial application of this instrument is England, Wales, Scotland, and Northern Ireland.

4.3 Regulations 1 and 4 extend to England, Wales, Scotland, and Northern Ireland. Regulations 2 and 3 extend to England, Wales, and Scotland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 In the Energy Prices Bill 2022, clause 2 enables the Secretary of State to make regulations designating a domestic electricity price reduction scheme for Great Britain. The effect of designation is that the provisions set out in clause 2 apply in relation to the designated scheme. This includes obligations for electricity suppliers to apply to join the scheme, and when joined to remain in and comply with it. The result of a scheme being designated for the purposes of clause 2 is that Ofgem can enforce compliance with the obligations provided under clause 2 using their existing enforcement powers.

6.2 Clause 3 enables the Secretary of State to make regulations designating a domestic gas price reduction scheme for Great Britain. The effect of designation is that the

provisions set out in clause 2 apply in relation to the designated scheme. This provision includes obligations for gas suppliers and certain gas shippers to apply to join the scheme, and when joined to remain in and comply with it. The result of a scheme being designated for the purposes of clause 3 is that Ofgem can enforce compliance with the obligations provided under clause 3 using their existing enforcement powers.

7. Policy background

What is being done and why?

7.1 On 8 September 2022, the PM announced the Energy Price Guarantee to provide extensive support for household energy bills. The scheme will save a typical British household around £700 this winter and will be in place from 1 October 2022 until April 2023.

7.2 The Energy Price Guarantee schemes in Great Britain, otherwise known as the domestic electricity or gas price reduction schemes, reduce the amount charged for domestic electricity or gas supplied by licensed suppliers, and make payments to those suppliers in respect of those reductions.

7.3 The Energy Price Guarantee scheme alongside other support for meeting energy costs is provided for in the Energy Prices Act 2022, which addresses the negative social, economic and other impacts of the current unprecedentedly high energy prices.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 The Energy Price Guarantee scheme has initially been established in Great Britain via private law contracts with energy suppliers and by powers under section 50 of the UK Internal Markets Act 2020. However, regulations are needed to oblige energy suppliers and some gas shippers to sign up to and comply with the scheme and to enable Ofgem to enforce compliance with the scheme.

7.5 The Act also provides power to the Secretary of State to give support for meeting energy costs. This covers support for meetings high energy prices, encouraging efficient use of energy, meeting cost related to supply of energy, and encouraging supply of energy.

Why is it being changed?

7.6 Though the scheme is up and running on a contractual basis, without the legal designation of this contract as a legislative scheme, energy suppliers and gas shippers will not be required to sign up to the scheme. In addition, Ofgem would not be able to take up an enforcement role in the timeframe required, a role which is crucial for protecting the public purse. It has been designed so that the scheme would be set up with a legal underpinning which the primary and secondary legislation provides.

7.7 Instrument 4 corrects an oversight in failing to refer to a district council for an area in England for which there is a county council in section 15(9) of the Act.

What will it now do?

7.8 Instruments 2 and 3 are simple regulations which will designate the Scheme Documents for the Energy Price Guarantee as the domestic electricity and gas price reduction schemes as defined in sections 2 and 3 of the Act.

7.9 The effect of instrument 4 is that district councils for an area in England for which there is a county council can now take action to support steps taken by the Secretary of State to meet energy costs under section 13 of the Act.

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 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 Given this statutory instrument followed from emergency primary legislation, there was no formal Government consultation on these regulations. However, Government has been engaging with Ofgem, scheme administrators, energy suppliers and gas shippers in Great Britain closely to make sure the obligations in these instruments and in the Energy Price Guarantee Scheme Documents are understood.

10.2 Consultation with devolved administrations took place during emergency primary legislation. However, no further formal Government consultation on these instruments has taken place.

11. Guidance

11.1 The Scheme Documents designated by this regulation have been shared with relevant energy suppliers and other relevant parties. Copies of the Scheme Documents designated by instruments 2 and 3 are available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument. Since this instrument is only designating the domestic electricity and gas price reduction schemes, rather than adding on any further obligations for suppliers not already covered in the schemes themselves, their impact is covered in the Impact Assessment for the primary legislation – therefore it is not deemed necessary to undertake another Impact Assessment considering the effect of these designation regulations.

12.4 The Impact Assessment on the Act considered the costs to energy suppliers from extra activities required to comply with and deliver the schemes between 1st October 2022-31st March 2023. The costs to energy suppliers during in this period are estimated at £11m. This estimate includes costs associated with familiarisation and reporting from suppliers to ensure their compliance with the Energy Price Guarantee scheme.

12.5 There are impacts on suppliers associated with Ofgem formally having enforcement powers – however, Ofgem's ability to enforce compliance with the Energy Price Guarantee scheme on suppliers does not change the enforcement powers it has available, e.g. changes in civil or criminal sanctions that companies might face for breaching the relevant requirements.

12.6 Therefore, it is not deemed necessary to undertake another Impact Assessment considering the effect of these designation instrument.

13. Regulating small business

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

13.2 The Energy Price Guarantee scheme aims to support as many domestic energy customers as possible in the United Kingdom. As such, there are no exemption for suppliers in Great Britain, as this would not be in line with the policy intent and to the detriment of customers and their suppliers. There will be no additional or different requirements placed on small or micro businesses.

14. Monitoring & review

14.1 The approach to the monitoring of this legislation is through Ofgem's expected monitoring and enforcement activities for the wider Energy Price Guarantee GB scheme.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt Hon Graham Stuart, the Minister for Climate has made the following statement:

"A review provision in these Regulations is not needed since the underlying primary powers for these Regulations in the Energy Prices Act 2022 will be expire after two years. After this point, the powers can be extended by regulations for a six-month period as appropriate, and so will be subject to typical parliamentary scrutiny."

14.3 A Treasury-led review will be launched to consider how to support households and businesses with energy bills after April 2023. The objective of the review is to design a new approach that will cost the taxpayer significantly less than planned whilst ensuring enough support for those in need.

15. Contact

15.1 Nigel Pargiter at the Department for Business, Energy and Industrial Strategy, email: nigel.pargiter@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Mccloghrie, Deputy Director for Energy Price Guarantee 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 at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.