EXPLANATORY MEMORANDUM

THE UTILITIES ACT 2000 (AMENDMENT OF SECTION 105) ORDER 2019

2019 No. 931

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.

2. Purpose of the instrument

2.1 To allow the energy markets regulator, Ofgem, to disclose information for the purpose of facilitating the performance of its functions under the Domestic Gas and Electricity (Tariff Cap) Act 2018 ("the 2018 Act").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

5.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement regarding Human Rights:

"In my view the provisions of the Utilities Act 2000 (Amendment of Section 105) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 105 of the Utilities Act 2000 ("the 2000 Act") prohibits Ofgem from disclosing certain information during the lifetime of a relevant individual, or so long as the business continues to be carried on, unless one of the exemptions applies.

6.2 This instrument amends section 105 of the 2000 Act to allow Ofgem to disclose information for the purpose of facilitating the performance of its functions under the 2018 Act.

6.3 The 2018 Act requires Ofgem to set a cap on standard variable and default gas and electricity tariffs. The cap will be in place until the end of 2020, but may be extended by a year at a time up to the end of 2023 at the latest.

7. Policy background

7.1 Section 105 of the 2000 Act provides that the unauthorised disclosure of information obtained under relevant legislation is a criminal offence. This is subject to a number of exceptions.

7.2 This instrument will add a further exception to section 105. This will cover the case where Ofgem need to provide information to facilitate the performance of its functions under the 2018 Act. In particular, Ofgem will need to be able to provide information to the Secretary of State to enable Ofgem to perform its functions under the 2018 Act, including making a report and recommendation to the Secretary of State as regards the possible extension of the tariff cap.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 None.

10. Consultation outcome

10.1 No consultation has taken place in respect of this instrument.

11. Guidance

11.1 There is no guidance in relation to this instrument.

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 An Impact Assessment has not been prepared for this instrument because the impact is believed to be de-minimis.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This instrument is not subject to review. However, the obligation on Ofgem to put tariff cap conditions in place under the 2018 Act will cease to have effect at the end of 2020, unless extended. The tariff cap conditions may be extended by a year at a time up to the end of 2023 at the latest.

15. Contact

15.1 Steve May (steven.may@beis.gov.uk), Head of Retail Energy at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the instrument.

15.2 Jane Walker (jane.walker@beis.gov.uk), Deputy Director of Energy Markets at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kelly Tolhurst MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.