

Draft Order laid before Parliament under section 56FB(3) of the Electricity Act 1989 and section 41HB(3) of the Gas Act 1986, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2012 No. 0000

ELECTRICITY

GAS

**The Electricity and Gas (Smart Meters Licensable Activity)
Order 2012**

Made - - - - 2012

Coming into force - - 2012

This Order is made in exercise of the powers conferred by section 56FA(1), (5) and (6) and section 60 of the Electricity Act 1989(a) and section 41HA(1), (5) and (6) and section 47 of the Gas Act 1986(b).

The Secretary of State has in accordance with section 56FB(1) of the Electricity Act 1989 and section 41HB(1) of the Gas Act 1986 consulted—

- (a) the Gas and Electricity Markets Authority; and
- (b) such other persons as the Secretary of State thinks appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 56FB(3) of the Electricity Act 1989 and section 41HB(3) of the Gas Act 1986.

Accordingly, the Secretary of State makes the following Order.

PART 1

General

Citation and commencement

1. This Order may be cited as the Electricity and Gas (Smart Meters Licensable Activity) Order 2012, and comes into force on the day after the day on which it is made.

-
- (a) 1989 c. 29. Sections 56FA and 56FB were inserted by section 91 of and Schedule 4 to the Energy Act 2008 (c. 32). Section 56FB was amended by section 73 of the Energy Act 2011 (c. 16). Section 60 was amended by section 3(2) of the Utilities Act 2000 (c. 27).
 - (b) 1986 c. 44. Sections 41HA and 41HB were inserted by section 91 of and Schedule 4 to the Energy Act 2008 (c. 32). Relevant amendments to section 47 were made by section 3(2) of the Utilities Act 2000 (c. 27) and section 10(1) of the Gas Act 1995 (c. 45). Section 41HB was amended by section 73 of the Energy Act 2011 (c. 16).

PART 2

Amendments to the Electricity Act 1989

Amendments to the Electricity Act 1989

2. The Electricity Act 1989(a) is amended in accordance with articles 3 to 16.

Amendment to section 3A (the principal objective and general duties of the Secretary of State and the Authority)

3. In section 3A(5)(b)—

(a) in paragraph (a)—

(i) after “transmission of electricity”, for “or”, substitute “,”; and

(ii) after “electricity interconnectors”, insert “or to provide a smart meter communication service”; and

(b) after each instance of “supply of electricity”, insert “or the provision of a smart meter communication service”.

Amendment to section 4 (prohibition on unlicensed supply etc)

4.—(1) Section 4(c) (prohibition on unlicensed supply etc) is amended as follows.

(2) In subsection (1)—

(a) omit the word “or” after paragraph (c); and

(b) after paragraph (d), insert—

“; or

(e) provides a smart meter communication service.”.

(3) After subsection (3F), insert—

“(3G) A reference in this Part to providing a smart meter communication service is a reference to making arrangements with each domestic supplier to provide a service, for such suppliers, of communicating relevant information to and from smart meters through which electricity is supplied to domestic premises.”.

(4) After subsection (5), insert—

“(6) In this section—

“domestic supplier” means an electricity supplier—

(a) who is authorised, in accordance with the conditions of a licence, to supply electricity to domestic premises; and

(b) who supplies electricity to domestic premises in accordance with that licence;

“external electronic communications network” means a network which—

(a) is an electronic communications network, within the meaning of section 32 of the Communications Act 2003(d); and

(b) does not form part of a smart meter;

“relevant information” means information relating to the supply of electricity; and

(a) 1989 c. 29.

(b) Section 3A was inserted by section 13 of the Utilities Act (c. 27). Subsection (5) was amended by sections 83, 143(1), 147 and 179 of the Energy Act 2004 (c. 20), sections 83(2)(c) and 108 of the Energy Act 2008 (c. 32) and section 17(1) and (6) of the Energy Act 2010 (c. 27).

(c) Relevant amendments were made by section 108 of and Schedule 8 to the Utilities Act 2000 (c. 27) and sections 89, 135, 145 and 197 of the Energy Act 2004 (c. 20).

(d) 2003 c. 21. Section 32 was amended by SI 2011/1210.

“smart meter” means—

- (a) an electricity meter which can send and receive information using an external electronic communications network; or
- (b) an electricity meter and a device which is associated with or ancillary to that meter and which enables information to be sent to and received by the meter using an external electronic communications network.”.

Amendment to section 5 (exemptions from prohibition)

5. In section 5(1)(a), for “(c) or (d)”, substitute “(c), (d) or (e)”.

Amendment to section 6 (licences authorising supply, etc)

6.—(1) Section 6(b) is amended in accordance with paragraphs (2) to (4).

(2) In subsection (1)—

- (a) omit the word “or” after paragraph (d); and
- (b) after paragraph (e), insert—

“; or

- (f) subject to subsection (1C), a licence authorising a person to provide a smart meter communication service (“a smart meter communication licence”).”.

(3) After subsection (1), insert—

“(1A) Subject to subsection (1B), the Secretary of State may grant a smart meter communication licence.

(1B) The Secretary of State may not grant a smart meter communication licence after 1 November 2018.

(1C) The first smart meter communication licence may only be granted by the Secretary of State.”.

(4) After subsection (2A), insert—

“(2B) A person may not be granted a smart meter communication licence unless the same person is at the same time granted a licence under section 7AB of the Gas Act 1986(c).”.

(5) A reference in any enactment to a licence under section 6(1) of the Electricity Act 1989 or a licence under section 6(1)(f) of that Act, shall be deemed to include any licence under section 6(1A) of that Act.

Amendment to section 6A (procedure for licence applications)

7.—(1) Section 6A(1)(d) is amended as follows.

(2) In paragraph (a), after “licence” insert “(but this is subject to subsection (1A))”.

(3) After subsection (1) insert—

“(1A) At any time when regulations made under section 56FC(e) are in force, this section does not apply to an application for a smart meter communication licence.”.

-
- (a) Section 5 was substituted by section 29 of the Utilities Act 2000 (c. 27) and amended by section 145 of the Energy Act 2004 (c. 20).
 - (b) Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27). Relevant amendments were made by sections 136, 145 and 197 of the Energy Act 2004 (c. 20).
 - (c) Section 7AB of the Gas Act 1986 (c. 44) is inserted by article 21 of this Order.
 - (d) Section 6A was inserted by section 30 of the Utilities Act 2000 (c. 27). Relevant amendments were made by section 143 of the Energy Act 2004 (c. 20).
 - (e) Section 56FC of the Electricity Act 1989 (c. 29) was inserted by section 91 and Schedule 4 to the Energy Act 2008 (c. 32).

Amendment to section 7 (conditions of licences: general)

8.—(1) Section 7(a) is amended as follows.

(2) In subsection (1)(a), for the “Authority”, substitute “grantor”.

(3) After subsection (3A), insert—

“(3B) Without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (3C) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where a person holds such a licence (the “licence holder”), and another person has applied or is considering whether to apply for a smart meter communication licence (“the applicant”).

(3C) The conditions in this subsection are conditions which require the licence holder to comply with a direction given by the Secretary of State or the Authority requiring the licence holder to provide to the applicant—

- (a) information in relation to the activities authorised by the licence; or
- (b) such other assistance as may be reasonably required by the applicant, including access to any facilities or equipment being used in connection with the activities authorised by the licence, in order that the applicant can—
 - (i) determine whether to apply for a licence; or
 - (ii) take part in a competition for a licence.

(3D) Subject to subsection (3F) and without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (3E) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where such a licence held by a person (the “first licensee”) will cease to have effect, and another such licence is to be granted or has been granted to a different person (the “second licensee”).

(3E) The conditions in this subsection are conditions which require compliance with a direction given by the Secretary of State or the Authority requiring—

- (a) the transfer of property, rights or liabilities from the first licensee to the second licensee;
- (b) the creation of rights in relation to property, rights or liabilities in favour of the second licensee;
- (c) the creation of other rights and liabilities as between the first and second licensee;
- (d) the first or second licensee to enter into a written agreement with each other, or the first licensee to execute an instrument of another kind in favour of the second licensee;
- (e) the first or second licensee to pay compensation to the other, or to any third party who is affected by any of the matters referred to in paragraphs (a) to (d).

(3F) Conditions included in a licence by virtue of subsection (3D) must provide that the licensee does not have a duty to comply with a direction of the kind referred to in subsection (3E) unless, in relation to that direction, the following conditions have been satisfied prior to it being given—

- (a) the Secretary of State or the Authority (as appropriate) has given written notice to the first licensee, the second licensee and any other person who would potentially be affected by the direction, including a copy of the proposed direction and inviting them to submit written representations, giving a minimum period of 21 days in which those representations can be made; and
- (b) after the end of the period set out in the notice under paragraph (a), the Secretary of State or the Authority (as appropriate) has considered those representations and determined that—

(a) Relevant amendments were made by section 32 of the Utilities Act 2000 (c. 27).

- (i) it is appropriate in all the circumstances that the proposed direction is given; and
- (ii) the arrangements of a type referred to in paragraphs (a) to (d) of subsection (3E) in the direction are necessary or expedient for the operational purposes of the second licensee, or are agreed by the first licensee and the second licensee to be necessary or expedient for those purposes.

(3G) For the purposes of subsection (3F), the operational purposes of the second licensee are the purposes of performing any functions which the second licensee has, or will have—

- (a) under or by virtue of the smart meter communication licence which has been, or is to be, granted; or
- (b) under or by virtue of any enactment, in the second licensee’s capacity as holder of that licence.”.

Amendment to section 7A (transfer of licences)

9.—(1) Section 7A(a) is amended as follows.

(2) After subsection (10), insert—

“(10A) Subject to subsection (10C), the Authority shall, following consideration of any representations or objections under subsection (9), give the Secretary of State not less than 28 days’ notice of any proposal to give consent to the transfer of the whole or any part of a smart meter communication licence.

(10B) If, before the expiry of the time specified in a notice under subsection (10A), the Secretary of State directs the Authority not to give consent, the Authority shall comply with that direction.

(10C) Where the Secretary of State does not give a direction under subsection (10B), the Authority may give consent to the transfer of the licence after—

- (a) the expiry of the time specified in the notice under subsection (10A); or
- (b) if earlier than the time in paragraph (a), the time at which the Secretary of State informs the Authority that no direction will be given under subsection (10B) in relation to the notice.

(10D) Subsections (10A) to (10C) do not apply after 1 November 2018.”.

(3) After subsection (11), insert—

“(11A) A smart meter communication licence may not be transferred to a person unless a licence granted under section 7AB of the Gas Act 1986 is also transferred to the same person at the same time.”.

Amendment to section 47 (general functions)

10. In section 47(1)(b) after “by such heat” insert “, and to the provision of smart meter communication services”.

Amendment to section 56A (power to alter activities requiring licence)

11. In section 56A(4)(c), after “supply of electricity”, insert “, or with providing a smart meter communication service”.

(a) Section 7A was inserted by section 41 of the Utilities Act 2000 (c. 27).
 (b) Section 47(1) was amended by section 3 of the Utilities Act 2000 (c. 27).
 (c) Section 56A was inserted by section 43 of the Utilities Act 2000 (c. 27).

Amendment to section 58 (directions restricting the use of certain information)

12. In section 58(2)(a), after “electricity interconnectors”, insert “or to provide a smart meter communication service”.

Amendment to section 64 (interpretation etc of Part 1)

13. In section 64(1)(b), insert in the relevant position—

““providing a smart meter communication service” has the meaning given in section 4(3G) above, and cognate expressions shall be construed accordingly;”.

Amendment to section 96 (directions for preserving security)

14.—(1) Section 96 is amended as follows.

(2) In subsection (1)(a), after “supply of electricity”, insert “or the provision of a smart meter communication service”.

(3) In subsection (6), after “supply electricity”, insert “or the provision of a smart meter communication service”.

Amendment to section 98 (provision of statistical information)

15. In section 98(1)(c)—

- (a) after “the use of electricity interconnectors”, insert “or the provision of a smart meter communication service”; and
- (b) after “operation of electricity interconnectors”, insert “or to provide a smart meter communication service”.

Amendment to Schedule 6A (provisions imposing obligations enforceable as relevant requirements)

16.—(1) Schedule 6A(d) is amended as follows.

(2) In paragraph 1, after “licence holders”, insert “(except the holder of a smart meter communication licence)”.

(3) Insert after paragraph 9—

“Smart meter communication licence holders

9A. The following are relevant provisions in relation to the holder of a smart meter communication licence—

- (a) section 42C(e); and
- (b) section 25(5) of the Consumers, Estate Agents and Redress Act 2007(f) (directions to comply with requirements under section 24 of that Act).”.

(a) Relevant amendments were made by sections 143 and 147 of the Energy Act 2004 (c. 20).

(b) There are amendments to section 64 which are not relevant for the purposes of this Order.

(c) Section 98(1) was amended by section 147 of the Energy Act 2004 (c. 20).

(d) Schedule 6A was inserted by SI 2011/2704.

(e) Section 42C of the Electricity Act 1989 (c. 29) was inserted by section 61 of the Utilities Act 2000 (c. 27) and was amended by SI 2009/1941.

(f) 2007 c. 17. There are amendments to sections 24 and 25 of the Act which are not relevant for the purposes of this Order.

PART 3

Amendments to the Gas Act 1986

Amendments to the Gas Act 1986

17. The Gas Act 1986(a) is amended in accordance with articles 18 to 28.

Amendment to 4AA (the principal objective and general duties of the Secretary of State and the Authority)

18.—(1) Section 4AA(b) is amended as follows.

(2) In subsection (5)—

- (a) in paragraph (b), after “conveyed through pipes”, insert “or the provision of a smart meter communication service”; and
- (b) in the last line, after “gas through pipes”, insert “or the provision of a smart meter communication service”.

(3) In subsection (8), for “or 7A”, substitute “, 7A or 7AB”.

Amendment to section 5 (prohibition on unlicensed activities)

19.—(1) Section 5(c) (prohibition on unlicensed activities) is amended as follows.

(2) In subsection (1)—

- (a) omit the word “or” after paragraph (b); and
- (b) after paragraph (c), insert—

“; or

(d) provides a smart meter communication service.”.

(3) After subsection (10), insert—

“(11) A reference in this Part to providing a smart meter communication service is a reference to making arrangements with each domestic supplier to provide a service, for such suppliers, of communicating relevant information to and from smart meters through which gas is supplied to domestic premises.

(12) In this section—

“domestic supplier” means a gas supplier—

- (a) who is authorised, in accordance with the conditions of a licence, to supply gas to domestic premises; and
- (b) who supplies gas to domestic premises in accordance with that licence;

“external electronic communications network” means a network which—

- (a) is an electronic communications network, within the meaning of section 32 of the Communications Act 2003(d); and
- (b) does not form part of a smart meter;

“relevant information” means information relating to the supply of gas; and

(a) 1986 c. 44.

(b) Section 4AA was substituted by section 9 of the Utilities Act 2000 (c. 27). Relevant amendments were made by section 83 of the Energy Act 2004 (c. 20), sections 83 and 149 of the Energy Act 2008 (c. 32) and section 16 of the Energy Act 2010 (c. 27).

(c) Section 5 was substituted by section 3 of the Gas Act 1995 (c. 45). Relevant amendments were made by section 108 of and Schedules 6 (Part 1, paragraphs 1 and 3) and 8 to the Utilities Act 2000 (c. 27) and section 149 of the Energy Act 2004 (c. 20).

(d) 2003 c. 21, as amended by SI 2011/1210.

“smart meter” means—

- (a) a gas meter which can send and receive information using an external electronic communications network; or
- (b) a gas meter and a device which is associated with or ancillary to that meter and which enables information to be sent to and received by the meter using an external electronic communications network.”.

Amendment to section 6A (exemptions from prohibition)

20. In section 6A(1)(a), for “or (c)”, substitute “, (c) or (d)”.

Insertion of section 7AB (licensing of a person providing a smart meter communication service)

21. After section 7A(b), insert—

“Licensing of a person providing a smart meter communication service

7AB.—(1) Subject to subsections (4) and (5), the Authority may grant a licence authorising a person to provide a smart meter communication service (“a smart meter communication licence”).

(2) Subject to subsections (3) and (5), the Secretary of State may grant a smart meter communication licence.

(3) The Secretary of State may not grant a smart meter communication licence after 1 November 2018.

(4) The first smart meter communication licence may only be granted by the Secretary of State.

(5) A person may not be granted a smart meter communication licence unless the same person is at the same time granted a licence under section 6(1)(f) of the Electricity Act 1989(c).”.

Amendment to section 7B (licences: general)

22.—(1) Section 7B(d) is amended as follows.

(2) After subsection (2A), insert—

“(2B) At any time when regulations made under section 41HC(e) are in force, subsections (1) to (2A) do not apply to an application for a smart meter communication licence.”.

(3) In subsection (4)(a), for “Authority”, insert “grantor”.

(4) In subsection (5)(b)(ii), after “7A”, insert “or 7AB”.

(5) After subsection (5), insert—

“(5A) Without prejudice to the generality of paragraph (a) of subsection (4), conditions which are described in subsection (5B) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where a person holds such a licence (the “licence holder”), and another person has applied or is considering whether to apply for a smart meter communication licence (“the applicant”).

(a) Section 6A was inserted by section 2 of the Gas (Exempt Supplies) Act 1993 (c. 1) and substituted by section 4 of the Gas Act 1995 (c. 45). Relevant amendments were made by section 86 of the Utilities Act 2000 (c. 27) and section 149 of the Energy Act 2004 (c. 20).

(b) Section 7A was inserted by section 6 of the Gas Act 1995 (c. 45).

(c) Section 6(1)(f) of the Electricity Act 1989 (c. 29) is inserted by article 6 of this Order.

(d) Section 7B was inserted by section 7 of the Gas Act 1995 (c. 45). Relevant amendments were made by sections 3, 74 and 108 of and Schedules 6 (Part 1 paragraphs 1 and 5) and 8 to the Utilities Act 2000 (c. 27).

(e) Section 41HC of the Gas Act 1986 (c. 44) was inserted by section 91 of and Schedule 4 to the Energy Act 2008 (c. 32).

(5B) The conditions in this subsection are conditions which require the licence holder to comply with a direction given by the Secretary of State or the Authority requiring the licence holder to provide to the applicant—

- (a) information in relation to the activities authorised by the licence; or
- (b) such other assistance as may be reasonably required by the applicant, including access to any facilities or equipment being used in connection with the activities authorised by the licence, in order that the applicant can—
 - (i) determine whether to apply for a licence; or
 - (ii) take part in a competition for a licence.

(5C) Subject to subsection (5E) and without prejudice to the generality of paragraph (a) of subsection (4), conditions which are described in subsection (5D) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where such a licence held by a person (the “first licensee”) will cease to have effect, and another such licence is to be granted or has been granted to a different person (the “second licensee”).

(5D) The conditions in this subsection are conditions which require compliance with a direction given by the Secretary of State or the Authority requiring—

- (a) the transfer of property, rights or liabilities from the first licensee to the second licensee;
- (b) the creation of rights in relation to property, rights or liabilities in favour of the second licensee;
- (c) the creation of other rights and liabilities as between the first and second licensee;
- (d) the first or second licensee to enter into a written agreement with each other, or the first licensee to execute an instrument of another kind in favour of the second licensee;
- (e) the first or second licensee to pay compensation to the other, or to any third party who is affected by any of the matters referred to in paragraphs (a) to (d).

(5E) Conditions included in a licence by virtue of subsection (5C) must provide that the licensee does not have a duty to comply with a direction of the kind referred to in subsection (5D) unless, in relation to that direction, the following conditions have been satisfied prior to it being given—

- (a) the Secretary of State or the Authority (as appropriate) has given written notice to the first licensee, the second licensee and any other person who would potentially be affected by the direction, including a copy of the proposed direction and inviting them to submit written representations, giving a minimum period of 21 days in which those representations can be made; and
- (b) after the end of the period set out in the notice under paragraph (a), the Secretary of State or the Authority (as appropriate) has considered those representations and determined that—
 - (i) it is appropriate in all the circumstances that the proposed direction is given; and
 - (ii) the arrangements of a type referred to in paragraphs (a) to (d) of subsection (5D) in the direction are necessary or expedient for the operational purposes of the second licensee, or are agreed by the first licensee and the second licensee to be necessary or expedient for those purposes.

(5F) For the purposes of subsection (5E), the operational purposes of the second licensee are the purposes of performing any functions which the second licensee has, or will have—

- (a) under or by virtue of the smart meter communication licence which has been, or is to be, granted; or
- (b) under or by virtue of any enactment, in the second licensee’s capacity as holder of that licence.”.

Amendment to section 8AA (transfer of licences)

23.—(1) Section 8AA(a) is amended as follows.

(2) After subsection (10), insert—

“(10A) Subject to subsection (10C), the Authority shall, following consideration of any representations or objections under subsection (9), give the Secretary of State not less than 28 days’ notice of any proposal to give consent to the transfer of the whole or any part of a smart meter communication licence.

(10B) If, before the expiry of the time specified in a notice under subsection (10A), the Secretary of State directs the Authority not to give consent, the Authority shall comply with that direction.

(10C) Where the Secretary of State does not give a direction under subsection (10B), the Authority may give consent to the transfer of the licence after—

- (a) the expiry of the time specified in the notice under subsection (10A); or
- (b) if earlier than the time in paragraph (a), the time at which the Secretary of State informs the Authority that no direction will be given under subsection (10B) in relation to the notice.

(10D) Subsections (10A) to (10C) do not apply after 1 November 2018.”.

(3) After paragraph (11), insert—

“(11A) A smart meter communication licence may not be transferred to a person unless a licence granted under section 6(1)(f) of the Electricity Act 1989 is also transferred to the same person at the same time.”.

Amendment to section 23B (appeal to the Competition Commission)

24. In section 23B(2)(b)(b) for “or 7A(1) or (2)”, substitute “, 7A(1) or (2) or 7AB”.

Amendment to section 36 (keeping of register)

25. In section 36(1) and (2)(d)(c), for “or 7A”, substitute “, 7A or 7AB”.

Amendment to section 41C (power to alter activities requiring licence)

26. In section 41C(4)(d)—

- (a) omit the word “or” after paragraph (b); and
- (b) after paragraph (c), insert—
 - “; or
- (d) the provision of a smart meter communication service.”.

Amendment to section 48 (interpretation of Part 1 and savings)

27. In section 48(1)(e)—

- (a) in the definition of “licence”, for “or 7A”, substitute “, 7A or 7AB”; and

-
- (a) Section 8AA was inserted by section 10 of the Gas Act 1995 (c. 45) and substituted by section 85 of the Utilities Act 2000 (c. 27).
 - (b) Section 23B was inserted by SI 2011/2704.
 - (c) Subsections (1) and (2) of section 36 were substituted by section 3 of the Gas (Exempt Supplies) Act 1993 (c. 1) and amended by section 10 of the Gas Act 1995 (c. 45), sections 3, 95 and 108 of and Schedule 8 to the Utilities Act 2000 (c. 27) and section 149 of the Energy Act 2004 (c. 20).
 - (d) Section 41C was inserted by section 88 of the Utilities Act 2000 (c. 27) and amended by section 149 of the Energy Act 2004 (c. 20).
 - (e) Relevant amendments to section 48 were made by section 108 of and paragraphs 1 and 19 of Part 1 of Schedule 6 to the Utilities Act 2000 (c. 27) and section 149 of the Energy Act 2004 (c. 20).

(b) insert in the relevant position—

““providing a smart meter communication service” has the meaning given in section 5(11) above, and cognate expressions shall be construed accordingly;”;

““smart meter communication licence” has the meaning given to that term in section 7AB(1);”.

Amendment to Schedule 4B (provisions imposing obligations enforceable as relevant requirements)

28.—(1) Schedule 4B(a) is amended as follows.

(2) In paragraph 1, after “all licence holders”, insert “(except the holder of a smart meter communication licence)”.

(3) After paragraph 9, insert—

“Smart meter communication licence holders

9A. The following are relevant provisions in relation to the holder of a smart meter communication licence—

(a) section 33F(b); and

(b) section 25(5) of the Consumers, Estate Agents and Redress Act 2007(c) (directions to comply with requirements under section 24 of that Act).”

PART 4

Amendments to other primary legislation

Amendment to the Insolvency Act 1986

29. In paragraph 10(1)(b) of Schedule 2A of the Insolvency Act 1986(d) (interpretation of regulated business for the purposes of section 72D of that Act), for “or 7A”, substitute “, 7A or 7B”.

Amendments to the Utilities Act 2000

30.—(1) The Utilities Act 2000(e) is amended as follows.

(2) In section 5A(2)(b) (duty of authority to carry out impact assessment), after “supply of electricity”, insert “or in the provision of smart meter communication services (in respect of electricity meters or gas meters)”.

(3) In section 106(1) (interpretation), in the definition of “gas licence”, for “or 7A”, insert “, 7A or 7AB”.

Amendments to the Enterprise Act 2002

31. In section 168 of the Enterprise Act 2002(f) (regulated markets), in subsections (3)(c), (4)(c) and (6), for “or 7A”, substitute “, 7A or 7AB”.

(a) Schedule 4B was inserted by SI 2011/2704.

(b) Section 33F of the Gas Act 1986 (c. 44) was inserted by section 97 of the Utilities Act 2000 (c. 27) and was amended by SI 2009/1941.

(c) 2007 c. 17.

(d) 1986 c. 45. Schedule 2A was inserted by section 250 of the Enterprise Act 2002 (c. 40).

(e) 2000 c. 27. Section 5A was inserted by section 6 of the Sustainable Energy Act 2003 (c. 30).

(f) 2002 c. 40. There are amendments to section 168 which are not relevant for the purposes of this Order.

Amendment to the Consumers, Estate Agents and Redress Act 2007

32. In section 25 of the Consumers, Estate Agents and Redress Act 2007(a) (enforcement by a regulator of notices under section 24 of that Act), in the table at the end of subsection (3), for “or 7A”, substitute “, 7A or 7AB”.

Amendment to the Energy Act 2008

33.—(1) Section 88 of the Energy Act 2008(b) (power to amend licence conditions etc: smart meters) is amended as follows.

(2) In subsection (1)—

(a) after paragraph (d), insert—

“(da) a condition of a particular licence under section 6(1)(f) of the Electricity Act 1989, or under section 7AB of the Gas Act 1986 (smart meter communication licences);”;

(b) in paragraph (e), for “or 7A”, substitute “, 7A or 7AB”.

(3) In subsection (6)—

(a) in paragraph (b), for “or 7A”, substitute “, 7A or 7AB”;

(b) in paragraph (c), for “or (d)”, substitute “, (d) or (f)”.

PART 5

Amendments to secondary legislation

Amendment to the Public Interest Disclosure (Prescribed Persons) Order 1999

34. In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 1999(c), in the second column in the entries relating to the Gas and Electricity Markets Authority—

(a) after “(as defined in section 4(3E) of the Electricity Act 1989)”, insert “or providing a smart meter communication service (as defined in section 4(3G) of that Act(d))”; and

(b) after “(as defined in section 5(8) of the Gas Act 1986)”, insert “or providing a smart meter communication service (as defined in section 5(11) of that Act(e))”.

Amendment to the Electricity Safety, Quality and Continuity Regulations 2002

35.—(1) The Electricity Safety, Quality and Continuity Regulations 2002(f) are amended as follows.

(2) In regulation 1(5) (interpretation), insert into the relevant place—

““smart meter communication provider” means a person who holds a licence under section 6(1)(f) of the Electricity Act 1989;”.

(3) In regulation 4 (duty of co-operation) for “and meter operators”, substitute “, meter operators and smart meter communication providers”.

(a) 2007 c. 17.

(b) 2008 c. 32. Section 88 was amended by section 73 of the Energy Act 2011 (c. 16).

(c) SI 1999/1549, Schedule substituted by SI 2003/1993 and a relevant amendment was made by SI 2005/2464.

(d) Section 4(3G) is inserted by article 4(3) of this Order.

(e) Section 5(11) is inserted by article 19(3) of this Order.

(f) SI 2002/2665, to which there are amendments which are not relevant for the purposes of this Order.

PART 6

Amendments to standard conditions of electricity licences

Amendments to the standard conditions of electricity distribution licences

36.—(1) The standard conditions incorporated by virtue of section 8A(a) of the Electricity Act 1989 in licences under section 6(1)(c) of that Act are amended in accordance with subsection (2).

(2) In condition 1.3 (definitions for standard conditions) in the definition of “Authorised Electricity Operator”, for “or participate in the operation of an Interconnector”, substitute “, participate in the operation of an Interconnector or provide a smart meter communication service”.

Amendments to the standard conditions of electricity supply licences

37.—(1) The standard conditions incorporated by virtue of section 8A of the Electricity Act 1989 in licences under section 6(1)(d) of that Act are amended in accordance with subsection (2).

(2) In condition 1.3 (definitions for standard conditions) in the definition of “Authorised Electricity Operator”, for “or participate in the operation of an Interconnector”, substitute “, participate in the operation of an Interconnector or provide a smart meter communication service”.

PART 7

Transitional exemptions

Smart meter communications service exemptions

38.—(1) This article applies for a period of 36 months beginning on the date on which this Order comes into force.

(2) Paragraph (3) applies to a person who is not the holder of a licence under section 6(1)(f) of the Electricity Act 1989(b).

(3) Exemption is granted from section 4(1)(e) of the Electricity Act 1989(c) to a person to whom this paragraph applies.

(4) Paragraph (5) applies to a person who is not the holder of a licence under section 7AB(1)(d) of the Gas Act 1986.

(5) Exemption is granted from section 5(1)(d)(e) of the Gas Act 1986 to a person to whom this paragraph applies.

Date

Name
Parliamentary Under Secretary of State
Department of Energy and Climate Change

-
- (a) Section 8A of the Electricity Act 1989 inserted by section 33 of the Utilities Act 2000 (c. 27), with a relevant amendment made by section 137 of the Energy Act 2004 (c. 20).
(b) Section 6(1)(f) is inserted by article 6(2)(b) of this Order.
(c) Section 4(1)(e) is inserted by article 4(2)(b) of this Order.
(d) Section 7AB(1) is inserted by article 21 of this Order.
(e) Section 5(1)(d) is inserted by article 19(2)(b) of this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Electricity Act 1989 (“the 1989 Act”) and the Gas Act 1986 (“the 1986 Act”) to provide for new licensable activities relating to the provision of communication services with respect to smart meters. The Order also makes consequential amendments to those Acts and to other legislation, as well as making transitional provision.

Articles 2 to 16 provide for amendments to the 1989 Act.

Article 3 amends section 3A to provide that when the Secretary of State and the Gas and Electricity Authority (“the Authority”) carry out their respective functions under the Act, they do so in the manner best calculated to promote efficiency and economy on the part of persons authorised by to provide a service of communicating with smart meters for each licensed supplier of electricity to domestic premises and that they consider the environmental and public safety implications that relate to the provision of such a service.

Article 4 amends section 4 to make it a criminal offence to, without a licence, arrange to provide a service of communicating with smart meters on behalf of each licensed supplier of electricity to domestic premises (excluding suppliers who have a licence but do not actually supply electricity).

Article 5 amends section 5 so that the Secretary of State is able to grant exemptions from the requirement for a licence inserted into the Act by article 4.

Article 6 amends section 6 to enable the Authority or the Secretary of State to issue licences authorising persons to undertake the new licensable activity inserted into the Act by article 4. Provision is made to ensure that such a licence may only be granted to a person who is also at the same time granted an equivalent licence under section 7AB of the 1986 Act (inserted by article 21 of this Order).

Article 7 amends section 6A so that the provisions in that section relating to the application process for licences under the 1989 Act apply to the new class of licence, but only where a competitive licence award process for the licences of the new class is not provided for in regulations made under the powers in section 56FC of the 1989 Act.

Article 8 amends section 7 to enable particular conditions to be included in the new class of licence which provide for arrangements that may be necessary to facilitate a transition between successive holders of such licences.

Article 9 amends section 7A to provide for a right for the Secretary of State to direct the Authority not to consent to the transfer of a licence of the new class to a particular person. This right applies until 1 November 2018.

Article 10 amends section 47 to provide that the Authority has duties to keep under review and to collect information on the undertaking of the new licensable activity, in addition to the existing equivalent duties in respect of the existing licensable activities.

Article 11 amends section 56A to provide that activities connected with the new licensable activity can become new licensable activities in accordance with the existing processes in that section.

Article 12 amends section 58 to extend an existing direction power which restricts the use by transmission licence holders of information they have gained from other licence holders, so that information gained from holders of the new class of licence is captured.

Article 13 amends section 64 to add new defined terms to the 1989 Act.

Article 14 amends section 96 to provide that directions that can be made under that section in respect of the security of buildings used in the energy system, include those buildings used in connection with undertaking the new licensable activity.

Article 15 amends section 98 to extend the provisions in that section allowing the Secretary of State to serve notices on licence holders requiring them to provide statistical information to

holders of the new class of licence so that information can be sought in respect of the new licensable activity.

Article 16 amends Schedule 6A, which sets out the provisions in legislation which are treated as relevant requirements which renders them capable of enforcement under the 1989 Act by the Authority. The amendment adds relevant requirements with respect to the new class of licence.

Articles 17 to 28 provide for amendments to the 1986 Act.

Article 18 amends section 4AA. The amendments have an equivalent effect to the amendments made to the 1989 Act by article 3.

Article 19 amends section 5. The amendments have an equivalent effect to the amendments made to the 1989 Act by article 4.

Article 20 amends section 6A. The amendments have an equivalent effect to the amendments made to the 1989 Act by article 5.

Article 21 inserts a new section 7AB, which authorises the Authority or the Secretary of State to issue licences enabling persons to undertake the new licensable activity inserted into the Act by article 19.

Article 22 amends section 7B. The amendments have an equivalent effect to the amendments made to the 1989 Act by articles 7 and 8.

Article 23 amends section 8AA. The amendments have an equivalent effect to the amendments made to the 1989 Act by article 9.

Article 24 amends section 23B to provide that a holder of the new class of licence in the new section 7AB inserted by article 21 is able to bring appeals against licence modifications in the same way as the holders of other licences under the Act.

Article 25 amends section 36, to provide that the Authority's register includes details of licences and exemptions granted in respect of the new activity inserted by article 19.

Article 26 amends section 41C. The amendments have an equivalent effect to the amendments made to the 1989 Act by article 11.

Article 27 amends section 48. The amendments have an equivalent effect to the amendments made to the 1989 Act by article 13.

Article 28 amends Schedule 4B. The amendments have an equivalent effect to the amendments made to the 1989 Act by article 16.

Articles 29 to 32 make consequential amendments to the Insolvency Act 1986, the Utilities Act 2000 and the Enterprise Act 2002 to ensure that the new class of licence in the Gas Act 1986 is captured by existing provisions in those Acts which relate to existing classes of licence.

Article 33 makes a consequential amendment to section 88 of the Energy Act 2008 to provide that the power in that Act, which is available until 2018, to amend licence conditions for the purposes of regulating smart meters includes a power to make necessary amendments to licences of the new classes inserted by this Order.

Article 34 makes a consequential amendment to the Public Interest Disclosure (Prescribed Persons) Order 1999 to provide that the provisions in that Order, which protect employees where they make certain disclosures to the Authority concerning regulated energy activities, extend to the new classes of activity inserted by this Order.

Article 35 makes a consequential amendment to the Electricity Safety, Quality and Continuity Regulations 2002 so that the holders of the new class of licence created by the amendment to the 1989 Act in Article 6 are required to share information and co-operate to ensure that those Regulations can be complied with.

Articles 36 and 37 make consequential amendments to the definition of authorised electricity operator in the standard conditions of electricity distribution and supply licences, to provide that that definition includes reference to the holder of a licence of the new class, or to a person who is exempt from the obligation to hold such a licence.

Article 38 makes transitional provision, providing that persons who undertake the activities inserted into the 1989 Act and the 1986 Acts by Articles 4 and 19 respectively do not require a licence for a period of 36 months after the Order comes into force.

An explanatory memorandum is available alongside this Order on www.legislation.gov.uk. A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

© Crown copyright 2012

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£5.75

E3897 07/2012 123897T 19585

ISBN 978-0-11-152654-5



9 780111 526545