Smart Meters Act 2018

2018 CHAPTER 14

Special administration regime

2 Smart meter communication licensee administration orders

(1) A smart meter communication licensee administration order (referred to in the smcl administration provisions as an "smcl administration order") is an order which—

(a) is made by the court in relation to a smart meter communication licensee; and

(b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.

(2) The person appointed in relation to a company for the purposes of an smcl administration order is the smart meter communication administrator of the company.

(3) The smart meter communication administrator of a company must manage its affairs, business and property, and exercise and perform all the powers and duties of a smart meter communication administrator, so as to achieve the objective set out in section 3.

(4) In relation to an smcl administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.

(5) In the smcl administration provisions—

"smart meter communication licensee" means the company which is the holder of the relevant licences; and

"relevant licences" means—

(a) the licence granted under section 7AB of the Gas Act 1986 to provide a smart meter communication service, and

(b) the licence granted under section 6 of the Electricity Act 1989 to provide a smart meter communication service.

3 Objective of a smart meter communication licensee administration

(1) The objective of a smart meter communication licensee administration is to secure—

(a) that the licensee's functions under the relevant licences are performed efficiently and economically, and

(b) that it becomes unnecessary, by one or both of the following means, for the smcl administration order to remain in force for the purpose mentioned in paragraph (a).

(2) Those means are—

(a) the rescue as a going concern of the company subject to the smcl administration order; and

(b) transfers falling within subsection (3).

(3) A transfer falls within this subsection if it is a transfer as a going concern—

(a) to another company, or

(b) as respects different parts of the undertaking of the company subject to the smcl administration order, to two or more different companies,

of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the smart meter communication licensee administration.

(4) The means by which transfers falling within subsection (3) may be effected include, in particular—

(a) a transfer of the undertaking of the company subject to the smcl administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and

(b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).

(5) The objective of a smart meter communication licensee administration may be achieved by a transfer falling within subsection (3) to the extent only that—

(a) the rescue as a going concern of the company subject to the smcl administration order is not reasonably practicable or is not reasonably practicable without such a transfer;

(b) the rescue of that company as a going concern will not achieve that objective or will not do so without such a transfer;

(c) such a transfer would produce a result for the company's creditors as a whole that is better than the result that would be produced without it; or

(d) such a transfer would, without prejudicing the interests of those creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without it.

(6) The Secretary of State may by regulations made by statutory instrument—

(a) specify activities carried out by a smart meter communication licensee under the relevant licences to which a smart meter communication administrator must give priority in—

(i) managing the affairs, business and property of the licensee, and

(ii) otherwise exercising and performing the powers and duties of a smart meter communication administrator; and

(b) make provision about how the smart meter communication administrator is to give priority to specified activities.

(7) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

4 Application of certain provisions of the Energy Act 2004

(1) Sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees) apply in relation to an smcl administration order as they apply in relation to an energy administration order within the meaning given by section 154(1) of that Act, but with the modifications set out in subsections (2) to (4).

(2) In the application of those provisions generally—

(a) for "energy administration", in each place where it occurs, substitute " smart meter communication licensee administration ";

(b) for "energy administrator", in each place where it occurs, substitute " smart meter communication administrator ";

(c) for "a protected energy company", in each place where it occurs, substitute " a smart meter communication licensee ".

(3) In the application of Schedule 20—

(a) in paragraph 32(1)(d), for the words from " "energy administration application"" to "Energy Act 2004" substitute " "smart meter communication licensee administration application" means an application to the court for a smart meter communication licensee administration order under Chapter 3 of Part 3 of the Energy Act 2004, as applied by section 4 of the Smart Meters Act 2018 ";

(b) in paragraph 32(1)(e), for "section 155 of the Energy Act 2004" substitute " section 3 of the Smart Meters Act 2018 ";

(c) in paragraph 36, for "section 154(4) of this Act" substitute " section 2(4) of the Smart Meters Act 2018 ";

(d) in paragraph 43, after "the Energy Act 2004" insert " and section 4 of the Smart Meters Act 2018 ";

(e) in paragraph 44(5), after "the Energy Act 2004" insert " and section 4 of the Smart Meters Act 2018 ";

(f) in paragraph 45, after "section 157(1)(e) of this Act" insert " as applied by section 4 of the Smart Meters Act 2018 ";

(g) omit paragraph 46 (but see section 9 of this Act);

(h) in paragraph 47, after "Part 1 of this Schedule" insert " and section 4 of the Smart Meters Act 2018 ".

(4) In the application of Schedule 21—

(a) for "old energy company", in each place where it occurs, substitute " old licensee ";

(b) for "new energy company", in each place where it occurs, substitute " new licensee ";

(c) in paragraph 1(b), for "section 155(3)" substitute " section 3(3) of the Smart Meters Act 2018 ";

(d) in paragraph 12, for "section 155" substitute " section 3 of the Smart Meters Act 2018 ".

(5) Sections 171 and 196 of the Energy Act 2004 (interpretation) apply for the purposes of the application by subsection (1) of the provisions mentioned in that subsection, but with the modifications set out in subsection (6).

(6) In the application of section 171(1)—

Changes to legislation: *There are currently no known outstanding effects for the Smart Meters Act 2018, Cross Heading: Special administration regime. (See end of Document for details)*

(a) insert, at the appropriate places, the following definitions—

""objective of the smart meter communication licensee administration" is to be construed in accordance with section 3 of the Smart Meters Act 2018;";

""smart meter communication licensee" has the meaning given by section 2(5) of the Smart Meters Act 2018;";

""smart meter communication licensee administration order" has the meaning given by section 2(1) of the Smart Meters Act 2018;";

""smart meter communication licensee administration rules" means rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act, for the purpose of giving effect to this Chapter as applied by section 4 of the Smart Meters Act 2018;";

(b) for the definition of "energy administrator" substitute—

""smart meter communication administrator" has the meaning given in section 10 of the Smart Meters Act 2018";

(c) for the definition of "relevant licence" substitute—

""relevant licence" means either of the relevant licences within the meaning given by section 2(5) of the Smart Meters Act 2018."

5 Conduct of administration, transfer schemes, etc

In section 159(3) of the Energy Act 2004 (conduct of administration, transfer schemes, etc under Chapter 3 of Part 3 of that Act), after "2011" insert " or section 4 of the Smart Meters Act 2018 ".

6 Modifications of particular or standard conditions

(1) Where the Secretary of State considers it appropriate to do so in connection with the provision made by the smcl administration provisions, the Secretary of State may make—

(a) modifications of the conditions of a gas or electricity licence held by a particular person;

(b) modifications of the standard conditions of such licences of any type.

(2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.

(3) Before making a modification under this section, the Secretary of State must consult—

(a) the holder of any licence being modified; and

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

(4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.

(5) The Secretary of State must publish every modification made under this section.

(6) The publication must be in such manner as the Secretary of State considers appropriate.

(7) A modification under subsection (1)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as

a standard condition for the purposes of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989.

(8) Where the Secretary of State makes modifications under subsection (1)(b) of the standard conditions of licences of any type, the Gas and Electricity Markets Authority must—

(a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and

(b) publish the modifications in such manner as it considers appropriate.

(9) The Secretary of State's powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.

(10) In section 33(1) of the Utilities Act 2000 (standard conditions of generation, distribution and supply licences under Part 1 of the Electricity Act 1989)—

(a) in paragraph (f) omit the second "or";

[F1](b) . . . . . .

(11) In section 81(2) of the Utilities Act 2000 (standard conditions of transporter, supply and shipping licences under Part 1 of the Gas Act 1986)—

(a) for "2011 or" substitute " 2011, ";

(b) for "(power to amend licence conditions)" substitute " or under section 6 of the Smart Meters Act 2018 ".

(12) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with respect to holders of gas licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

(13) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with respect to holders of electricity licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

(14) In this section—

(a) references to a gas licence are to a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities relating to gas), and

(b) references to an electricity licence are to a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities relating to electricity).

Textual Amendments

F1 S. 6(10)(b) repealed (1.6.2022) by Nuclear Energy (Financing) Act 2022 (c. 15), s. 44(2)(d), **Sch. para. 4(a)**

7 Licence conditions to secure funding of smart meter communication licensee administration

(1) The modifications that may be made under section 6 include, in particular, modifications imposing conditions requiring the holder of the licence—

(a) so to modify the charges imposed by the licence holder for anything done by the licence holder in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and

(b) to pay the amounts so raised to such persons as may be so determined for the purpose of—

(i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of a smart meter communication licensee administration; or

(ii) enabling those persons to secure that those amounts are so applied.

(2) Those modifications may include modifications imposing on the licence holder an obligation to apply amounts paid to the licence holder in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.

(3) For the purposes of this section—

(a) there is a shortfall in the property available for meeting the expenses of a smart meter communication licensee administration if, in a case where a company is or has been subject to an smcl administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and

(b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.

(4) In this section "relevant debt" in relation to a case in which a company is or has been subject to an smcl administration order, means an obligation—

(a) to make payments in respect of the expenses or remuneration of any person as the smart meter communication administrator of that company;

(b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the smart meter communication administrator of that company;

(c) to repay the whole or a part of a grant made to that company under section 165 of the Energy Act 2004 as applied by section 4 of this Act;

(d) to repay a loan made to the company under that section as so applied, or to pay interest on such a loan;

(e) to make a payment under section 166(4) of that Act as so applied; or

(f) to make a payment under section 167(5) of that Act as so applied.

8 Modifications under the Enterprise Act 2002

(1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of the smcl administration provisions as the Secretary of State considers appropriate in connection with any other provision made under that section.

(2) Those sections are—

(a) sections 248 and 277 (amendments consequential on that Act); and

(b) section 254 (power to apply insolvency law to foreign companies).

(3) In section 170(1) of the Energy Act 2004 (modification of Chapter 3 of Part 3 of that Act under the Enterprise Act 2002) after "2011" insert " or section 4 of the Smart Meters Act 2018 ".

9 Power to make further modifications of insolvency legislation

(1) The Secretary of State may by regulations—

(a) provide for insolvency legislation to apply in relation to any provision made by or under the smcl administration provisions;

(b) make such modifications of insolvency legislation as the Secretary of State considers appropriate in relation to any provision made by or under the smcl administration provisions (including any insolvency legislation that is applied under paragraph (a)).

(2) In relation to regulations under subsection (1) "insolvency legislation" means—

(a) the Insolvency Act 1986,

(b) Chapter 3 of Part 3 of the Energy Act 2004, and

(c) any other provision that relates to insolvency, or makes provision by reference to anything that is or may be done under the Insolvency Act 1986, and is—

(i) contained in an Act passed before this Act or in the same Session, or

(ii) made under an Act before the regulations come into force.

(3) Provision made under subsection (1) may amend this Act.

(4) Regulations under this section are to be made by statutory instrument.

(5) Regulations under this section must not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.

10 Interpretation

(1) In this Act "smcl administration provisions" means sections 2 to 9 and this section.

(2) In the smcl administration provisions—

"business", "member", "property" and "security" have the same meanings as in the Insolvency Act 1986;

"company" means—

(a) a company registered under the Companies Act 2006, or

(b) an unregistered company;

"court", in relation to a company, means the court—

(a) having jurisdiction to wind up the company, or

(b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);

"modification" includes omission, addition or alteration, and cognate expressions are to be construed accordingly;

"non-GB company" means a company incorporated outside Great Britain;

"objective of the smart meter communication administration" is to be construed in accordance with section 3;

"relevant licences" has the meaning given by section 2(5);

"smart meter communication administrator" has the meaning given by section 2(2) and is to be construed in accordance with subsection (3) of this section;

"smart meter communication licensee administration order" (or "smcl administration order") has the meaning given by section 2(1);

"smart meter communication licensee" has the meaning given by section 2(5);

"subsidiary" and "wholly-owned subsidiary" have the meanings given by section 1159 of the Companies Act 2006;

"unregistered company" means a company that is not registered under the Companies Act 2006.

(3) In the smcl administration provisions references to the smart meter communication administrator of a company—

(a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 20 to the Energy Act 2004 and section 4 of this Act, to be the smart meter communication administrator of that company; and

(b) where two or more persons are appointed to be the smart meter communication administrator of that company, are to be construed in accordance with the provision made under section 158(5) of the Energy Act 2004, as applied by section 4 of this Act.

(4) In the smcl administration provisions a reference to the provision of a smart meter communication service has—

(a) the same meaning as in Part 1 of the Gas Act 1986 (see section 5(11) of that Act), in relation to holding of a licence under section 7AB of that Act by a company for which a smart meter communication administrator has been appointed;

(b) the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(3G) of that Act), in relation to the holding of a licence under section 6(1)(f) or (1A) of that Act by a company for which a smart meter communication administrator has been appointed.

Changes to legislation:
There are currently no known outstanding effects for the Smart Meters Act 2018, Cross Heading: Special administration regime.