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## 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](http://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](http://www.legislation.gov.uk).