

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

477. **Part 1** of Schedule 4 inserts the following new sections into the Gas Act 1986:
- 41HA New licensable activities: smart meters
 - 41HB Section 41HA: supplemental
 - 41HC Competitive tendering for licences for new licensable activities
478. **Part 2** of Schedule 4 inserts the following new sections into the Electricity Act 1989:
- 56FA New licensable activities: smart meters
 - 56FB Section 41HA: supplemental
 - 56FC Competitive tendering for licences for new licensable activities

Part 1: Gas

Section 41HA: New licensable activities: smart meters

479. This section gives the Secretary of State an order-making power to both create new licensable activities under section 41C of the Gas Act 1986 in relation to smart metering and to order that such new licensable activities shall cease to be licensable.
480. *Subsection (2)* provides that once activities become licensable, it will be an offence under section 5(1) of the Gas Act to undertake them without a licence.
481. *Subsection (3)* sets out the scope of the licensing power and that it may only be used to make licensable some or all of the activities connected with the provision, installation or operation of smart meters or related infrastructure or services. This could include, for example, the communications infrastructure for smart meters. *Subsection (4)* provides for the definition of “smart meters” to be set out in the order.
482. *Subsection (5)* makes provision for the order to include any necessary consequential, transitional, incidental or supplementary changes to primary legislation. This will enable the Secretary of State to add any new licensable activities to the current list of licensable activities in sections 5(1) and 7 of the Gas Act and to make other amendments necessary to ensure that the new licences fit within the existing statutory framework. Such changes could include making a provision similar to section 81(1) of the Utilities Act 2000 to specify how any new standard conditions are to come into effect and/or be suspended; and amending section 81(2) of the Utilities Act so that any modified standard conditions are incorporated as standard conditions for licences of that type. It is

envisaged that the existing licensing framework and metering provisions in the Gas Act will be applied to the new licensable activities including, for example, the procedures for modification of licences in sections 23 to 27 of the Gas Act and the enforcement powers in sections 28 to 32 of the Gas Act.

483. *Subsection (5)(c)* makes provision for the order to specify the standard conditions for any new licensable activities and to modify any existing standard conditions of licences.
484. *Subsection (6)* sets out a further non-inclusive list of the type of provisions which an order creating new licensable activities could contain. This includes provision restricting the geographic scope of licences which would, for example, facilitate national or regional licensing of smart metering activities (*paragraphs (a) and (b)*). The order could also confer functions of the Secretary of State or the Authority which would, for example, enable the conferral of the general licensing powers in section 7B(4) to (11) of the Gas Act on the Secretary of State so that he can determine the general licence conditions for any new licences created under these powers (*paragraph (e)*).
485. *Subsection (7)* makes provision for the Secretary of State to specify how long an order will remain in force which could limit the period during which any smart metering activities are licensable.

Section 41HB Section 41HA: supplemental

486. This section sets out the procedure with which the Secretary of State must comply when making an order under section 41HA(1). *Subsection (1)* obliges the Secretary of State to consult the Authority and others as appropriate before making an order. By virtue of *subsection (2)*, the power to make an order may not be exercised after the end of the period of 5 years beginning with the day on which section 41HA(1) comes into force. Section 41HA(1) comes into force on the passing of the Act (see [Section 110\(1\)](#)).
487. *Subsection (3)* provides that the affirmative procedure will apply to the order and that it will not come into force unless approved by resolution of each House of Parliament (see also [Schedule 5](#) amending section 64(2) of the Gas Act).
488. *Subsection (4)* gives the Secretary of State certain supplemental powers contained in sections 47(1) to (3) of the Gas Act when making any order under section 41HA(1). These include a power to make provision for the determination of any questions of fact or law which may arise in giving effect to the order; prescribing time-limits within which things are to be done; and providing for matters under the order to be determined by specified persons and in accordance with specified procedures.

Section 41HC: Competitive tendering for licences for new licensable activities

489. This section gives the Secretary of State power to make regulations providing for the award of licences for new licensable activities connected with the provision of smart meters, by the Secretary of State or the Authority following a competitive tender procedure.
490. *Subsection (3)* sets out a non-inclusive list of the type of provisions which the regulations 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)*).
491. 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)*).

492. *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.
493. The regulations would be subject to the negative resolution procedure.

Part 2: Electricity

Section 56FA New licensable activities: smart meters

494. **Section 91** gives the Secretary of State an order-making power to both create new licensable activities under section 56A of the Electricity Act in relation to smart metering and to order that such new licensable activities shall cease to be licensable.
495. *Subsection (2)* provides that once activities become licensable, it will be an offence under section 4(1) of the Electricity Act to undertake them without a licence.
496. *Subsection (3)* sets out the scope of the licensing power and it may only be used to make licensable some or all of the activities connected with the provision, installation or operation of smart meters or related infrastructure or services. This could include, for example, the communications infrastructure for smart meters. *Subsection (4)* provides for the definition of “smart meters” to be set out in the order.
497. *Subsection (5)* makes provision for the order to include any necessary consequential, transitional, incidental or supplementary changes to primary legislation. This will enable the Secretary of State to add any new licensable activities to the current list of licensable activities in sections 4(1) and 6(1) of the Electricity Act and to make other amendments necessary to ensure that the new licences fit within the existing statutory framework. Such changes could include making a provision similar to section 33(2) of the Utilities Act 2000 to specify how any new standard conditions are to come into effect and/or be suspended; and amending section 33(1) of the Utilities Act so that any modified standard conditions are incorporated as standard conditions for licences of that type.
498. It is envisaged that the existing licensing framework and metering provisions in the Electricity Act will be applied to the new licensable activities including, for example, the procedures for modification of licences in sections 11 to 15 of the Electricity Act and the enforcement powers in sections 25 to 28 of the Electricity Act.
499. *Subsection (5)(c)* makes provision for the order to specify the standard conditions for any new licensable activities and to modify any existing standard conditions of licences.
500. *Subsection (6)* sets out a further non-inclusive list of the type of provisions which an order creating new licensable activities could contain. This includes provision restricting the geographic scope of licences which would, for example, facilitate national or regional licensing of smart metering activities (*paragraphs (a) and (b)*). The order could also confer functions of the Secretary of State or the Authority which would, for example, enable the conferral of the general licensing powers in section 7 of the Electricity Act on the Secretary of State so that he can determine the general licence conditions for any new licences created under these powers.
501. *Subsection (7)* makes provision for the Secretary of State to specify how long an order will remain in force which could limit the period during which any smart metering activities are licensable.

Section 56FB: section 56FA:supplemental

502. This section sets out the procedure with which the Secretary of State must comply when making an order under section 56FA(1).
503. *Subsection (1)* obliges the Secretary of State to consult the Authority and others as appropriate before making an order. By virtue of *subsection (2)*, the power to make an order may not be exercised after the end of the period of 5 years beginning with the day on which section 56FA(1) comes into force. Section 56FA(1) comes into force on the passing of the Act (see [section 110\(1\)](#)).
504. *Subsection (3)* provides that the affirmative procedure will apply to the order and it will not come into force unless approved by resolution of each House of Parliament (see also [Schedule 5](#) amending section 106(2)(b) of the Electricity Act).
505. *Subsection (4)* gives the Secretary of State certain supplemental powers contained in section 60 of the Electricity Act when making any order under section 56FA(1). These include power to make provision for the determination of any questions of fact or law which may arise in giving effect to the order; prescribing time-limits within which things are to be done; and providing for matters under the order to be determined by specified persons and in accordance with specified procedures.

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.