EXPLANATORY MEMORANDUM TO

THE WARM HOME DISCOUNT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2021

2021 No. [XXXX]

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 The Warm Home Discount Regulations 2011 ("the WHD Regulations") established the Warm Home Discount scheme ("the scheme") which required licensed electricity suppliers to incur spending on providing benefits to customers who are in, or at risk of, fuel poverty. This instrument amends the WHD Regulations to run the scheme from the coming into force of this instrument until 31st March 2022 and makes some amendments to the operation of the scheme. It also makes consequential amendments to the related Warm Home Discount (Reconciliation) Regulations 2011 ("the Reconciliation Regulations").

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 The territorial application of this instrument includes Scotland.

3.3 Many of the powers to make the scheme in relation to Scotland have been transferred to the Scottish Ministers by section 58 of the Scotland Act 2016. These powers are exercisable by the Secretary of State with the agreement of the Scottish Ministers.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

5.1 The Minister of State for Business, Energy and Clean Growth has made the following statement regarding Human Rights:

"In my view the provisions of the Warm Home Discount (Miscellaneous Amendments) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The WHD Regulations and the Reconciliation Regulations are two of a suite of three sets of Regulations which together established and regulate the scheme. The third set is the Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011.

6.2 The scheme established by the WHD Regulations most recently ran from 15th August 2018 until 31st March 2021. In the most recent scheme year (scheme year 10) the scheme was made up of two parts:

- the core group: energy suppliers participating in the scheme provide a rebate of £140 off electricity bills to their eligible customers in receipt of Pension Credit Guarantee Credit;
- the non-core spending obligation:
  - larger energy suppliers required to participate in the scheme provide a rebate of £140 off electricity bills to low income and vulnerable customers who meet the supplier's eligibility criteria and successfully apply ("the broader group");
  - the energy suppliers could also incur spending, up to a cap, on a range of activities including debt assistance, benefit entitlement checks, energy efficiency measures and energy advice to customers in or at risk of fuel poverty ("industry initiatives" or "specified activities").

6.3 The instrument amends the WHD Regulations so that the scheme runs for an eleventh scheme year, from the commencement of this instrument until 31st March 2022.

6.4 The general approach has been to amend the WHD Regulations so that they apply to the new scheme year 11, in the same way as they applied to scheme year 10, except for certain specific changes:

- increasing the overall spending target in line with inflation;
- setting out that, for scheme year 11, a domestic customer is only eligible for the core group rebate if their electricity supplier participates in the scheme and if the customer, or their partner, is in receipt of Pension Credit Guarantee Credit, thus removing the ability for the Secretary of State to determine eligibility for the core group through an 'eligibility statement';
- introducing a £2,000 cap on individual debt write-off permitted under industry initiatives, in addition to the overall cap of £6 million on total debt write-off that is currently in place;
- removing the current restriction on energy suppliers that prevents providing additional financial assistance through industry initiatives to domestic customers eligible for core group and broader group rebates;
- ensuring advice about the benefits of smart meters is provided in addition to wider energy advice, so far as is reasonably practicable, to every domestic consumer benefitting from industry initiatives or specified activities;
- introducing consumer protection requirements for boiler and central heating system installations and repairs carried out under the industry initiatives part of the scheme;
- introducing a requirement for the Gas and Electricity Markets Authority ("the Authority")to inform the Secretary of State if an electricity supplier who

becomes a "Supplier of Last Resort" notifies the Authority of its intention to meet all or part of a failed supplier's non-core spending obligation;

- clarifying that in the scheme year in which a voluntary or compulsory smaller electricity supplier passes the relevant supplier threshold and becomes newly subject to the non-core spending obligation, the sum of that supplier's undelivered core group rebates for the previous scheme year is added to its non-core spending obligation;
- adjusting some of the deadlines for notifications and determinations under the scheme, taking into account notifications of domestic customer numbers made by suppliers before the instrument comes into force and recognising spending on industry initiatives taking place between 1st April 2021 and the coming into force of the instrument.

6.5 The instrument also makes consequential amendments to the Reconciliation Regulations.

7. Policy background

What is being done and why?

7.1 The scheme is a key policy in the Government's programme to tackle fuel poverty and the impact of the cost of energy on low income households. The scheme was launched in 2011 and has provided assistance with energy costs to over 2.2 million low income and vulnerable households in Great Britain each year.

7.2 In the Energy White Paper 2020, Government sets out its commitment to keeping energy bills affordable and ensuring that households in fuel poverty are not left behind. As set out in Government's Net Zero strategy, upgrading the energy efficiency of the housing stock is vital for the long-term reduction of energy costs, but this process is gradual, with the Energy White Paper committing to all homes to reach EPC C standard by 2035, where practical, cost-effective and affordable. There is recognition that some households need additional support now, which is why Government continues to promote a range of measures to tackle fuel poverty, including energy bill rebates through the scheme.

7.3 The fuel poverty strategy "Sustainable Warmth: Protecting Vulnerable Households in England", published by Government in February 2021, states that energy bill rebates have an important role as part of a cost-effective mix of measures to tackle the long-term, structural problem of fuel poverty. The strategy draws attention to the dual aims of making energy affordable for households in fuel poverty while improving the energy efficiency of fuel poor homes.

7.4 The "Sustainable Warmth" strategy also outlines the updated fuel poverty metric for England, Low Income Low Energy Efficiency ("LILEE"). A household is considered to be in fuel poverty if the home has a residual income below the poverty line after accounting for required fuel costs, and if the household lives in a home that has an energy efficiency rating below Band C. Scotland and Wales use variations of the '10%' indicator, whereby a household is considered fuel poor if they need to spend more than 10% of their net income on energy. Scotland also considers a household's remaining income and whether this is sufficient to maintain an acceptable standard of living, defined as being at least 90% of the UK Minimum Income Standard. As there are significant similarities in the characteristics of households considered to be in fuel poverty across Great Britain, there are no variations to the scheme between England, Scotland and Wales.

7.5 Under the WHD Regulations, the scheme ends on 31st March 2021. This instrument amends the WHD Regulations to run the scheme for an 11th scheme year and to make some improvements to the scheme. The instrument maintains the current rebate amount of £140 to ensure that rebates reach as many households as possible for the 2021/22 scheme year, particularly given the increase in the number of eligible households due to the impacts of the COVID-19 pandemic. The current eligibility criteria for both the core group and the broader group remain unchanged, as well as energy supplier participation thresholds requiring only those suppliers with at least 150,000 domestic customer accounts to participate. This will provide continuity from the latest scheme year, and simplicity in a COVID-19 context.

7.6 The main changes introduced include:

- keeping the overall spend the same, except for a rise with inflation to £354m;
- introducing a £2,000 cap on individual debt write-off provided as part of industry initiatives, in addition to maintaining the current £6 million total debt write-off cap, to enable energy suppliers to maximise the number of households they can help through this measure. This will also ensure that funds are not being misused to write off historic or 'bad' debt, which generally requires a more holistic approach from energy suppliers beyond the remit of the scheme;
- removing restrictions under industry initiatives on the provision of financial assistance with energy bills, such as fuel vouchers, to domestic customers eligible for core group and broader group rebates. This will remove a barrier that prevented vulnerable households from accessing emergency support, particularly during COVID-19, for fear of later losing out on a rebate;
- ensuring that advice on the benefits of using smart meters is provided alongside energy advice, so far as is reasonably practicable, to every domestic consumer benefitting from industry initiatives and specified activities. Smart meters enable customers to monitor their energy use, track available credit, and top up credit more easily. They also allow energy suppliers to provide support to customers who may be in more challenging financial situations or at risk of self-disconnection through measures such as emergency credit;
- requiring installations or repairs of boilers and central heating systems under industry initiatives to be delivered by TrustMark registered installers and lodged in TrustMark's Data Warehouse so that they are subject to its auditing processes. Government's ambition is for energy efficiency measures installed under a Government scheme to be carried out to a high standard by reputable companies and that, where things do go wrong, they are remedied quickly, and adequate consumer protections are in place. The TrustMark Government Endorsed Quality scheme was significantly reformed and launched in October 2018, providing greater consumer protection for energy efficiency measures. The TrustMark scheme is operated by TrustMark (2005) Limited under licence from the Department for Business, Energy and Industrial Strategy. These new requirements will provide greater standards of installation and consumer protection, particularly for the most vulnerable customers and those living in high risk properties;

- requiring the Authority to inform the Secretary of State when Suppliers of Last Resort ("SoLR") notify them of their intention to take on part, or all, of the non-core spending obligation of a failed supplier. As the scheme's obligations are placed on the electricity supply licence, when a participating energy supplier fails and their licence is revoked, the scheme obligations on the licence fall, and there is no requirement on the SoLR to take on the obligation. This means that eligible scheme customers are at risk of not receiving the rebate they were expecting to receive, and Industry Initiatives schemes may be at risk of not receiving sufficient funding. This information requirement is intended to facilitate the potential to permit any notifying SoLRs to deduct extra non-core overspend from their non-core spending obligation in future scheme years, which in turn would incentivise SoLRs to voluntarily take on the non-core spending obligation of failed suppliers;
- ensuring that when a voluntary and compulsory smaller electricity supplier passes the relevant supplier threshold and becomes a larger energy supplier subject to the non-core spending obligation, the sum of that supplier's undelivered core group rebates from the preceding scheme year is added to its non-core spending obligation. This introduces consistency with the rules for fully obligated suppliers, and ensures that the funds for undelivered rebates are used to help those in need; and
- removing the ability for Secretary of State to determine eligibility for the core group through an "eligibility statement", as there is no intention of using such provision before the start of scheme year 11.

7.7 The Energy White Paper 2020 published by the Department for Business, Energy and Industrial Strategy commits to further extension of the scheme from 2022/23 to 2025/26, expansion of the spending envelope to £475 million per year from 2022, and to consulting on scheme reform to better target fuel poverty. We intend to consult on changes to the scheme in the first half of 2021, with a view to laying a future instrument in the next year for a scheme extended beyond the 2021/22 scheme year.

7.8 There is a reasonable level of interest from energy suppliers who deliver the scheme, fuel poverty groups and the public in the scheme.

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 This is the fifth instrument to amend the WHD Regulations. There are no plans for a consolidation at this time. Should more significant amendments be made to the scheme following a review under the circumstances listed in regulation 31 of the WHD Regulations, a consolidation of the WHD Regulations may be necessary. This instrument is the fourth to make amendments to the Reconciliation Regulations and a consolidation of those regulations is not considered necessary at present.

10. Consultation outcome

10.1 The consultation on the scheme was launched on 14th October 2020 and closed on 11th November 2020. The length of the consultation was set at 4 weeks as the scheme is well-established, the changes proposed were minimal and key stakeholders had been consulted informally beforehand. There was a total of 52 responses to the consultation.

10.2 There was general support for the proposals to: make changes to industry initiatives, including the introduction of an individual debt write-off cap; removal of restrictions on providing financial assistance to domestic customers eligible for core group and broader group rebates; requiring smart meter advice to be given to all domestic consumers benefitting from industry initiatives so far as reasonably practicable; introducing installation standards and consumer protection requirements for boiler and central heating system installations and repairs; and to make no changes to the rebate size and eligibility for scheme year 2021/22, although for many this support was conditional on more significant reform of eligibility for subsequent scheme years.

10.3 There were mixed views on the proposal to maintain supplier participation thresholds for energy suppliers. However, there was a general understanding of the need to make minimal changes for the 2021/22 scheme year due to COVID-19 and the risks of non-compliance that limited preparation time would cause if participation thresholds were to be reduced or removed for scheme year 2021/22, particularly for smaller energy suppliers. There were mixed views on the introduction of a technical monitoring framework for installation standards and consumer protection and, in light of responses, Government will work with TrustMark to ensure auditing of installations and repair of measures is integrated in its Framework Operating Requirements. One proposal on requiring failing suppliers to provide data on unpaid rebates and industry initiatives spending, whilst receiving support, was not taken forward as a result of indications that the requirement would not be implementable.

10.4 As such, the outcome of the consultation is to implement the consultation proposals for the extension year, except for the proposed requirement for reporting by failing suppliers, and to commit to consulting on future reform, including the removal of supplier participation thresholds, for subsequent scheme years as outlined in the 2020 Energy White Paper.

10.5 A formal Government response setting out further details on respondents' views was published on the gov.uk website on 26 February. As part of the consultation process the Department discussed its proposals with the devolved administrations in Scotland and Wales. Consent to laying the Regulations was sought from the Scottish Government due to certain powers being transferred to Scottish Ministers under the Scotland Act 2016 and consent was received on 16 February.

11. Guidance

11.1 The Authority, which is the scheme administrator, has previously published guidance for suppliers participating in the scheme, and this guidance will be updated by the Authority to reflect the changes made by this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies is mainly that participating energy suppliers are likely to recoup their costs of providing support under the scheme and their administration costs through their charges to domestic customers. Administration costs for participating energy suppliers are estimated to total £10m for scheme year 11.

12.2 The impact on the public sector is very small (administrative costs to Government are estimated at around £2m for scheme year 11). The Authority will administer the scheme, monitor compliance and enforce the scheme. The Department for Work and Pensions enables the delivery of the scheme through verifying the eligibility of core group rebate recipients. The Department for Business, Energy and Industrial Strategy is responsible for the design of the scheme and has oversight of its impact and effectiveness.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The supplier threshold means that energy suppliers that are small businesses (those with fewer than 50 full time employees) are likely to be exempt from obligations under the WHD Regulations. Licensed electricity suppliers with numbers of domestic customers below the limit for the scheme year may participate voluntarily, in which case the requirements of the WHD Regulations relating to the provision of rebates to core group customers will only apply to the small supplier.

14. Monitoring & review

14.1 The Secretary of State will be under a duty, set out in regulation 31 of the WHD Regulations, to conduct a review of the scheme or of particular parts of it, if the circumstances set out in that regulation are met.

14.2 The Authority is under a duty, set out in section 13 of the Energy Act 2010, to keep the operation of the scheme under review. Energy suppliers who participate in the scheme will be required to demonstrate to the Authority that they have complied with the requirements of the scheme. The Authority will publish an annual report on the scheme.

14.3 The instrument provides for the scheme to run until 31st March 2022. Consultation with the Authority, electricity and gas suppliers and other appropriate persons, and new regulations requiring the approval of Parliament will be needed to extend the scheme beyond that date.

15. Contact

15.1 Jack Ramsden at the Department for Business, Energy and Industrial Strategy; Telephone: 02072154221 or email: jack.ramsden@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrej Miller, Deputy Director for the Warm Homes Team, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan, Parliamentary Under-Secretary of State, at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.