

# ENERGY ACT 2008

---

## EXPLANATORY NOTES

### **Part 5: Miscellaneous**

#### **Smart Meters**

Commentary on Sections

#### *Section 91 and Schedule 4: Licensing of activities relating to smart meters*

### **Part 2: Electricity**

Section 56FC: Competitive tendering for licences for new licensable activities

506. This section gives the Secretary of State power to make regulations providing for the award of licences for new licensable activities by the Secretary of State or the Authority following a competitive tender procedure.
507. *Subsection (3)* sets out a non-inclusive list of the type of provisions which the regulation may include. The regulations may provide for the licences to be awarded by either the Secretary of State or the Authority (*paragraph (a)*); and may prescribe the necessary procedures for the tender process including publication of an invitation to tender and the conditions and any restrictions governing the making of applications (*paragraphs (b) to (f)*).
508. The regulations may also make provision concerning how the applications for licences are to be considered and determined. In particular, the regulations may authorise or require the Secretary of State or the Authority to have regard to an applicant's suitability in relation to both gas and electricity activities when awarding a licence for new activities under the Gas Act (*paragraphs (g) and (h)*). The regulations may also confer functions on either the Secretary of State or the Authority in relation to the conduct of the tender (*paragraph (i)*).
509. *Subsection (4)* gives the Secretary of State power to make provision for the Secretary of State or the Authority to recover the costs of running the tender and to specify the consequences of any failure to make payment. This could, for example, give the Secretary of State power to require applicants to make payments to cover the costs of running the tender and ending their participation in the tender, and if necessary ending the tender exercise, in the event of any failure to comply. *Subsection (6)* states that any sums received by the Secretary of State or the Authority will be paid into the Consolidated Fund.
510. The regulations would be subject to the negative resolution procedure.