

**EXPLANATORY MEMORANDUM TO
THE ELECTRICITY AND GAS (SMART METERS LICENSABLE ACTIVITY) ORDER
2012**

2012 No. 2400

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order introduces a new licensable activity into each of the Electricity Act 1989 and the Gas Act 1986, which it will be unlawful to undertake without holding a licence. The new activity relates to the provision of a service of communicating with smart energy meters on behalf of all licensed energy suppliers. The Order also makes consequential amendments to legislation to allow for the effective regulation of holders of the new class of licence.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Order is the first use of powers in section 56FA of the Electricity Act 1989 and section 41HA of the Gas Act 1986, which allow for the amendment of the scope of activities requiring regulation under those Acts. It will be the first of a number of measures that DECC will be taking to provide the regulatory framework for the rollout of smart meters by the end of 2019, including measures under section 88 of the Energy Act 2008, which allows for the amendment of electricity and gas licences with respect to the rollout.

4.2 In particular, a further statutory instrument setting out the licence application process will be made under section 41HC of the Gas Act 1986 and section 56FC of the Electricity Act 1989 to support the competitive process to appoint the new central communications body, which will then be granted a licence to carry out the new licensable activities.

4.3 This Order does not directly implement European legislation. However, Directives 2009/72/EC and 2009/73/EC concerning common rules for the internal market in electricity and gas require that Member States take certain actions in order to implement smart metering systems and ensure the interoperability of those systems.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for Energy has made the following statement regarding Human Rights:

In my view the provisions of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The Government is committed to the rollout of smart gas and electricity meters to every home in Great Britain by the end of 2019. This will empower people to manage their energy consumption and reduce their carbon emissions. The rollout programme also extends to businesses and public sector users. The rollout of smart meters will play an important role in Great Britain's transition to a low-carbon economy, and help us meet some of the long-term challenges we face in ensuring an affordable, secure and sustainable energy supply.

7.2 This is a major programme and a Coalition Agreement commitment, which aims to support the rollout of some 53 million gas and electricity meters to domestic properties and to medium sized non-domestic sites in Great Britain by the end of 2019. This will impact approximately 30 million premises and deliver a net benefit estimated to be approximately £7 billion.

7.3 The communications and data transfer and management required to support smart metering are to be organised by a new central communications body, referred to as the Data and Communications Company (DCC). The DCC will provide a service of remotely communicating with smart meters on behalf of parties including electricity and gas suppliers, electricity distribution companies, gas transporters and other third parties authorised by the consumer, such as energy services companies. This model delivers the necessary security and interoperability required for the smart meter system as well as facilitating market access for new entrants.

7.4 Implementation of the Government's smart metering policy will require changes to the existing regulatory and commercial framework governing the electricity and gas markets. The Order provides the foundation to regulate the DCC by introducing a new smart metering licensable activity into each of the Electricity Act 1989 and the Gas Act 1986, which it will be unlawful to undertake without holding a licence. In addition, the Energy Act 2008 provides powers to amend existing licences and industry codes for the

purpose of delivering smart metering. Alongside this Order, the Government has been developing draft conditions for the licence to be awarded under the new activity, and a draft Smart Energy Code (versions of which are available on the DECC website¹). These and other regulatory changes will be introduced over the coming twelve months to give effect to the Government's policies across the whole smart meter programme, including obligations on licensed suppliers to use the communication services offered by the DCC.

7.5 The DCC will be a new national monopoly provider of services and it will need to be regulated by Ofgem to control its behaviour. This Order will enable the necessary regulatory control to be exerted over the DCC through the issue of its licence and, taken together with the other regulatory interventions set out in paragraph 7.4 to prevent unlicensed persons from undertaking the licensable activity. The scope of the DCC licensable activity set out in the Order itself is narrowly focused on the activity of making arrangements with all active licensed suppliers to provide communications services to smart meters in respect of certain energy related information. This approach is designed to minimise the risk of unintended capture of parties other than the DCC within scope of the licensable activity.

Consolidation

7.6 This Order amends the Gas Act 1986, the Electricity Act 1989 and various other Acts and Orders. However, there is no intention to consolidate any of these instruments.

8. Consultation outcome

8.1 The Government consulted on the detailed policy design of the regulatory and commercial framework for the DCC in September 2011. This consultation included a section seeking views on the approach to the licensable activity for the DCC, which is the subject of this Order. The majority of respondents who addressed questions related to the licensable activity supported the Government's proposed approach. Most responses were received from the energy industry, consumer groups and the regulator. There were few responses from members of the public.

8.2 In February 2012 a further consultation was published focused only on this Order and in particular the licensable activity for the DCC. This included the Government's response to the relevant sections of the September 2011 consultation and included, for comment, a draft of the Order. Responses to this consultation remained broadly supportive of the approach taken and the drafting of the Order, which remains substantively in the same form as set out in the consultation. Again the majority of responses were from industry stakeholders.

8.3 Arguments were put forward by stakeholders in response to the February 2012 consultation that in the period before the DCC was established it would be important that organisations currently offering DCC-type services should not be inadvertently caught by

¹ http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx

the Order. In response to these concerns, the Government has concluded that a transitional exemption should be included and this is reflected in the Order, which grants a transitional exemption lasting for 36 months from the coming into force of the Order. This will allow sufficient time for existing providers of DCC-type services to respond to the new arrangements and for the Government to consider the case for any enduring exemptions from the Order.

9. Guidance

9.1 The Government does not intend to publish any guidance related to this Order.

10. Impact

10.1 The direct impact on business, charities or voluntary bodies is nil. However, the Order lays the foundations for the implementation of the overall smart meter programme, which as an estimated NPV benefit of approximately £7 billion.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business. The Order is intended to ensure that a licence is held by any person undertaking the defined DCC licensable activity. It is important that regulatory control can be exerted over this activity. The Government has therefore not exempted small businesses from the need to obtain a licence in order to undertake this licensable activity because to do so would undermine the effectiveness of the Order.

12. Monitoring & review

12.1 DECC will ensure that the smart meters programme is subject to a comprehensive and integrated review and evaluation process, both during the initial stage and towards the end of the main rollout. Annex 4 of the Impact Assessment sets out further detail of the proposed approach, within which this Order should be considered.

13. Contact

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