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DRAFT STATUTORY INSTRUMENTS

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**2012 No.**

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

PART 3

Amendments to the Gas Act 1986

**Amendments to the Gas Act 1986**

17. The Gas Act 1986<sup>(1)</sup> 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<sup>(2)</sup> 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<sup>(3)</sup> (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.

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(1) 1986 c. 44.

(2) 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).

(3) 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).

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

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

“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)(5), 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(6), 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(7).”.

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(4) 2003 c. 21, as amended by SI 2011/1210.

(5) 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).

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

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

### **Amendment to section 7B (licences: general)**

**22.**—(1) Section 7B(8) is amended as follows.

(2) After subsection (2A), insert—

“(2B) At any time when regulations made under section 41HC(9) 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”).

(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

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(8) 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).

(9) 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).

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(10) 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—

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(10) 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).

“(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)(11) 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)(12), for “or 7A”, substitute “, 7A or 7AB”.

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

26. In section 41C(4)(13)—

(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)(14)—

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

(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(15) 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—

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(11) Section 23B was inserted by [SI 2011/2704](#).

(12) 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).

(13) 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).

(14) 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).

(15) Schedule 4B was inserted by [SI 2011/2704](#).

- (a) section 33F<sup>(16)</sup>; and
- (b) section 25(5) of the Consumers, Estate Agents and Redress Act 2007<sup>(17)</sup> (directions to comply with requirements under section 24 of that Act).”

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<sup>(16)</sup> 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.

<sup>(17)</sup> 2007 c. 17.