
DRAFT STATUTORY INSTRUMENTS

2012 No.

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

PART 3

Amendments to the Gas Act 1986

Amendment to section 7B (licences: general)

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

(2) After subsection (2A), insert—

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

(1) 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).

(2) 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).

(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 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.”.