SCHEDULES

SCHEDULE 4

Section 91

SMART METERS: LICENSABLE ACTIVITIES

PART 1

GAS

1 After section 41H of the Gas Act 1986 (c. 44), insert—

"**41HA New licensable activities: smart meters**

(1) The Secretary of State may by order amend this Part so as to provide—
  (a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or
  (b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.

(2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 5(1).

(3) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.

(4) In this section—
  (a) "relevant meter" means a meter of a kind prescribed by the order;
  (b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.

(5) An order under this section may make consequential, transitional, incidental or supplementary provision, including—
  (a) amendments (or repeals) in any provision of this Act or any other enactment;
  (b) in the case of an order under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;
  (c) provision modifying any standard conditions of licences.

(6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision—
  (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;

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(b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;

(c) specifying that a licence, and any modification of a licence, must be in writing;

(d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;

(e) conferring functions on the Secretary of State or the Authority.

(7) An order under this section may provide that it is to remain in force only for the period specified in the order.

41HB Section 41HA: supplemental

(1) Before making an order under section 41HA, the Secretary of State must consult—

(a) the Authority, and

(b) such other persons as the Secretary of State thinks appropriate.

(2) The power to make such an order may not be exercised after the end of the period of 5 years beginning with the day on which section 41HA comes into force.

(3) An order under section 41HA may not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.

(4) Subsections (1) to (3) of section 47 apply in relation to orders under section 41HA as they apply in relation to regulations under this Part.

41HC Competitive tenders for licences for new licensable activities

(1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.

(2) In this section "new licensable activities" means one or more activities which are the subject of an order under section 41HA(1)(a).

(3) The regulations may—

(a) provide for the determination to be made by the Secretary of State or the Authority;

(b) provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;

(c) provide for the inclusion in such a proposal of an invitation to apply for such a licence;

(d) impose conditions in relation to the making of an application for a licence;

(e) impose restrictions in relation to persons who may apply for a licence;

(f) impose requirements as to the period within which applications must be made;

(g) make provision for regulating the manner in which applications are to be considered or determined;

(h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person's suitability for being granted both the licence and an electricity licence;

(i) confer on the Authority or the Secretary of State functions in connection with tender exercises.

(4) The regulations may also include provision—

(a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;

(b) about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.

(5) In this section—

"electricity licence" means a licence for an activity to which an order under section 56FA(1)(a) of the Electricity Act 1989 applies;

"prescribed" means prescribed in or determined under regulations under this section;

"tender costs", in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;

"tender exercise" means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.

(6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund."

PART 2

ELECTRICITY

2 After section 56F of the Electricity Act 1989 (c. 29) insert—

"**56FA New licensable activities: smart meters**

(1) The Secretary of State may by order amend this Part so as to provide—

(a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or

(b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.

(2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 4(1).

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(3) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.

(4) In this section—
  (a) "relevant meter" means a meter of a kind prescribed by the order;
  (b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.

(5) An order under this section may make consequential, transitional, incidental or supplementary provision, including—
  (a) amendments (or repeals) in any provision of this Act or any other enactment;
  (b) in the case of an order under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;
  (c) provision modifying any standard conditions of licences.

(6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision—
  (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;
  (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;
  (c) specifying that a licence, and any modification of a licence, must be in writing;
  (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  (e) conferring functions on the Secretary of State or the Authority.

(7) An order under this section may provide that it is to remain in force only for the period specified in the order.

56FB Section 56FA: supplemental

(1) Before making an order under section 56FA, the Secretary of State must consult—
  (a) the Authority, and
  (b) such other persons as the Secretary of State thinks appropriate.

(2) The power to make such an order may not be exercised after the end of the period of 5 years beginning with the day on which section 56FA comes into force.

(3) An order under section 56FA may not be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, each House of Parliament.

(4) Section 60 applies in relation to an order under this section as it applies in relation to regulations under this Part.

56FC Competitive tenders for licences for new licensable activities

(1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.

(2) In this section "new licensable activities" means one or more activities which are the subject of an order under section 56FA(1)(a).

(3) The regulations may—

(a) provide for the determination to be made by the Secretary of State or the Authority;

(b) provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;

(c) provide for the inclusion in such a proposal of an invitation to apply for such a licence;

(d) impose conditions in relation to the making of an application for a licence;

(e) impose restrictions in relation to persons who may apply for a licence;

(f) impose requirements as to the period within which applications must be made;

(g) make provision for regulating the manner in which applications are to be considered or determined;

(h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person's suitability for being granted both the licence and a gas licence;

(i) confer on the Authority or the Secretary of State functions in connection with tender exercises.

(4) The regulations may also include provision—

(a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;

(b) about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.

(5) In this section—

"gas licence" means a licence for an activity to which an order under section 41HA of the Gas Act 1986 applies;

"prescribed" means prescribed in or determined under regulations under this section;

"tender costs", in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;

"tender exercise" means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.

(6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund."

Changes to legislation:
There are currently no known outstanding effects for the Energy Act 2008, SCHEDULE 4.