

**EXPLANATORY MEMORANDUM TO**  
**THE ELECTRICITY AND GAS (COMPETITIVE TENDERS FOR SMART METER**  
**COMMUNICATION LICENCES) REGULATIONS 2012**

**2012 No. 2414**

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

**2. Purpose of the instrument**

2.1 The Regulations set out the competitive application process to award licences for the provision of a service of communicating with smart energy meters on behalf of all licensed energy suppliers. The process under the Regulations will allow for a single person to be granted licences for this activity in respect of both electricity and gas smart meters after competition and to become a monopoly provider of communication services in Great Britain. The Regulations detail the required procedure for each of up to four stages of the tender exercise.

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

3.1 None

**4. Legislative Context**

4.1 The Regulations are the first use of powers in section 56FC of the Electricity Act 1989 and section 41HC of the Gas Act 1986. The Regulations provide for a competitive award process for the grant of licences concerning the new licensable activities that were inserted into the Electricity Act 1989 and the Gas Act 1986 by the Electricity and Gas (Smart Meters Licensable Activity) Order 2012. The Regulations are among a number of measures (including energy licence modifications) that DECC is taking to provide the regulatory framework for the rollout of smart meters by the end of 2019.

**5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

*What is being done and why*

7.1 The Government's vision is for every home in Great Britain to have smart energy meters, giving people far better information about, and control over, their energy consumption than today. Businesses and public sector users should also have smart or advanced energy metering suited to their needs. The rollout of smart meters will play an important role in Great Britain's transition to a low-carbon economy, and help us meet some of the long-term challenges we face in ensuring an affordable, secure and sustainable energy supply.

7.2 This is a major programme and a Coalition Agreement commitment, which aims to support the rollout of some 53 million smart electricity and gas meters to domestic properties and smart or advanced meters to small and medium non-domestic sites in Great Britain by 2019. This will impact approximately 30 million premises and deliver a net benefit estimated at approximately £7 billion.

7.3 The communications, and the data transfer and management, required to support smart metering are to be organised by a new central communications body. This will be referred to as the Data and Communications Company and operate as a regulated monopoly. It will provide a service of remotely communicating with smart meters on behalf of parties including electricity and gas suppliers, electricity distribution companies, gas transporters and other third parties authorised by the consumer, such as energy services companies. The DCC will not operate these services itself, but will contract with data and communications companies for their provision, following competitive tenders. This model delivers the necessary security and interoperability required for the smart meter system as well as facilitating market access for new entrants.

7.4 Regulatory control will be exerted over the DCC through the licences that it will be required to hold under both the Electricity Act 1989 and the Gas Act 1986, in order to be able to undertake its activities. The Government has also developed draft conditions for the DCC's licences, and draft content of a new industry code (the 'Smart Energy Code') setting out the more detailed working arrangements between the DCC and its users (these are available on the DECC website<sup>1</sup>). These and other regulatory measures will be introduced in due course to give effect to the Government's policies across the whole smart meter programme, including placing obligations on licensed energy suppliers to use the communication services offered by the DCC.

7.5 The Regulations provide for a competition to determine a person to whom both the DCC licences are to be granted, by way of a single competitive tender conducted over up to four distinct stages by either the Secretary of State or Ofgem (the Regulations set out the process for determining who conducts a particular exercise; the first will be conducted by the Secretary of State). The first licences are expected to be awarded in the summer of 2013, and will be retendered at regular intervals, normally 12 years.

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<sup>1</sup> [http://www.decc.gov.uk/en/content/cms/consultations/cons\\_smip/cons\\_smip.aspx](http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx)

7.6 The disciplines of a competitive process will be employed to ensure the openness and transparency of the tender exercise and to ensure value for money.

7.7 The Government has indicated that the DCC should be independent from its service providers. Separating the DCC from its service providers and letting service provider contracts via a competitive tender should also help ensure value for money.

## **8. Consultation outcome**

8.1 The Government consulted on the detailed policy design of the regulatory and commercial framework for the DCC in September 2011. This consultation included a section seeking views on the design of the competitive process to award the DCC licences. The majority of respondents supported the Government's proposed approach. In general responses were received from the energy industry, consumer groups and the regulator. There were few responses from the members of the public.

8.2 In April 2012 a further consultation was published which focused on the process for awarding the DCC licences. This included the Government's response to the relevant section of the September 2011 consultation and included draft regulations. Sixteen responses were received to this section of the consultation, all of which came from industry stakeholders. This included energy suppliers, network operators, other industry parties and consumer groups. No responses were received from individual members of the public.

8.3 Responses remained broadly supportive of the Government's approach.

## **9. Guidance**

9.1 The Government does not intend to publish any guidance related to the Regulations.

## **10. Impact**

10.1 The impact on the public sector is nil.

10.2 An Impact Assessment is attached to this memorandum and will be published alongside it on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The regulations apply to small business. The regulations are designed to deliver a fair and appropriate tender exercise for the determination of the person to whom the licences will be granted. It is important that the regulations be followed by all potential tender participants, regardless of the size of the company applying for the DCC licences.

The Government has therefore not exempted small businesses from the need to comply with the Regulations.

## **12. Monitoring & review**

12.1 DECC will ensure that the smart metering implementation programme is subject to a comprehensive and integrated review and evaluation process, both during the initial stage and towards the end of the main rollout. Annex 4 of the Impact Assessment sets out further detail of the proposed approach, within which this Order should be considered.

## **13. Contact**

Jeremy Yapp at the Department of Energy and Climate Change can answer any queries regarding the instrument. Tel: 0300 068 6657 or email: [jeremy.yapp@decc.gsi.gov.uk](mailto:jeremy.yapp@decc.gsi.gov.uk).