EXPLANATORY MEMORANDUM TO

THE WARM HOME DISCOUNT (RECONCILIATION) (AMENDMENT) REGULATIONS 2013

2013 No. 519

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

2. Purpose of the instrument

2.1 This instrument makes minor amendments to the Warm Home Discount (Reconciliation) Regulations 2011 ("the Reconciliation Regulations"), which provide for the operation of a reconciliation mechanism for the purposes of the Warm Home Discount scheme.

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

3.1 Regulation 2 of this instrument corrects a drafting defect in regulation 9 of the Reconciliation Regulations which was reported by the JCSI in its 27th Report of Session 2010-12. Consequently, this instrument is being used free of charge to all known recipients of the Reconciliation Regulations.

4. Legislative Context

4.1 This instrument is made under sections 11 and 31(5) and (6) of the Energy Act 2010.

4.2 The Warm Home Discount scheme, which was established by the Warm Home Discount Regulations 2011 ("the Scheme Regulations"), requires spending by electricity suppliers for the purpose of reducing fuel poverty. The reconciliation mechanism balances expenditure on one part of the scheme across electricity suppliers, by providing for cash transfers ('reconciliation payments') to be made between suppliers so that each supplier pays a share of the total expenditures that is proportionate to its market share. The transfers are calculated and administered by an operator appointed by the Secretary of State, currently Elexon Ltd ('the Operator').

4.3 Regulation 15 of the Reconciliation Regulations provides for the Operator to make adjustment payments ('make-right amounts') to suppliers, and to direct other suppliers to make such payments to the Operator, in certain circumstances, for example to correct an error made in calculating reconciliation payments. Regulation 3 of this instrument amends regulation 15 to ensure that, where this is done, the total of the make-right amounts which the Operator must pay to suppliers and the total of the amounts which other suppliers must pay to the Operator are equal. Without the amendment, a difference

in those totals could arise as a result of the interest element of make-right amounts, as determined under regulation 15(3), being different for different suppliers.

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

7.1 Part 2 of the Energy Act 2010 set a framework for the establishment of a statutory scheme for the purpose of reducing fuel poverty. The Warm Home Discount scheme requires, subject to a degree of flexibility permitted by the Scheme Regulations, spending by suppliers totalling £250-310 million per annum from 2011/12 to 2014/15.

7.2 As one part of the Warm Home Discount scheme, electricity suppliers are required to provide rebates to certain customers determined by the Secretary of State. The purpose of the reconciliation mechanism is to ensure that a supplier that has a disproportionate number of customers eligible under this part of the scheme is not put at a competitive disadvantage.

8. Consultation

8.1 The Department carried out a public consultation on the Warm Home Discount scheme from 2 December 2010 to 14 January 2011, and published a draft of the Reconciliation Regulations for comments as part of that consultation.

8.2 The Department has not carried out a separate public consultation on this instrument as it contains only minor amendments which are within the scope of the original consultation. The Gas and Electricity Markets Authority, the Operator and energy suppliers have been given an opportunity to comment on a draft of the instrument.

9. Guidance

9.1 The Operator provides energy suppliers with guidance on compliance with the requirements of the reconciliation mechanism.

10. Impact

10.1 No impact assessment has been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

10.2 An impact assessment for the Warm Home Discount scheme was published alongside the Warm Home Discount Regulations 2011.

11. Regulating small business

11.1 The Warm Home Discount scheme does not impose obligations on small businesses, as the scheme includes a threshold for mandatory participation.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that mandatory participation in the scheme is limited to licensed energy suppliers with over 250,000 customer accounts.

11.3 The basis for the final decision on what action to take to assist small business was a consultation on the appropriate threshold for participation in the range of schemes through which DECC places social and environmental obligations on energy suppliers.

12. Monitoring & review

12.1 The Operator reports annually to the Secretary of State on the operation of the reconciliation mechanism.

12.2 The Secretary of State may, under regulation 31 of the Scheme Regulations, review any aspect of the operation of the Warm Home Discount scheme if he considers that it is not, or may not be, operating effectively or if its effectiveness could be improved.

13. Contact

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