EXPLANATORY MEMORANDUM TO

THE WARM HOME DISCOUNT (AMENDMENT) REGULATIONS 2014

2014 No. 695

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 increase the maximum amount by which a supplier's non-core spending obligation may be reduced in scheme year 4 (1st April 2014 to 31st March 2015) in the event that a supplier incurs non-core spending in excess of its obligation in scheme year 3 (1st April 2013 to 31st March 2014). This instrument increases the maximum reduction which may be made from the current level of 1% to a new, much higher level of 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 both 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 that 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 during 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 in scheme year 3 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 Scheme requires certain electricity suppliers to incur spending on the provision of benefits. The Scheme specifies two categories of benefits, namely rebates to core group customers and non-core spending.

7.2 Each scheme year the majority of spending is usually incurred by suppliers paying rebates in respect of electricity costs to customers who are in receipt of a subset of Pension Credit; these customers are known as core group customers. Suppliers have to provide rebates to all their customers who are identified as being in this group.

7.3 Some electricity suppliers under the Scheme are also required to incur specified amounts of non-core spending. Non-core spending must include:

- the provision of rebates in respect of electricity costs to a variety of low income and vulnerable households, including those of working age, known as the broader group (this is usually the largest component of non-core spending),

and may, in certain circumstances, include:

- legacy spending which is the provision of benefits to households under voluntary commitments that preceded the Scheme (its inclusion under the Scheme is to provide for a smooth transition from the voluntary commitments to the Scheme); and
- spending on industry initiatives which may be a variety of specified activities to support low income and vulnerable households (for example debt assistance, benefits entitlement checks and energy advice).

7.4 The Scheme specifies the amounts of spending which must be incurred by suppliers. Individual participating suppliers are required to provide rebates to all their customers who are identified members of the core group. The level of expenditure on the core group is therefore determined by the number of qualifying households each year. Some of these suppliers are also set a spending obligation in respect of non-core spending; legacy spending and expenditure on industry initiatives are discretionary and subject to spending caps on each element, whereas a supplier is required to fulfil the remainder of its non-core spending obligation by providing broader group rebates.

7.5 Where a supplier overspends against its non-core spending obligation for scheme years 2, 3 and 4, it is currently permitted under the Scheme to 'bank' overspends for the next scheme year up to a maximum level that is equal to 1% of their non-core spending obligation for the scheme year in which it overspends. This flexibility does not adjust the limits to the amount of legacy spending and spending on industry initiatives which may be counted towards a suppliers' non-core spending.

7.6 The minimum amount which a supplier must spend during a scheme year on non-core activities is set each year once an estimate has been made of the anticipated size of, and therefore expenditure in relation to, the core group in that scheme year. For example, this scheme year 3 (1^{st} April 2013 to 31^{st} March 2014) it was estimated by Government that the core group would require £200m of expenditure from suppliers against an overall spending obligation of £300m, so the total amount of non-core spending was determined to be £100m. On this basis individual suppliers were instructed how much non-core spending they must incur, based on their share of domestic customers. As required by the Scheme, suppliers were informed by 14 March of their individual non-core spending obligations.

7.7 Since suppliers were informed of their non-core spending obligations for scheme year 3, Government's estimate of the number of individuals that would qualify for the core group reduced significantly, from around 1.8 million to around 1.5 million. Consequently the estimated expenditure on the core group has been revised from around £200m to around £166m. In the absence of a revision to the Scheme this would result in suppliers being required to spend about £34m less to support low income and vulnerable households in scheme year 3 than the overall spending target set for scheme year 3.

7.8 A further consequence of the core-group estimate in scheme year 3 is that the value of the shortfall, about £34m, will be added to the non-core spending obligation for scheme year 4 (1^{st} April 2014 to 31^{st} March 2015). The implication of this would be that, in addition to overall support under the Scheme being lower in 2013/14 than was intended, participating suppliers would be required to significantly increase their non-core spending in 2014/15. Suppliers have indicated that it would be difficult to meet the increased spending obligation in 2014/15, creating significant delivery problems and potential non-compliance.

7.9 Taking all this into account, this instrument will enable suppliers to spend more on the broader group rebate element of non-core spending under the Scheme this scheme year and reduce their non-core spending obligation in scheme year 4. The clear benefits of this are that more low income and vulnerable people may receive assistance under the Scheme this scheme year, which would result in more consistent scheme spending year-on-year and reduce likely delivery difficulties for suppliers.

- **Consolidation**

710 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 and can be found at: https://www.gov.uk/government/consultations/warm-home-discount-flexibility-for-higher-spending

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.