Draft Order laid before Parliament under section 56FB(3) of the Electricity Act 1989 and section 41HB(3) of the Gas Act 1986, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. 0000

ELECTRICITY
GAS

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

Made - - - -	*2012*
Coming into force - -	*2012*

This Order is made in exercise of the powers conferred by section 56FA(1), (5) and (6) and section 60 of the Electricity Act 1989(**1**) and section 41HA(1), (5) and (6) and section 47 of the Gas Act 1986(**2**).

The Secretary of State has in accordance with section 56FB(1) of the Electricity Act 1989 and section 41HB(1) of the Gas Act 1986 consulted—

(a) the Gas and Electricity Markets Authority; and

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

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 56FB(3) of the Electricity Act 1989 and section 41HB(3) of the Gas Act 1986.

Accordingly, the Secretary of State makes the following Order.

PART 1

General

Citation and commencement

1. This Order may be cited as the Electricity and Gas (Smart Meters Licensable Activity) Order 2012, and comes into force on the day after the day on which it is made.

(**1**) 1989 c. 29. Sections 56FA and 56FB were inserted by section 91 of and Schedule 4 to the Energy Act 2008 (c. 32). Section 56FB was amended by section 73 of the Energy Act 2011 (c. 16). Section 60 was amended by section 3(2) of the Utilities Act 2000 (c. 27).

(**2**) 1986 c. 44. Sections 41HA and 41HB were inserted by section 91 of and Schedule 4 to the Energy Act 2008 (c. 32). Relevant amendments to section 47 were made by section 3(2) of the Utilities Act 2000 (c. 27) and section 10(1) of the Gas Act 1995 (c. 45). Section 41HB was amended by section 73 of the Energy Act 2011 (c. 16).

PART 2

Amendments to the Electricity Act 1989

Amendments to the Electricity Act 1989

2. The Electricity Act 1989(**3**) is amended in accordance with articles 3 to 16.

Amendment to section 3A (the principal objective and general duties of the Secretary of State and the Authority)

3. In section 3A(5)(**4**)—

(a) in paragraph (a)—

(i) after "transmission of electricity", for "or", substitute ","; and

(ii) after "electricity interconnectors", insert "or to provide a smart meter communication service"; and

(b) after each instance of "supply of electricity", insert "or the provision of a smart meter communication service".

Amendment to section 4 (prohibition on unlicensed supply etc)

4.—(1) Section 4(**5**) (prohibition on unlicensed supply etc) is amended as follows.

(2) In subsection (1)—

(a) omit the word "or" after paragraph (c); and

(b) after paragraph (d), insert—

"; or

(e) provides a smart meter communication service,".

(3) After subsection (3F), insert—

"(3G) A reference in this Part to providing a smart meter communication service is a reference to making arrangements with each domestic supplier to provide a service, for such suppliers, of communicating relevant information to and from smart meters through which electricity is supplied to domestic premises.".

(4) After subsection (5), insert—

"(6) In this section—

"domestic supplier" means an electricity supplier—

(a) who is authorised, in accordance with the conditions of a licence, to supply electricity to domestic premises; and

(b) who supplies electricity to domestic premises in accordance with that licence;

"external electronic communications network" means a network which—

(a) is an electronic communications network, within the meaning of section 32 of the Communications Act 2003(**6**); and

(**3**) 1989 c. 29.

(**4**) Section 3A was inserted by section 13 of the Utilities Act (c. 27). Subsection (5) was amended by sections 83, 143(1), 147 and 179 the Energy Act 2004 (c. 20), sections 83(2)(c) and 108 of the Energy Act 2008 (c. 32) and section 17(1) and (6) of the Energy Act 2010 (c. 27).

(**5**) Relevant amendments were made by section 108 of and Schedule 8 to the Utilities Act 2000 (c. 27) and sections 89, 135, 145 and 197 of the Energy Act 2004 (c. 20).

(**6**) 2003 c. 21. Section 32 was amended by SI 2011/1210.

(b) does not form part of a smart meter;

"relevant information" means information relating to the supply of electricity; and

"smart meter" means—

(a) an electricity meter which can send and receive information using an external electronic communications network; or

(b) an electricity meter and a device which is associated with or ancillary to that meter and which enables information to be sent to and received by the meter using an external electronic communications network.".

Amendment to section 5 (exemptions from prohibition)

5. In section 5(1)(**7**), for "(c) or (d)", substitute "(c), (d) or (e)".

Amendment to section 6 (licences authorising supply, etc)

6.—(1) Section 6(**8**) is amended in accordance with paragraphs (2) to (4).

(2) In subsection (1)—

(a) omit the word "or" after paragraph (d); and

(b) after paragraph (e), insert—

"; or

(f) subject to subsection (1C), a licence authorising a person to provide a smart meter communication service ("a smart meter communication licence").".

(3) After subsection (1), insert—

"(1A) Subject to subsection (1B), the Secretary of State may grant a smart meter communication licence.

(1B) The Secretary of State may not grant a smart meter communication licence after 1 November 2018.

(1C) The first smart meter communication licence may only be granted by the Secretary of State.".

(4) After subsection (2A), insert—

"(2B) A person may not be granted a smart meter communication licence unless the same person is at the same time granted a licence under section 7AB of the Gas Act 1986(**9**).".

(5) A reference in any enactment to a licence under section 6(1) of the Electricity Act 1989 or a licence under section 6(1)(f) of that Act, shall be deemed to include any licence under section 6(1A) of that Act.

Amendment to section 6A (procedure for licence applications)

7.—(1) Section 6A(1)(**10**) is amended as follows.

(2) In paragraph (a), after "licence" insert "(but this is subject to subsection (1A))".

(3) After subsection (1) insert—

(**7**) Section 5 was substituted by section 29 of the Utilities Act 2000 (c. 27) and amended by section 145 of the Energy Act 2004 (c. 20).

(**8**) Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27). Relevant amendments were made by sections 136, 145 and 197 of the Energy Act 2004 (c. 20).

(**9**) Section 7AB of the Gas Act 1986 (c. 44) is inserted by article 21 of this Order.

(**10**) Section 6A was inserted by section 30 of the Utilities Act 2000 (c. 27). Relevant amendments were made by section 143 of the Energy Act 2004 (c. 20).

"(1A) At any time when regulations made under section 56FC(**11**) are in force, this section does not apply to an application for a smart meter communication licence.".

Amendment to section 7 (conditions of licences: general)

8.—(1) Section 7(**12**) is amended as follows.

(2) In subsection (1)(a), for the "Authority", substitute "grantor".

(3) After subsection (3A), insert—

"(3B) Without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (3C) 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").

(3C) 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.

(3D) Subject to subsection (3F) and without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (3E) 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").

(3E) 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).

(3F) Conditions included in a licence by virtue of subsection (3D) must provide that the licensee does not have a duty to comply with a direction of the kind referred to in subsection (3E) unless, in relation to that direction, the following conditions have been satisfied prior to it being given—

(**11**) Section 56FC of the Electricity Act 1989 (c. 29) was inserted by section 91 and Schedule 4 to the Energy Act 2008 (c. 32).
(**12**) Relevant amendments were made by section 32 of the Utilities Act 2000 (c. 27).

(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 (3E) 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.

(3G) For the purposes of subsection (3F), 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.".

Amendment to section 7A (transfer of licences)

9.—(1) Section 7A(**13**) is amended as follows.

(2) After subsection (10), insert—

"(10A) Subject to subsection (10C), the Authority shall, following consideration of any representations or objections under subsection (9), give the Secretary of State not less than 28 days' notice of any proposal to give consent to the transfer of the whole or any part of a smart meter communication licence.

(10B) If, before the expiry of the time specified in a notice under subsection (10A), the Secretary of State directs the Authority not to give consent, the Authority shall comply with that direction.

(10C) Where the Secretary of State does not give a direction under subsection (10B), the Authority may give consent to the transfer of the licence after—

(a) the expiry of the time specified in the notice under subsection (10A); or

(b) if earlier than the time in paragraph (a), the time at which the Secretary of State informs the Authority that no direction will be given under subsection (10B) in relation to the notice.

(10D) Subsections (10A) to (10C) do not apply after 1 November 2018.".

(3) After subsection (11), insert—

"(11A) A smart meter communication licence may not be transferred to a person unless a licence granted under section 7AB of the Gas Act 1986 is also transferred to the same person at the same time.".

(**13**) Section 7A was inserted by section 41 of the Utilities Act 2000 (c. 27).