EXPLANATORY MEMORANDUM TO

THE GAS AND ELECTRICITY REGULATED PROVIDERS (REDRESS SCHEME) (AMENDMENT) ORDER 2014

2014 No. 2378

1. This explanatory memorandum has been prepared by Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268) ("the 2008 Order"). It changes the upper limit for annual consumption of electricity and gas for a person to qualify as a "relevant consumer", where that person is supplied with gas or electricity by a regulated provider of those utilities at premises other than domestic premises. This has the effect of increasing the number of business consumers who can utilise a redress scheme which regulated providers of gas and electricity are required to join under the 2008 Order, in relation to certain consumer complaints.

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

3.1 Due to a procedural administrative error within the DECC's Parliamentary Unit, the Order, having been made by the Secretary of State, was overlooked and as a consequence was not sent for Registration or laid before Parliament. The Department can only apologise unreservedly to the House for this error and thereby not giving the JCSI the opportunity to scrutinise this Order before it came into force. The Parliamentary Unit has looked at their procedures and identified changes to their procedures for processing SIs so as to include additional checks at key stages to make that this mistake does not happen in future.

4. Legislative Context

4.1 This instrument is being made as part of the government's Red Tape Challenge programme, which involves removing and reforming areas of regulation. For more details, see the Policy Background section below.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 This Order is being made as a result of the government's 'Red Tape Challenge' programme which sought the views of businesses and the public on the removal and reform of areas of regulation. DECC holds primary responsibility for the 'Red Tape Challenge Energy Theme' under which these revocations are being delivered.

7.2 The 2008 Order enables domestic and small (micro) business customers of licensed energy providers to have the right to take consumer complaints to an approved redress scheme if the energy provider fails to resolve the problem directly. The definition of who has the right to access a redress scheme is to be found in the defined term "relevant consumer" in regulation 2(1), and paragraph (b) of that definition sets out who is a micro-business consumer. A 'micro business' is one which has fewer than 10 employees or their full time equivalent, and an annual turnover or balance sheet total not exceeding 2 million Euros, but the definition also sets upper limits for annual energy consumption.

7.3 This Order changes the definition of who is a relevant consumer in relation to micro businesses by increasing the upper limit for annual energy consumption as follows:

- from a consumption of no more than 55,000 kWh to no more than 100,000 kWh of electricity per year, or,
- from a consumption of no more than 200,000 kWh to no more than 293,000 kWh of gas per year.

It is estimated that up to 150,000 additional businesses will have the right to take consumer complaints to an approved redress scheme as a result of this change.

7.4 This change mirrors a change already made by the independent regulator for gas and electricity markets, Ofgem, to the definition of a micro business in Standard Licence Condition 7A of gas and electricity non-domestic supply licences as from 31st March 2014. This condition governs contractual relationships between suppliers and micro business consumers, and provides safeguards to micro businesses. It is desirable that there is a single, common definition of a micro business for both the Standard Licence Condition and the 2008 Order, to avoid confusion and to align the basis on which safeguards and protection are given.

- Consolidation

7.5 None.

8. Consultation outcome

8.1 As part of the Red Tape Challenge, every few weeks regulation affecting a specific sector or industry (as well as that of general regulation that cuts across sectors) is published by the Cabinet Office online (at this web address: http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/) for the public and stakeholders to suggest how they can be 'scrapped' or 'improved'. The department also ran an internal challenge process to identify measures which could be removed or reformed, which identified the Order as one which could be improved.

8.2 The proposal to increase the upper limit for annual consumption of electricity and gas for micro businesses in the 2008 Order was subject to a public consultation for 6 weeks from 7 January until 14 February 2014. 9 responses were received from energy companies, supply companies representative, network operator, and redress and consumer organisations. All the respondents were supportive of the proposal.

9. Guidance

9.1 The Department will not be issuing guidance. Ofgem may issue guidance. It has a duty under the Consumer, Estate Agents and Redress Act 2007 to approve redress schemes, and to set the standards for complaint handling under the Gas and Electricity (Consumer Complaints Handling Standards) Regulations which energy providers must follow.

10. Impact

10.1 The impact on business is limited to energy providers and newly eligible micro businesses and no impact on charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is low.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business consumers of energy and their energy suppliers. It confers a benefit on small businesses in their capacity as purchasers of energy.

11.2 The basis for the final decision on what action to take to assist micro businesses was in order to align the definition of micro business in the 2008 Order to mirror changes

made by the independent regulator, Ofgem, to the Standard Licence Condition 7A in the standard conditions of gas and electricity non-domestic supply licences.

12. Monitoring & review

12.1 The Department does not plan to carry out a review.

13. Contact

Ngaio Wallis at DECC can answer any queries regarding this instrument Tel: 0300 068 6098 or email: Ngaio.wallis@decc.gsi.gov.uk.