

EXPLANATORY MEMORANDUM TO
THE WARM HOME DISCOUNT (AMENDMENT) REGULATIONS 2014

2014 No. [XXXX]

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 amends the Warm Home Discount Regulations 2011 (“the 2011 Regulations”) to enable the reduction of a supplier’s non-core spending obligation in scheme year 4 by a greater amount should a supplier incur non-core spending in excess of its obligation in scheme year 3. This instrument increases the reduction which may be made from 1% to 34% of a supplier’s non-core spending obligation for scheme year 3. This instrument does not however adjust the limits on certain types of spending (namely legacy spending and spending on industry initiatives) which may count towards a supplier’s non-core spending.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The 2011 Regulations are made under powers in section 9 of the Energy Act 2010 and establish the Warm Home Discount scheme (“the Scheme”). The Scheme obliges certain electricity suppliers to incur spending on the provision of benefits for the purpose of reducing fuel poverty.
 - 4.2 The 2011 Regulations require certain electricity suppliers to pay prescribed rebates to those who qualify as core group customers and require certain electricity suppliers to incur prescribed types and amounts of spending known as non-core spending. The 2011 Regulations enable a supplier to count towards its non-core spending obligation legacy spending and spending on industry initiatives up to certain limits and require a supplier to fulfil the remainder of its non-core spending obligation by making prescribed rebates to certain customers who are known as broader group customers.
 - 4.3 Regulation 14 of the 2011 Regulations requires the Gas and Electricity Markets Authority to adjust a supplier’s non-core spending obligation for scheme years 2, 3 and 4 according to the amount of non-core spending incurred by the supplier in the previous scheme year. This requirement includes reducing a supplier’s non-core spending obligation by the amount of non-core spending incurred the previous scheme year which was in excess of that year’s obligation up to a maximum amount.
 - 4.4 This instrument amends Regulation 14 to increase the maximum amount from 1% to 34% of the supplier’s non-core spending obligation of the previous scheme year in respect of the supplier’s non-core spending obligation for scheme year 4.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Gregory Barker, Minister of State at the Department of Energy and Climate Change, has made the following statement regarding Human Rights:

In my view the provisions of the Warm Home Discount (Amendment) Regulations 2014 are compatible with the Convention rights.

7. Policy Background

- **What is being done and why**

7.1 The 2011 Regulations specify the overall spending targets, for each of the four years of the Scheme. The Scheme requires overall spending targets to be met collectively by all suppliers which have obligations under the Scheme. To achieve this outcome the 2011 Regulations require certain suppliers to provide prescribed rebates to core group customers (this element is demand-led and subject to customers meeting eligibility criteria) and require prescribed types and amounts of non-core spending.

7.2 The aggregate non-core spending obligation, to be met by all suppliers with non-core spending obligations, is set annually and based on the overall spending target for the scheme year, minus the total amount of core group spending estimated for that scheme year. A supplier's individual non-core spending obligation is determined by the Gas and Electricity Markets Authority according to a supplier's market share, as prescribed in the 2011 Regulations.

7.3 The aggregate non-core spending obligation may be adjusted in the event that the previous scheme year's core group spending estimate was not accurate. A supplier's individual non-core spending obligation may be adjusted, within certain limits, should that supplier have spent more or less than its non-core spending obligation in the previous scheme year.

7.4 The Secretary of State estimates that the core group spending in the current scheme year (scheme year 3) is going to be £34m lower than estimated at the time scheme year 3's aggregate non-core spending obligation was set. The result of this is that the overall spending for scheme year 3 could be £34m below the overall spending target.

7.5 The Secretary of State intends to use the existing flexibility within the 2011 Regulations to increase scheme year 4's aggregate non-core spending obligation to account for any difference between the core group spending estimate and actual core group spending for scheme year 3. This will result in a significant difference between the aggregate non-core spending obligations for scheme years 3 and 4.

7.6 This instrument will enable a supplier's non-core spending obligation for scheme year 4 to be reduced by a greater amount than originally permitted by the 2011 Regulations by incurring more non-core spending in scheme year 3. This instrument does not adjust the limits on spending on industry initiatives and legacy spend which may

count towards a supplier's non-core spending. This should therefore lead to more low income, vulnerable households receiving electricity bill rebates in scheme year 3 and should reduce possible delivery risks in scheme year 4.

- **Consolidation**

7.7 This instrument makes minor changes to the 2011 Regulations, the Department of Energy and Climate Change does not therefore intend to consolidate the two instruments at this stage.

8 Consultation Outcome

8.1 A public consultation was run prior to the drafting of this amendment for a period of four weeks in September and October 2013. This consultation was deemed sufficient given the previous engagement with participating energy suppliers on the matter and the imperative to make the change quickly in order for it to be effective. There were 12 responses to the consultation with all respondents in favour of the proposed change. A formal Government response was published in December.

9 Guidance

9.1 Due to this instrument's simplicity there is no intention to publish specific guidance in relation to it.

10 Impact

10.1 The impact on business, charities or voluntary bodies is small. Participating energy suppliers will have to familiarise themselves with the Amendment to the Regulations which will add a small amount of cost. However, the ability to have a more even spending trajectory over the two year's will bring significant operational benefits.

10.2 The impact on the public sector is very small. Gas and Electricity Markets Authority, which is the scheme administrator, will administer with the change to the Regulations.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the explanatory memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 This instrument does not impose obligations on small business.

11.2 The 2011 Regulations use a threshold based on the number of customer accounts that a licensed energy supplier serves for mandatory participation in the Scheme. This threshold has been set at 250,000 domestic customer accounts.

12. Monitoring & review

12.1 This instrument will come into force on the day after the day it is made.

12.2 Suppliers who participate in the Scheme will be required to demonstrate to Ofgem on an annual basis that they have complied with the requirements of the Scheme – this is

because compliance is a relevant requirement of the suppliers' licences. Ofgem will publish an annual report on the Scheme.

- 12.3 Throughout the duration of the Scheme the 2011 Regulations enable the Secretary of State to review the Scheme, if the Secretary of State considers it desirable, following a significant change in circumstances since the commencement of the Scheme. The Secretary of State may also review any aspect of the operation of the Scheme if the Secretary of State considers that it is not, or may not be, operating effectively or if its effectiveness could be improved. Under section 14(5) of the Energy Act 2010, the Secretary of State may only amend the Scheme following a review.

13 Contact

- 13.1 Andrej Miller at the Department of Energy and Climate Change Tel: 0300 068 6155 or email andrej.miller@decc.gsi.gov.uk can answer any queries regarding this instrument.