



Draft Legislation on Energy

Presented to Parliament
by the Secretary of State for Energy and Climate Change
by Command of Her Majesty

January 2016



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Contents

Foreword	4
Provisions About Energy	5
Explanatory Notes	32

Foreword

This Government is committed to keeping energy bills as low as possible for hard working families and businesses. A competition focussed energy system is central to achieving this aim.


This document sets out the draft legislation which will assist in increasing competition; thereby enabling consumers to get a good deal by keeping prices down and ensuring they are protected.

The Government is committed to ensuring every home and small business in Great Britain is offered a Smart Meter by the end of 2020. Smart Meters will provide consumers with near-real time information on their energy consumption, therefore helping them to control and manage their energy use, save money, switch energy supplier more quickly, and reduce carbon emissions. The draft legislation would ensure that Government is able to continue to drive the timely delivery of Smart Meters and ensure consumer protections are in place.

A competitive market is reliant on engaged consumers to drive suppliers to innovate, improve their service and to seek to reduce their prices. The Government has already taken a number of steps to make it quicker and easier for consumers to switch energy supplier. The powers to support the reform of energy supplier switching build on this, enabling Ofgem to better coordinate reforms which will expedite and simplify arrangements for customers to switch their gas or electricity supplier.

The Competition and Markets Authority has identified that current electricity settlement arrangements limit suppliers' incentives to encourage their customers to voluntarily change the time they consume energy. The powers to support the reform of electricity settlement would allow Ofgem to require suppliers to use consumers' actual half hourly electricity consumption data from their smart meter in the settlement processes. This can help to reduce consumer bills, lower carbon emissions and enhance security of supply.

In addition, nearly a quarter of the average household electricity bill in 2014 was made up of the cost of transporting electricity from the place that it was generated to the customer. Extending Ofgem's powers to enable competitive tendering for onshore electricity assets could bring new players into the market, encourage innovation and bring significant savings to consumers.



AMBER RUDD MP

Secretary of State for Energy and Climate Change

Provisions about Energy

CONTENTS

PART 1

SMART METERS

Powers

- 1 Smart meters: extension of time for exercise of powers etc [sm01 (1)]

Special administration regime

- 2 Smart meter communication licensee administration orders [SMAO001]
- 3 Objective of a smart meter communication licensee administration [SMAO002]
- 4 Application of certain provisions of the Energy Act 2004 [SMAO003]
- 5 Conduct of administration, transfer schemes, etc [SMAO004]
- 6 Modifications of particular or standard conditions [SMAO005]
- 7 Licence conditions to secure funding of smart meter communication licensee administration [SMAO006]
- 8 Modifications under the Enterprise Act 2002 [SMAO007]
- 9 Power to make further modifications of insolvency legislation [SMAO008]
- 10 Interpretation [SMAO009]

PART 2

SUPPLY AND SWITCHING

- 11 Power to modify energy codes etc: supply and switching [jSS101]
- 12 Modification under section 11 [jSS102]
- 13 Power to modify electricity codes etc: settlement [jSS201]
- 14 Modification under section 13 [jSS202]
- 15 Date from which modifications of energy licence conditions may have effect [jSS301]

PART 3

AMENDMENTS OF ELECTRICITY ACT 1989

- 16 Competitive tenders for transmission and distribution licences [j501]

PART 4

GENERAL

- 17 Commencement [j900a]
- 18 Extent [j901a]

Schedule — Competitive tenders for transmission and distribution licences
[j501s]

PART 1

SMART METERS

Powers

1 Smart meters: extension of time for exercise of powers etc [sm01 (1)]

- (1) In section 88 of the Energy Act 2008 (power to amend licence conditions etc: smart meters), in subsection (5), for “1 November 2018” substitute “1 November 2023”.
- (2) In the Electricity Act 1989 –
 - (a) in section 7A(10D) (expiry of provisions requiring proposed transfer of smart meter communication licence to be notified to Secretary of State), for “1 November 2018” substitute “1 November 2023”;
 - (b) in section 56FB(2) (time limit for exercise of power to provide for activities connected with smart meters to be licensable activities), for “1 November 2018” substitute “1 November 2023”.
- (3) In the Gas Act 1986 –
 - (a) in section 8AA(10D) (expiry of provisions requiring proposed transfer of smart meter communication licence to be notified to Secretary of State), for “1 November 2018” substitute “1 November 2023”;
 - (b) in section 41HB(2) (time limit for exercise of power to provide for activities connected with smart meters to be licensable activities), for “1 November 2018” substitute “1 November 2023”.
- (4) In consequence of the amendments made by subsections (1), (2)(b) and (3)(b), in section 73 of the Energy Act 2011, omit subsections (5), (7) and (8).

Special administration regime

2 Smart meter communication licensee administration orders [SMAO001]

- (1) A smart meter communication licensee administration order (referred to in the smcl administration provisions as an “smcl administration order”) is an order which –
 - (a) is made by the court in relation to a smart meter communication licensee; and
 - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.

- (2) The person appointed in relation to a company for the purposes of an smcl administration order is the smart meter communication administrator of the company.
- (3) The smart meter communication administrator of a company must manage its affairs, business and property, and exercise and perform all the powers and duties of a smart meter communication administrator, so as to achieve the objective set out in section 3.
- (4) In relation to an smcl administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.
- (5) In the smcl administration provisions –
 - “smart meter communication licensee” means the company which is the holder of the relevant licences; and
 - “relevant licences” means –
 - (a) the licence granted under section 7AB of the Gas Act 1986 to provide a smart meter communication service, and
 - (b) the licence granted under section 6 of the Electricity Act 1989 to provide a smart meter communication service.

3 Objective of a smart meter communication licensee administration [SMAO002]

- (1) The objective of a smart meter communication licensee administration is to secure –
 - (a) that the licensee’s functions under the relevant licence are performed efficiently and economically, and
 - (b) that it becomes unnecessary, by one or both of the following means, for the smcl administration order to remain in force for the purpose mentioned in paragraph (a).
- (2) Those means are –
 - (a) the rescue as a going concern of the company subject to the smcl administration order; and
 - (b) transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern –
 - (a) to another company, or
 - (b) as respects different parts of the undertaking of the company subject to the smcl administration order, to two or more different companies,so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the smart meter communication licensee administration.
- (4) The means by which transfers falling within subsection (3) may be effected include, in particular –
 - (a) a transfer of the undertaking of the company subject to the smcl administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and
 - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).

- (5) The objective of a smart meter communication licensee administration may be achieved by a transfer falling within subsection (3) to the extent only that –
 - (a) the rescue as a going concern of the company subject to the smcl administration order is not reasonably practicable or is not reasonably practicable without such a transfer;
 - (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such a transfer;
 - (c) such a transfer would produce a result for the company’s creditors as a whole that is better than the result that would be produced without it; or
 - (d) such a transfer would, without prejudicing the interests of those creditors as a whole, produce a result for the company’s members as a whole that is better than the result that would be produced without it.
- (6) The Secretary of State may by regulations made by statutory instrument –
 - (a) specify activities carried out by a smart meter communication licensee under the relevant licences to which a smart meter communication administrator must give priority in –
 - (i) managing the affairs, business and property of the licensee, and
 - (ii) otherwise exercising and performing the powers and duties of a smart meter communication administrator; and
 - (b) make provision about how the administrator is to give priority to specified activities.
- (7) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

4 Application of certain provisions of the Energy Act 2004 [SMAO003]

- (1) Sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees) apply in relation to an smcl administration order as they apply in relation to an energy administration order within the meaning given by section 154(1) of that Act, but with the modifications set out in subsections (2) to (4).
- (2) In the application of those provisions generally –
 - (a) for “energy administration”, in each place where it occurs, substitute “smart meter communication licensee administration”;
 - (b) for “energy administrator”, in each place where it occurs, substitute “smart meter communication administrator”;
 - (c) for “a protected energy company”, in each place where it occurs, substitute “a smart meter communication licensee”.
- (3) In the application of Schedule 20 –
 - (a) in paragraph 32(d), for the words from ““energy administration application”” to “Energy Act 2004” substitute ““smart meter communication licensee administration application” means an application to the court for a smart meter communication licensee administration order under Chapter 3 of Part 3 of the Energy Act 2004, as applied by section 4 of the Energy Act 20XX”;
 - (b) in paragraph 32(e), for “section 155 of the Energy Act 2004” substitute “section 4 of the Energy Act 20XX”;
 - (c) in paragraph 36, for “section 154(4) of this Act” substitute “section 4(4) of the Energy Act 20XX”;

- (d) in paragraph 43, after “the Energy Act 2004” insert “and section 4 of the Energy Act 20XX”;
 - (e) in paragraph 44(5), after “the Energy Act 2004” insert “and section 4 of the Energy Act 20XX”;
 - (f) in paragraph 45, after “section 157(1)(e) of this Act” insert “as applied by section 4 of the Energy Act 20XX”;
 - (g) in paragraph 47, after “Part 1 of this Schedule” insert “and section 4 of the Energy Act 20XX”.
- (4) In the application of Schedule 21 –
- (a) for “old energy company”, in each place where it occurs, substitute “old licensee”;
 - (b) for “new energy company”, in each place where it occurs, substitute “new licensee”;
 - (c) in paragraph 1(b), for “section 155(3)” substitute “section 3(3) of the Energy Act 20XX”;
 - (d) in paragraph 12, for “section 155” substitute “section 3 of the Energy Act 20XX”.
- (5) Sections 171 and 196 of the Energy Act 2004 (interpretation) apply for the purposes of the application by subsection (1) of the provisions mentioned in that subsection, but with the modifications set out in subsection (6).
- (6) In the application of section 171(1) –
- (a) insert, at the appropriate places, the following definitions –
 - ““objective of the smart meter communication licensee administration” is to be construed in accordance with section 3 of the Energy Act 20XX;”;
 - ““smart meter communication licensee” has the meaning given by section 2(5) of the Energy Act 20XX;”;
 - ““smart meter communication licensee administration order” has the meaning given by section 2(1) of the Energy Act 20XX;”;
 - ““smart meter communication licensee administration rules” means rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act, for the purpose of giving effect to this Chapter as applied by section 4 of the Energy Act 20XX;”;
 - (b) for the definition of “energy administrator” substitute –
 - ““smart meter communication administrator” has the meaning given in section 10 of the Energy Act 20XX;”;
 - (c) for the definition of “relevant licence” substitute –
 - ““relevant licence” means either of the relevant licences within the meaning given by section 2(5) of the Energy Act 20XX.”

5 Conduct of administration, transfer schemes, etc [SMAO004]

In section 159(3) of the Energy Act 2004 (conduct of administration, transfer schemes, etc under Chapter 3 of Part 3 of that Act), after “2011” insert “or section 4 of the Energy Act 20XX”.

6 Modifications of particular or standard conditions [SMAO005]

- (1) Where the Secretary of State considers it appropriate to do so in connection with the provision made by the smcl administration provisions, the Secretary of State may make –
 - (a) modifications of the conditions of a gas or electricity licence held by a particular person;
 - (b) modifications of the standard conditions of such licences of any type.
- (2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification under this section, the Secretary of State must consult –
 - (a) the holder of any licence being modified; and
 - (b) such other persons as the Secretary of State considers appropriate.
- (4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (5) The Secretary of State must publish every modification made under this section.
- (6) The publication must be in such manner as the Secretary of State considers appropriate.
- (7) A modification under subsection (1)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989.
- (8) Where the Secretary of State makes modifications under subsection (1)(b) of the standard conditions of licences of any type, the Gas and Electricity Markets Authority must –
 - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
 - (b) publish the modifications in such manner as it considers appropriate.
- (9) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (10) In section 33(1) of the Utilities Act 2000 (standard conditions of generation, distribution and supply licences under Part 1 of the Electricity Act 1989) –
 - (a) in paragraph (f) omit the second “or”;
 - (b) at the end insert “, or
 - (h) under section 6 of the Energy Act 20XX.”
- (11) In section 81(2) of the Utilities Act 2000 (standard conditions of transporter, supply and shipping licences under Part 1 of the Gas Act 1986) –
 - (a) for “2011 or” substitute “2011,”;
 - (b) for “(power to amend licence conditions)” substitute “or under section 6 of the Energy Act 20XX”.
- (12) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with

respect to holders of gas licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

- (13) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with respect to holders of electricity licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (14) In this section –
- (a) references to a gas licence are to a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities relating to gas), and
 - (b) references to an electricity licence are to a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities relating to electricity).

7 Licence conditions to secure funding of smart meter communication licensee administration [SMAO006]

- (1) The modifications that may be made under section 6 include, in particular, modifications imposing conditions requiring the holder of the licence –
- (a) so to modify the charges imposed by the licence holder for anything done by the licence holder in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and
 - (b) to pay the amounts so raised to such persons as may be so determined for the purpose of –
 - (i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of a smart meter communication licensee administration; or
 - (ii) enabling those persons to secure that those amounts are so applied.
- (2) Those modifications may include modifications imposing on the licence holder an obligation to apply amounts paid to the licence holder in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.
- (3) For the purposes of this section –
- (a) there is a shortfall in the property available for meeting the costs of a smart meter communication licensee administration if, in a case where a company is or has been subject to a smart meter communication licensee administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and
 - (b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.
- (4) In this section “relevant debt” in relation to a case in which a company is or has been subject to a smart meter communication licensee administration order, means an obligation –
- (a) to make payments in respect of the expenses or remuneration of any person as the smart meter communication administrator of that company;

- (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the smart meter communication administrator of that company;
- (c) to repay the whole or a part of a grant made to that company under section 165 of the Energy Act 2004 as applied by section 4 of this Act;
- (d) to repay a loan made to the company under that section as so applied, or to pay interest on such a loan;
- (e) to make a payment under section 166(4) of that Act as so applied; or
- (f) to make a payment under section 167(5) of that Act as so applied.

8 Modifications under the Enterprise Act 2002 [SMAO007]

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of the smcl administration provisions as the Secretary of State considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
 - (a) sections 248 and 277 (amendments consequential on that Act); and
 - (b) section 254 (power to apply insolvency law to foreign companies).
- (3) In section 170(1) of the Energy Act 2004 (modification of Chapter 3 of Part 3 of that Act under the Enterprise Act 2002) after “Chapter” insert “(including this Chapter as applied by section 4 of the Energy Act 20XX)”.

9 Power to make further modifications of insolvency legislation [SMAO008]

- (1) The power of the Secretary of State under paragraph 46 of Schedule 20 to the Energy Act 2004 (conduct of energy administration) to make modifications includes power to make such modifications as the Secretary of State considers appropriate in relation to any provision made by or under the smcl administration provisions.
- (2) In paragraph 46(1) of that Schedule, after “2011” insert “or section 4 of the Energy Act 20XX”.

10 Interpretation [SMAO009]

- (1) In this Part “smcl administration provisions” means sections 2 to 9 and this section.
- (2) In the smcl administration provisions—
 - “business”, “member” and “property” have the same meanings as in the Insolvency Act 1986;
 - “company” means—
 - (a) a company registered under the Companies Act 2006, or
 - (b) an unregistered company;
 - “court”, in relation to a company, means the court—
 - (a) having jurisdiction to wind up the company, or
 - (b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up

- jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);
- “modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;
- “non-GB company” means a company incorporated outside Great Britain;
- “objective of the smart meter communication administration” is to be construed in accordance with section 3;
- “relevant licences” has the meaning given by section 2(5);
- “smart meter communication administrator” has the meaning given by section 2(2) and is to be construed in accordance with subsection (3) of this section;
- “smart meter communication licensee administration order” has the meaning given by section 2(1);
- “smart meter communication licensee” has the meaning given by section 2(5);
- “subsidiary” and “wholly-owned subsidiary” have the meanings given by section 1159 of the Companies Act 2006;
- “unregistered company” means a company that is not registered under the Companies Act 2006.
- (3) In the smcl administration provisions references to the smart meter communication administrator of a company –
- include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 20 to the Energy Act 2004 and section 4 of this Act, to be the smart meter communication administrator of that company; and
 - where two or more persons are appointed to be the smart meter communication administrator of that company, are to be construed in accordance with the provision made under section 158(5) of the Energy Act 2004, as applied by section 4 of this Act.
- (4) In the smcl administration provisions a reference to the provision of a smart meter communication service has –
- the same meaning as in Part 1 of the Gas Act 1986 (see section 5(11) of that Act), in relation to holding of a licence under section 7AB of that Act by a company for which a smart meter communication administrator has been appointed;
 - the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(3G) of that Act), in relation to the holding of a licence under section 6(1)(f) or (1A) of that Act by a company for which a smart meter communication administrator has been appointed.”

PART 2

SUPPLY AND SWITCHING

11 Power to modify energy codes etc: supply and switching [jSS101]

- (1) The Gas and Electricity Markets Authority (“the Authority”) may –
- modify a document maintained in accordance with an electricity licence or a gas licence, and
 - modify an agreement that gives effect to such a document, if the first or second condition is satisfied.

- (2) The first condition is that the Authority considers the modification necessary or desirable for the purposes of the creation or efficient operation of centralised arrangements for compiling, managing and providing access to one or more of the following –
 - (a) information relating to electricity supply points;
 - (b) information relating to electricity export points;
 - (c) information relating to gas supply points.
- (3) The second condition is that the Authority considers the modification necessary or desirable for the purposes of speeding up, simplifying or otherwise improving the processes by which responsibility for the supply of electricity or gas (or both) to particular premises may be transferred from one supplier to another.
- (4) The power to make modifications under this section includes –
 - (a) power to remove or replace all of the provisions of a document or agreement;
 - (b) power to make different provision for different purposes;
 - (c) power to make incidental, supplementary, consequential or transitional modifications.
- (5) A modification may not be made under this section after the end of the period of 5 years beginning with the day on which this section comes into force.
- (6) For the purposes of subsection (2), information relating to an electricity supply point or gas supply point for premises includes –
 - (a) information identifying the premises;
 - (b) information about the metering arrangements;
 - (c) information about consumption of electricity or gas;
 - (d) information about electricity industry participants and gas industry participants who are involved directly or indirectly in the provision of electricity or gas to the premises;
 - (e) information about the customer;
 - (f) information about the occupier of the premises;
 - (g) information that is relevant for the purposes of determining and fulfilling obligations, including financial obligations, arising directly or indirectly from the provision of electricity or gas to the premises.
- (7) For the purposes of subsection (2), information relating to an electricity export point for premises includes –
 - (a) information identifying the premises;
 - (b) information about the metering arrangements;
 - (c) information about electricity industry participants who are involved directly or indirectly in the provision of electricity from the premises to a distribution system;
 - (d) information about the generator of the electricity;
 - (e) information that is relevant for the purposes of determining and fulfilling obligations, including financial obligations, arising directly or indirectly from the provision of electricity from the premises to a distribution system.
- (8) In this section –

“distribution system” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(4) of that Act);

“electricity export point” means a point at which the flow of electricity to a distribution system from the premises at which it was generated is measured;

“electricity industry participants” means –

- (a) persons carrying on licensable activities (as defined in section 64(1) of the Electricity Act 1989) with the authority of an electricity licence or an exemption under Part 1 of that Act, and
- (b) agents of such persons;

“electricity licence” means a licence under section 6(1) of the Electricity Act 1989;

“electricity supply point” means a point at which the flow of electricity supplied to particular premises is measured;

“gas” has the same meaning as in Part 1 of the Gas Act 1986 (see section 48(1) of that Act);

“gas industry participants” means –

- (a) persons carrying on licensable activities (as defined in section 41C(2) of the Gas Act 1986) with the authority of a gas licence,
- (b) persons carrying on activities with the authority of an exception under Schedule 2A to the Gas Act 1986, and
- (c) agents of persons described in paragraph (a) or (b);

“gas licence” means a licence under section 7, 7ZA, 7A or 7AB of the Gas Act 1986;

“gas supply point” means a point at which the flow of gas supplied to particular premises is measured;

“premises” includes any land, building or structure;

“supply”, in relation to electricity, has the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(4) of that Act) and related expressions are to be read accordingly;

“supply”, in relation to gas, means supply to premises to which the gas has been conveyed through pipes and related expressions are to be read accordingly.

12 Modification under section 11 [jSS102]

- (1) Before making a modification under section 11, the Gas and Electricity Markets Authority (“the Authority”) must –
 - (a) publish a notice about the proposed modification,
 - (b) send a copy of the notice to the persons listed in subsection (2), and
 - (c) consider any representations made within the period specified in the notice about the proposed modification or the date from which it would take effect.
- (2) The persons mentioned in subsection (1)(b) are –
 - (a) each relevant licence holder,
 - (b) the Secretary of State,
 - (c) Citizens Advice, and
 - (d) Citizens Advice Scotland.
- (3) A notice under subsection (1) must –
 - (a) state that the Authority proposes to make a modification,
 - (b) set out the proposed modification and its effect,

- (c) specify the date from which the Authority proposes that the modification will have effect, and
 - (d) state the reasons why the Authority proposes to make the modification.
- (4) The period specified under subsection (1)(c) must be a period of not less than 28 days beginning with the day on which the notice is published.
- (5) If, after complying with subsections (1) to (4) in relation to a modification, the Authority decides to make a modification, it must publish a notice about the decision.
- (6) A notice under subsection (5) must –
 - (a) state that the Authority has decided to make the modification,
 - (b) set out the modification and its effect,
 - (c) specify the date from which the modification has effect,
 - (d) state how the Authority has taken account of any representations made in the period specified in the notice under subsection (1), and
 - (e) state the reason for any differences between the modification set out in the notice and the proposed modification.
- (7) A notice under this section about a modification or decision must be published in such manner as the Authority considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification or decision.
- (8) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the functions of the Authority under section 11 and this section with respect to modifications of documents maintained in accordance with electricity licences, and agreements giving effect to such documents, as they apply in relation to functions of the Authority under Part 1 of that Act.
- (9) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to the functions of the Authority under section 11 and this section with respect to modifications of documents maintained in accordance with gas licences, and agreements giving effect to such documents, as they apply in relation to functions of the Authority under Part 1 of that Act.
- (10) In this section –
 - “electricity licence” has the meaning given in section 11;
 - “gas licence” has the meaning given in section 11;
 - “relevant licence holder” means, in relation to the modification of a document maintained under an electricity licence or gas licence or an agreement that gives effect to such a document, the holder of a licence under which the document is maintained.

13 Power to modify electricity codes etc: settlement [jSS201]

- (1) The Gas and Electricity Markets Authority (“the Authority”) may –
 - (a) modify a document maintained in accordance with an electricity licence, and
 - (b) modify an agreement that gives effect to such a document,if the condition in subsection (2) is satisfied.
- (2) The condition is that the Authority considers the modification necessary or desirable for the purposes of enabling or requiring half-hourly electricity

imbalances to be calculated using information about customers' actual consumption of electricity on a half-hourly basis.

- (3) The power to make modifications under this section includes –
 - (a) power to make provision about the determination of amounts payable in connection with half-hourly electricity imbalances;
 - (b) power to remove or replace all of the provisions of a document or agreement;
 - (c) power to make different provision for different purposes;
 - (d) power to make incidental, supplementary, consequential or transitional modifications.
- (4) A modification may not be made under this section after the end of the period of 5 years beginning with the day on which this section comes into force.
- (5) In this section –
 - “balancing arrangements” means arrangements made by the transmission system operator for the purposes of balancing the national transmission system for Great Britain;
 - “electricity licence” means a licence under section 6(1) of the Electricity Act 1989;
 - “half-hourly electricity imbalance” means the difference between the amount of electricity consumed by an electricity supplier’s customers during a half-hour period and the amount of electricity purchased by the electricity supplier for delivery during that period (after taking into account any adjustments in connection with the supplier’s participation in balancing arrangements);
 - “supply”, in relation to electricity, has the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(4) of that Act);
 - “transmission system” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(4) of that Act);
 - “transmission system operator” means the person operating the national transmission system for Great Britain.

14 Modification under section 13 [jSS202]

- (1) Before making a modification under section 13, the Gas and Electricity Markets Authority (“the Authority”) must –
 - (a) publish a notice about the proposed modification,
 - (b) send a copy of the notice to the persons listed in subsection (2), and
 - (c) consider any representations made within the period specified in the notice about the proposed modification or the date from which it would take effect.
- (2) The persons mentioned in subsection (1)(b) are –
 - (a) each relevant licence holder,
 - (b) the Secretary of State,
 - (c) Citizens Advice, and
 - (d) Citizens Advice Scotland.
- (3) A notice under subsection (1) must –
 - (a) state that the Authority proposes to make a modification,
 - (b) set out the proposed modification and its effect,

- (c) specify the date from which the Authority proposes that the modification will have effect, and
 - (d) state the reasons why the Authority proposes to make the modification.
- (4) The period specified under subsection (1)(c) must be a period of not less than 28 days beginning with the day on which the notice is published.
- (5) If, after complying with subsections (1) to (4) in relation to a modification, the Authority decides to make a modification, it must publish a notice about the decision.
- (6) A notice under subsection (5) must –
 - (a) state that the Authority has decided to make the modification,
 - (b) set out the modification and its effect,
 - (c) specify the date from which the modification has effect,
 - (d) state how the Authority has taken account of any representations made in the period specified in the notice under subsection (1), and
 - (e) state the reason for any differences between the modification set out in the notice and the proposed modification.
- (7) A notice under this section about a modification or decision must be published in such manner as the Authority considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification or decision.
- (8) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the functions of the Authority under section 11 and this section with respect to modifications of documents maintained in accordance with electricity licences, and agreements giving effect to such documents, as they apply in relation to functions of the Authority under Part 1 of that Act.
- (9) In this section –
 - “electricity licence” means a licence under section 6(1) of the Electricity Act 1989;
 - “relevant licence holder” means, in relation to the modification of a document maintained under an electricity licence or an agreement that gives effect to such a document, the holder of a licence under which the document is maintained.

15 Date from which modifications of energy licence conditions may have effect [jSS301]

- (1) The Electricity Act 1989 is amended in accordance with subsections (2) to (4).
- (2) In section 11A(9) (modifications of electricity licence conditions not to have effect less than 56 days from publication of decision to modify), at the end insert “, except as provided in section 11AA”.
- (3) After that section insert –

“11AA Modification of conditions under section 11A: early effective date

 - (1) The date specified by virtue of section 11A(8) in relation to a modification under that section may be less than 56 days from the publication of the decision to proceed with the making of the modification if –

- (a) the Authority considers it necessary or expedient for the modification to have effect before the 56 days expire,
 - (b) the purpose condition is satisfied, and
 - (c) the consultation condition is satisfied.
- (2) The purpose condition is that the Authority considers the modification necessary or desirable –
 - (a) for the purposes of the creation or efficient operation of centralised arrangements for compiling, managing and providing access to one or both of the following –
 - (i) information relating to supply points;
 - (ii) information relating to export points,
 - (b) for the purposes of speeding up, simplifying or otherwise improving the processes by which responsibility for the supply of electricity to particular premises may be transferred from one supplier to another, or
 - (c) for the purposes of enabling or requiring half-hourly electricity imbalances to be calculated using information about customers' actual consumption of electricity on a half-hourly basis.
- (3) The consultation condition is that the notice under section 11A(2) relating to the modification –
 - (a) stated the date from which the Authority proposed that the modification should have effect,
 - (b) stated the Authority's reasons for proposing that the modification should have effect from a date less than 56 days from the publication of the decision to modify, and
 - (c) explained why, in the Authority's view, that would not have a material adverse effect on any licence holder.
- (4) For the purposes of subsection (2)(a), information relating to a supply point for premises includes –
 - (a) information identifying the premises;
 - (b) information about the metering arrangements;
 - (c) information about consumption of electricity;
 - (d) information about electricity industry participants who are involved directly or indirectly in the provision of electricity to the premises;
 - (e) information about the customer;
 - (f) information about the occupier of the premises;
 - (g) information that is relevant for the purposes of determining and fulfilling obligations, including financial obligations, arising directly or indirectly from the provision of electricity to the premises.
- (5) For the purposes of subsection (2)(a), information relating to an export point for premises includes –
 - (a) information identifying the premises;
 - (b) information about the metering arrangements;
 - (c) information about electricity industry participants who are involved directly or indirectly in the provision of electricity from the premises to a distribution system;
 - (d) information about the generator of the electricity;

- (e) information that is relevant for the purposes of determining and fulfilling obligations, including financial obligations, arising directly or indirectly from the provision of electricity from the premises to a distribution system.
- (6) In this section –
 - “balancing arrangements” means arrangements made by the transmission system operator for the purposes of balancing the national transmission system;
 - “electricity industry participants” means –
 - (a) persons carrying on licensable activities with the authority of a licence or with the authority of an exemption under section 5, and
 - (b) agents of such persons;
 - “export point” means a point at which the flow of electricity to a distribution system from the premises at which it was generated is measured;
 - “half-hourly electricity imbalance” means the difference between the amount of electricity consumed by a supplier’s customers during a half-hour period and the amount of electricity purchased by the supplier for delivery during that period (after taking account of any adjustments in connection with the supplier’s participation in balancing arrangements);
 - “supply point” means a point at which the flow of electricity supplied to particular premises is measured;
 - “transmission system operator” means the person operating the national transmission system for Great Britain.”
- (4) In paragraph 2 of Schedule 5A (procedure for appeals under section 11C: suspension of decision), after sub-paragraph (1) insert –
 - “(1A) In the case of an appeal against a decision of the Authority which already has effect by virtue of section 11AA, the CMA may direct that the modification that is the subject of the decision –
 - (a) ceases to have effect entirely or to such extent as may be specified in the direction, and
 - (b) does not have effect, or does not have effect to the specified extent, pending the determination of the appeal.”
- (5) The Gas Act 1986 is amended in accordance with subsections (6) to (8).
- (6) In section 23(9) (modifications of gas licence conditions not to have effect less than 56 days from publication of decision to modify), at the end insert “, except as provided in section 23ZA”.
- (7) After that section insert –

“23ZA Modification of conditions under section 23: early effective date

 - (1) The date specified by virtue of section 23(8) in relation to a modification under that section may be less than 56 days from the publication of the decision to proceed with the making of the modification if –
 - (a) the Authority considers it necessary or expedient for the modification to have effect before the 56 days expire,
 - (b) the purpose condition is satisfied, and
 - (c) the consultation condition is satisfied.

- (2) The purpose condition is that the Authority considers the modification necessary or desirable –
 - (a) for the purposes of the creation or efficient operation of centralised arrangements for compiling, managing and providing access to information relating to supply points, or
 - (b) for the purposes of speeding up, simplifying or otherwise improving the processes by which responsibility for the supply of gas to particular premises may be transferred from one supplier to another.
- (3) The consultation condition is that the notice under section 23(2) relating to the modification –
 - (a) stated the date from which the Authority proposed that the modification should have effect,
 - (b) stated the Authority’s reasons for proposing that the modification should have effect from a date less than 56 days from the publication of the decision to modify, and
 - (c) explained why, in the Authority’s view, that would not have a material adverse effect on any licence holder.
- (4) For the purposes of subsection (2)(a), information relating to a supply point for premises includes –
 - (a) information identifying the premises;
 - (b) information about the metering arrangements;
 - (c) information about consumption of gas;
 - (d) information about gas industry participants who are involved directly or indirectly in the provision of gas to the premises;
 - (e) information about the customer;
 - (f) information about the occupier of the premises;
 - (g) information that is relevant for the purposes of determining and fulfilling obligations, including financial obligations, arising directly or indirectly from the provision of gas to the premises.
- (5) In this section –

“gas industry participants” means –

 - (a) persons carrying on licensable activities with the authority of a licence,
 - (b) persons carrying on activities with the authority of an exception under Schedule 2A, and
 - (c) agents of persons described in paragraph (a) or (b);

“supply point” means a point at which the flow of gas supplied to particular premises is measured.”
- (8) In paragraph 2 of Schedule 4A (procedure for appeals under section 23B: suspension of decision), after sub-paragraph (1) insert –
 - (1A) In the case of an appeal against a decision of the Authority which already has effect by virtue of section 23ZA, the CMA may direct that the modification that is the subject of the decision –
 - (a) ceases to have effect entirely or to such extent as may be specified in the direction, and
 - (b) does not have effect, or does not have effect to the specified extent, pending the determination of the appeal.”

PART 3

AMENDMENTS OF ELECTRICITY ACT 1989

16 Competitive tenders for transmission and distribution licences [j501]

The Schedule (which makes provision about competitive tenders for transmission and distribution licences under Part 1 of the Electricity Act 1989) has effect.

PART 4

GENERAL

17 Commencement [j900a]

- (1) This Part comes into force on the day on which this Act is passed.
- (2) The following provisions of this Act come into force at the end of the period of two months beginning with the day on which this Act is passed –
 - (a) Part 1, and
 - (b) sections 11, 12 and 15.
- (3) The remaining provisions of this Act come into force on such day or days as the Secretary of State may by regulations made by statutory instrument appoint.
- (4) Regulations under subsection (3) may include transitional or transitory provision or savings.

18 Extent [j901a]

This Act extends to England and Wales and Scotland.

SCHEDULE

Section 16

COMPETITIVE TENDERS FOR TRANSMISSION AND DISTRIBUTION LICENCES [j501s]

1 The Electricity Act 1989 is amended as follows.

2 After section 6B insert –

“6BA Meaning of “relevant licence”

- (1) In this Part “relevant licence” means –
 - (a) an offshore transmission licence in respect of which the first condition is met,
 - (b) a transmission licence (other than an offshore transmission licence) in respect of which the first and second conditions are met, or
 - (c) a distribution licence in respect of which the second condition is met.
- (2) The first condition is that the licence does not authorise the licence holder to participate in the transmission of electricity as described in section 4(3A)(a).
- (3) The second condition is that the assets required by the licence holder in order to comply with the obligations under the licence satisfy the requirements specified in regulations made by the Secretary of State.
- (4) Regulations under this section may make different provision for licences of different descriptions.
- (5) Before making regulations under this section the Secretary of State must consult –
 - (a) the Authority,
 - (b) such licence holders as the Secretary of State considers appropriate, and
 - (c) such other persons as the Secretary of State considers appropriate.”

3 For section 6C substitute –

“6C Competitive tenders for relevant licences

- (1) The Authority may by regulations make such provision as appears to it to be appropriate for facilitating the making, in cases in which the Authority considers it appropriate, of a determination on a competitive basis of the person to whom a relevant licence is to be granted.
- (2) That provision may include –
 - (a) provision for the publication in such cases of a proposal to grant a relevant licence;

- (b) provision for the inclusion in such a proposal of an invitation to apply for such a licence;
 - (c) provision restricting the making of applications for relevant licences and imposing requirements as to the period within which they must be made;
 - (d) provision for regulating the manner in which applications are considered and determined.
- (3) Regulations under this section –
- (a) may make provision by reference to a determination by the Authority or to the opinion of the Authority as to any matter, and
 - (b) may dispense with or supplement provision made in relation to applications for relevant licences by or under section 6A or 6B.
- (4) The approval of the Secretary of State is required for the making of regulations under this section.

6CA Recovery of tender costs and assessment costs

- (1) The provision made by regulations under section 6C may also include provision requiring –
- (a) the payment to the Authority, in prescribed circumstances, of amounts in respect of the Authority’s tender costs in relation to a tender exercise,
 - (b) the payment to the Authority, in prescribed circumstances, of amounts in respect of the Authority’s cost assessment costs where a tender exercise has been held,
 - (c) the provision to the Authority, in prescribed circumstances, of a deposit of a prescribed amount in respect of a liability which a person has, or may in future have, by virtue of paragraph (a) in relation to a relevant licence,
 - (d) the provision to the Authority, in prescribed circumstances, of security in a form approved by it in respect of such a liability.
- (2) The regulations may require the payments to be made, or the deposit or security to be provided, by one or more of the following –
- (a) in the case of a liability to pay tender costs in relation to a relevant licence, any person who –
 - (i) has made a connection request for the purposes of which the tender exercise has been, is being or is to be, held;
 - (ii) made a connection request for the purposes of which any previous tender exercise relating to the same transmission system, or a transmission system consisting of some or all of the same lines or plant or connecting any of the same generating stations or substations was held;
 - (iii) made a connection request for the purposes of which any previous tender exercise relating to the same distribution system, or a distribution system consisting of some or all of the same lines or plant or

- connecting any of same premises or other distribution systems was held;
- (b) any person who submits an application for the relevant licence to which the tender exercise relates;
 - (c) any person who is the holder of a transmission licence or a distribution licence.
- (3) The regulations may make provision about how –
- (a) payments are to be made, and
 - (b) deposits or other forms of security are to be provided,
- including provision for them to be made or provided by a person approved by the Authority.
- (4) The regulations may include provision about –
- (a) the times at which payments are to be made, or deposits or other forms of security are to be provided, under the regulations;
 - (b) the circumstances in which a payment made in accordance with regulations made by virtue of subsection (1)(a) is to be repaid (wholly or in part);
 - (c) the circumstances in which such a repayment is to include an amount representing interest accrued on the whole or part of the payment;
 - (d) the circumstances in which a deposit (including any interest accrued on it) or other security provided in accordance with the regulations is to be released or forfeited (wholly or in part);
 - (e) the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of this section, and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (5) The regulations must ensure that, as soon as reasonably practicable after –
- (a) a tender exercise is finished, or
 - (b) a series of tender exercises is finished,
- steps are taken by the Authority, in accordance with the regulations, to ensure that the aggregate of the amounts in subsection (7), so far as relating to the exercise or series of exercises, does not exceed the aggregate of the Authority's tender costs in respect of the exercise or series of exercises.
- (6) The regulations must also ensure that, in a case within subsection (5)(b), the aggregate of the amounts within subsection (7) so far as relating to any particular tender exercise does not include any amount that falls within paragraph (a) of the definition of tender costs in section 6D(8) in relation to a different tender exercise.
- (7) The amounts are –
- (a) any fees under section 6A(2) in respect of applications for relevant licences,
 - (b) any payments made or deposits provided in accordance with regulations made by virtue of subsection (1)(a) or (c) and not repaid, and

- (c) the value of any security forfeited in accordance with the regulations.”
- 4 (1) Section 6D (section 6C: supplemental provision) is amended as follows.
- (2) Omit subsections (1) and (2).
 - (3) For subsection (3) substitute –
 - “(3) For the purposes of section 6CA(2)(a), a person makes a connection request when the person makes an application to –
 - (a) the holder of a co-ordination licence (in accordance with any provision made by the licence) for an offer of connection to and use of a transmission system, or
 - (b) an electricity distributor (whether in accordance with any provision made by the distributor’s licence or otherwise) for an offer of connection to and use of the distributor’s distribution system.”
 - (4) In subsection (4), for “subsection (2)(a)” substitute “section 6CA(2)(a)”.
 - (5) Omit subsection (5).
 - (6) In subsection (6)(a), for “offshore transmission” substitute “relevant”.
 - (7) In subsection (8) –
 - (a) after “In” insert “section 6CA and”,
 - (b) at the appropriate places insert –
 - ““cost assessment costs”, in relation to a tender exercise, means any costs incurred by the Authority in connection with any assessment of the costs which have been or are to be incurred in connection with any property, rights or liabilities necessary or expedient for the person granted the licence to perform functions under the licence;”, and
 - ““functions” includes powers and duties;”,
 - (c) omit the definitions of “offshore transmission licence”, “regulated asset”, “successful bidder” and “transitional tender exercise”,
 - (d) for the definition of “prescribed” substitute –
 - ““prescribed” means prescribed in or determined under regulations made by the Authority under section 6C;”,
 - (e) in the definition of “tender costs” –
 - (i) in paragraph (a), after “costs” insert “(including any cost assessment costs)”, and
 - (ii) in paragraph (b), after “costs” insert “(including any cost assessment costs)”, and
 - (f) in the definition of “tender exercise”, for “offshore transmission” substitute “relevant”.
 - (8) After that subsection insert –
 - “(8A) Where the Authority determines under section 6C to grant a relevant licence to a person who already holds a transmission licence or a distribution licence (“the existing licence”) –

- (a) the Authority may make such modifications of the existing licence as are necessary to give effect to the determination, and
 - (b) references in this Part to the grant of the licence are to be read accordingly.
- (8B) Before making any modifications under subsection (8A)(a), the Authority must give notice –
 - (a) stating that it proposes to make the modifications and setting out their effect, and
 - (b) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and must consider any representations or objections that are duly made and not withdrawn.”
- (9) In subsection (9), for “by virtue of this section” substitute “under section 6C”.
- (10) In the heading, for “Section 6C:” substitute “Competitive tenders:”.
- 5 In section 6E (property schemes), for “offshore transmission” (including in the heading) substitute “relevant”.
- 6 (1) Section 6F (offshore transmission during commissioning period) is amended as follows.
 - (2) In subsection (2), for “an offshore” substitute “a”.
 - (3) In subsection (4), at the beginning insert “In relation to an offshore transmission system,”.
 - (4) After that subsection insert –
 - “(4A) In relation to a transmission system other than an offshore transmission system, the third condition is that –
 - (a) either –
 - (i) a tender exercise for the granting of a transmission licence in respect of the system has been or is being held, or
 - (ii) the Authority has determined to hold a tender exercise for the granting of a transmission licence in respect of the system, and
 - (b) the system, or anything forming part of it, has not been transferred to the successful bidder.”
 - (5) In subsection (8) –
 - (a) in the definition of “associated”, at the end insert “as it had effect immediately before its repeal”,
 - (b) in the definition of “developer”, for “6D(2)(a)” substitute “6CA(2)(a)”,
 - (c) omit the definitions of “offshore transmission” and “offshore transmission licence”, and
 - (d) in the definition of “relevant generating station”, for “an offshore” substitute “a”.
 - (6) In the heading omit “Offshore”.

- 7 (1) Section 6G (meaning of “commissioning period”) is amended as follows.
- (2) In subsection (1), for “an offshore” substitute “a”.
- (3) Omit subsections (3) to (5).
- (4) For subsection (6) substitute –
- “(6) In this section –
- “co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place and the whole or part of which is at a place in Great Britain, in the territorial sea adjacent to Great Britain or in a Renewable Energy Zone;
- “relevant co-ordination licence holder” means the holder of a co-ordination licence to whom a person has applied (in accordance with any provision made by that licence) for an offer of connection to and use of a transmission system for the purposes of which the tender exercise is held.”
- 8 (1) Section 6H (modification of codes or agreements) is amended as follows.
- (2) For subsection (2) substitute –
- “(2) The Authority may make a modification under subsection (1) only if it considers it necessary or desirable for the purpose of –
- (a) implementing, or facilitating the implementation of, a determination made in accordance with regulations under section 6C, or
- (b) implementing or facilitating the operation of section 6F or 6G.”
- (3) For subsection (4) substitute –
- “(4) Before making a modification under subsection (1) the Authority must –
- (a) consult such persons as the Authority considers appropriate, and
- (b) publish a notice –
- (i) stating that it proposes to make the modification and its reasons for proposing to make it,
- (ii) setting out the proposed modification and its effect, and
- (iii) specifying the time within which representations may be made (which must not be less than the period of 28 days beginning with the day on which the notice is published).”
- (4) In subsection (5), for “the Energy Act 2013” substitute “the Energy Act 20XX”.
- (5) In subsection (7), after “subsection” insert “(4) or”.
- (6) Omit subsection (8).
- (7) In the heading, after “Sections” insert “6C”.

- 9 (1) Section 64 (interpretation etc of Part 1) is amended as follows.
- (2) In subsection (1), at the appropriate places insert –
- ““offshore transmission” means the transmission within an area of offshore waters of electricity generated by a generating station in such an area;”
 - “offshore transmission licence” means a transmission licence authorising anything that forms part of a transmission system to be used for purposes connected with offshore transmission;”, and
 - ““relevant licence” has the meaning given by section 6BA;”.
- (3) After subsection (1AA) insert –
- “(1AB) For the purposes of the definition of “offshore transmission” in subsection (1), “offshore waters” means –
- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea, and
 - (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964.”
- 10 Schedule 2A is amended as follows.
- 11 For paragraph 1 substitute –
- “Scheme-making power*
- 1 (1) This paragraph applies where a tender exercise is held in relation to a relevant licence.
- (2) The Authority may, on an application under paragraph 3, make a scheme (“a property scheme”) providing for –
- (a) the transfer to the successful bidder of, or
 - (b) the creation in favour of the successful bidder of rights in relation to,
- any property, rights or liabilities necessary or expedient for operational purposes.”
- 12 In paragraph 2, at the end insert –
- “(5) A property scheme may not contain provision for the transfer of, or creation of rights in relation to, property, rights or liabilities that the Authority considers it appropriate for the successful bidder to acquire by other means.”
- 13 Omit paragraph 5.
- 14 For paragraph 13 substitute –
- “13 On an application for a property scheme, no scheme may be made until the relevant licence has been granted to the successful bidder.”
- 15 Omit paragraph 16(1)(d).
- 16 In paragraph 35(2), for “offshore transmission” substitute “relevant”.

- 17 (1) Paragraph 36 is amended as follows.
- (2) In sub-paragraph (1), for “offshore transmission” substitute “relevant”.
- (3) In sub-paragraph (2), for “offshore transmission” substitute “relevant”.
- 18 After paragraph 36 insert –
- “Transmission owner of last resort*
- 36A (1) Before directing the holder of a transmission licence to act as a transmission owner of last resort pursuant to the conditions of the licence, the Authority may publish a notice –
- (a) stating that it proposes to give the direction, and
- (b) identifying the licence holder to whom it proposes to give the direction.
- (2) Where such a notice is published, this Schedule has effect as if –
- (a) the licence holder is the preferred bidder in relation to a tender exercise, and
- (b) the notice is one published under paragraph 35(2), identifying the licence holder as the preferred bidder.
- (3) Paragraph 35(4) applies in relation to a notice published under sub-paragraph (1) of this paragraph as it applies to a notice published under paragraph 35(2).
- (4) Where the Authority directs the holder of a transmission licence to act as a transmission owner of last resort pursuant to the conditions of the licence, this Schedule has effect as if –
- (a) the licence holder is the holder of a transmission licence granted as a result of a tender exercise in which the licence holder was the successful bidder, and
- (b) a notice has been published under paragraph 36 identifying the licence holder as the successful bidder in relation to the tender exercise.”
- 19 Omit paragraph 37.
- 20 In paragraph 38(1) –
- (a) omit the definitions of “co-ordination licence” and “relevant place”, and
- (b) in paragraph (a) of the definition of “operational purposes”, for “offshore transmission” substitute “relevant”.

PROVISIONS ABOUT ENERGY

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Provisions about Energy.

- These Explanatory Notes have been produced by the Department of Energy and Climate Change in order to assist the reader of the provisions.
- These Explanatory Notes explain what the Provisions about Energy will mean in practice; provide background information on the development of policy; and provide additional information on how the provisions will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Provisions about Energy. They are not, and are not intended to be, a comprehensive description of the Provisions.

Overview of the Provisions

- 1 The Government is committed to increasing competition in the energy market and reducing energy costs for consumers. The following measures are fundamental elements to achieving this aim. Once enacted this package of measures would:
 - enable Government to drive timely delivery of smart meters. Smart meters will help put households and businesses in control of their energy usage;
 - provide the Gas and Electricity Markets Authority (the Authority) with powers that support the introduction of arrangements for next-day switching and ensuring that suppliers use consumers' actual half hourly electricity consumption data in settlement processes, boosting competition and assisting consumers; and
 - enable competitive tenders for some onshore electricity assets, fundamentally changing the way network investment is made while driving savings for consumers.

Policy background

Clauses 1 to 10 Smart Meters

- 2 Smart Meters, rolled out as part of the Smart Metering Implementation Programme (the 'Programme'), are the next generation of gas and electricity meters. They will provide consumers with near-real time information on their energy consumption to help them control and manage their energy use, save money, switch energy supplier more quickly, and reduce emissions.
- 3 Central to the operation of smart metering is the activity of communicating to and from smart metering systems (the 'smart meter communication service'). The smart meter communication service will be provided by a central communications provider called the 'Data and Communications Company', or 'DCC'. The DCC is a new licensed entity regulated by the Authority and holds a smart meter communication licence (the 'DCC Licence') awarded under the Electricity Act 1989 and the Gas Act 1986 (the 'Electricity and Gas Acts').
- 4 Through the DCC, energy suppliers will be able to collect energy usage data remotely, bringing an end to estimated bills and facilitating faster switching between energy suppliers. Domestic consumers will be able to see their energy usage in near-real time through provision of an In Home Display. Other third parties, such as energy service companies, will also be able to access usage data with the consumer's permission so as to provide consumer services such as accurate price comparisons.
- 5 The DCC sits at the heart of the operation of smart meters and enables the realisation of the benefits of the Programme. Its continued operation is therefore fundamental to protecting consumers and ensuring benefits are achieved. Whilst the DCC is subject to the provisions of the Insolvency Act 1986, there are currently no special statutory provisions to deal with the threatened or actual insolvency of the DCC. This is in contrast with the position for water, railways, the transportation or supply of gas and the transmission, distribution and supply of electricity.

- 6 The Government considers that the risk of the DCC's insolvency is very low. However, the Government is concerned that the impact for consumers would be high; potentially resulting in a loss of energy billing services, including prepayment service which would particularly affect vulnerable consumers. The objective of the Special Administration Regime (SAR) is to ensure the continuity of the smart meter communication service and therefore the provision of billing and smart services to consumers. It is currently expected that the provision of 'live' services by the DCC to its users will commence in 2016. The exposure of consumers and the industry to the potential risk of DCC insolvency will therefore increase rapidly thereafter, as smart meters are rolled out nationally in the run up to the end of 2020.
- 7 The Government is facilitating the smart metering rollout by developing a comprehensive regulatory framework comprising licence conditions (in supply licences, network operator licences, and the DCC Licence) and a new industry code called the Smart Energy Code (the SEC). Together, these establish the rights and obligations for all aspects of smart metering design, development, installation and operation.
- 8 The Energy Act 2008 and the Electricity and Gas Acts provide the Secretary of State a number of powers in relation to smart metering, including powers to amend licences and industry codes, to veto any proposal by the Authority to consent to the transfer of the DCC licence, and to make activities relating to smart metering licensable.
- 9 These powers are currently due to expire on 1 November 2018. The draft clauses provide for these powers to continue to be available to the Secretary of State until 1 November 2023. We consider that it is necessary for the Secretary of State to continue to have the ability to intervene where necessary to drive the timely completion of the roll out of smart meters and delivery of benefits during early operations once the roll out is complete at the end of 2020.

Clauses 11 to 15: Supply and switching

- 10 The Authority, with Government support, is embarking on a programme of work to radically overhaul the change of supplier process for gas and electricity customers to deliver a faster and more reliable process. This includes the provision of a single central registration system which will hold data on all gas and electricity supply points and export points. Currently data is held separately for gas and electricity and in the case of electricity, on a regional basis.
- 11 An effective change of supplier process is vital for a competitive energy market.
- 12 The current processes depend on systems that operate differently between the gas and electricity markets and which were developed in the late 1990s. They are slow, inefficient and unreliable. Consumers see switching supplier as a hassle, and the fear of something going wrong is off-putting for many. A competitive market is reliant on engaged consumers to drive suppliers to innovate, improve their service and to seek to reduce their prices below those of their competitors.
- 13 The GB electricity industry is based around half-hour units of time, called 'settlement periods'. For generators and larger consumers, electricity production or consumption is measured every half-hour. However, the vast majority of domestic and smaller non-domestic consumers have their energy consumption settled on a non-half-hourly basis. This is because most consumers do not have meters capable of recording their half-hourly consumption or export.
- 14 With traditional meters, the amount of energy consumed is recorded, but the timing of when it is consumed is not recorded – it is estimated, for each settlement period, according to a profile of the average consumer. The roll-out of smart and advanced meters to domestic and smaller

non-domestic consumers, which can record the amount of energy consumed or exported within every half-hour period and provide this data to energy suppliers remotely, presents an opportunity to improve the accuracy and timeliness of the electricity settlement process. In particular, smart and advanced meters will improve the process by which the volume of electricity purchased by a supplier for a particular half-hour period is compared to the volume of electricity consumed by the supplier's customers for the same period using information about customers' actual consumption of electricity on a half-hourly basis; this is 'half-hourly settlement'.

- 15 Half-hourly settlement will put in place the right environment for more demand-side response (DSR). DSR is defined as the actions taken by consumers to change the amount of electricity they take off the grid at particular times in response to a signal. In practice DSR means the active reduction in the electricity a user is taking from the grid at a given moment in time. Half-hourly settlement can also facilitate measures that encourage consumers to export electricity to the grid (for example, from onsite solar PV) when it is more beneficial to the electricity system.
- 16 This can help to reduce consumer bills, lower carbon emissions and enhance security of supply. These positive outcomes will become more important with an increasingly low carbon generation mix, and the need for distribution networks to cope with the additional load resulting from the take-up of electric vehicles and potentially the electrification of heat as part of a move to a low-carbon energy system. The Authority, with Government support, is taking forward a project to consider the approach for moving to mandatory, market-wide half-hourly settlement in order to deliver the potential benefits that it can provide (see: www.ofgem.gov.uk/publications-and-updates/half-hourly-settlement-way-forward).

Clause 16 and the Schedule: Amendments to the Electricity Act 1989: Competitive tenders

- 17 Significant investment will be needed in the electricity network to ensure it delivers a secure, sustainable and affordable energy supply. Nearly a quarter (24%) of the average household electricity bill in 2014 was made up of the cost of transporting electricity from the place that it was generated to the customer. The aim of these provisions is to enable necessary investment to be made in a cost-effective way.
- 18 The onshore electricity network consists of high-voltage, and typically long-distance, transmission networks and lower-voltage, local distribution networks. They operate as geographically-defined regional monopolies regulated by the Authority, supported by the Office of the Gas and Electricity Markets (Ofgem), through price controls. Price controls limit the amount of allowed revenue that a network company can take over the length of a price control period and serve as a proxy for competition.
- 19 The Energy Acts of 2004 and 2008 amended the Electricity Act 1989 to enable the Authority to identify on a competitive basis the party licenced to participate in offshore transmission (transmission between offshore electricity generation and the mainland network). Government believes that there would be benefit in extending this competitive process to enable the allocation of some other network licences. However, because the current legislative framework only provides specifically for the competitive allocation of licences for offshore transmission, primary legislative change is needed. This draft legislation therefore provides powers for the Authority, where it thinks it appropriate, to determine on a competitive basis the person to whom some onshore transmission licences or distribution licences are awarded. It is not cost-

effective or practical to award all licences competitively, so the power to make a competitive determination for onshore transmission licences and distribution licences is limited to assets which meet a set of generic criteria set out by the Secretary of State in regulations. These criteria could be, for example, that the asset is new, high-value and separable, which might serve to enable the competitive tendering of a transmission line connecting a new, remote power station to the main, integrated transmission system, or a line that connects two parts of the network across a constrained area.

- 20 The draft legislation also makes provision to facilitate the making of competitive determinations. In summary, the provisions:
- enable the Authority to make provision, in regulations, to recover certain costs of making competitive determinations from specified people;
 - enable the Authority, in limited circumstances and subject to certain conditions, to make a scheme to transfer, or create rights in relation to, property, rights or liabilities, to, or for the benefit of, a licensed person where that property is needed by them to fulfil their licensed functions;
 - permit transmission during a commissioning period without the requirement to hold a transmission licence, with the intention of enabling electricity generators to build, test and operate transmission assets before they are transferred to a successful bidder; and
 - enable the Authority to modify codes and agreements so that those codes facilitate delivery of certain aspects of the new competitive regime.

Legal background

SMART METERS

- 21 The activity of providing the smart meter communication service is controlled by a system of prohibitions and licences. The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (SI 2012 No 2400) amends the scope of prohibited activities defined in the Electricity and Gas Acts to include providing a communication service to and from smart meters that are installed at domestic premises. This is the smart meter communication service. Provision of the service is permitted by the DCC Licence which was granted by the Secretary of State under sections 6(1A) and (1C) of the Electricity Act 1989 and sections 7AB(2) and (4) of the Gas Act 1986 and took effect from 23 September 2013. The initial licence will last for 12 years. A number of conditions have also been added to energy supply licences, notably the requirement on energy suppliers to take all reasonable steps to complete the rollout of smart meters by the end of 2020.
- 22 Many of the provisions in the accompanying draft clauses mirror those that apply to other energy licensees as set out in the Energy Act 2004. These are explained in more detail in the commentary on draft clauses below. The SAR will provide for a special administration order to be sought by the Secretary of State (or the Authority with agreement of the Secretary of State) from a court. The order will provide that for the period during which the order remains in force the affairs, business and property of the DCC shall be managed by a person appointed by the court to ensure the continuation of the functions the DCC performs under the DCC Licence until the DCC is rescued as a going concern, or transferred to another company (or companies) as a going concern. Any transfer would require approval by the Secretary of State.

The SAR will apply until it is no longer necessary to ensure continuation of the relevant service(s).

- 23 The Energy Act 2008 and Electricity and Gas Acts provide the Secretary of State with a package of powers related to smart metering to enable the delivery of the Programme. Sections 88(1) and 88(2) of the Energy Act 2008 allow the Secretary of State to modify the licences of electricity distributors and suppliers and gas transporters, shippers and suppliers, and the smart meter communication licensee (i.e. DCC) or documents made under licence conditions (e.g. industry codes). Section 91 and Schedule 4 of the Energy Act 2008 inserted new provisions into the Electricity and Gas Acts to create new licensable activities relating to smart metering (Section 41HA-HC Gas Act 1986 and 56FA-FC Electricity Act 1989). The Electricity and Gas Acts give the Secretary of State the power to veto the transfer of this licence or any part of it (section 7A of the Electricity Act section 8AA of the Gas Act).

SUPPLY AND SWITCHING

- 24 The regulatory framework for the gas and electricity industry in Great Britain is set out in European and domestic legislation, licences and industry codes. The key obligations linked to the change of supplier and the settlement processes are set out in licences and industry codes.
- 25 Each industry code has its own objectives, which any proposed modification must better facilitate. A distinct panel oversees the modification process for each industry code, supported by a dedicated administrator. While the Authority takes decisions on whether to approve a modification at the end of the process, it is currently very limited in the role it can play in coordinating modifications during their development. The Authority has powers to launch a Significant Code Review (SCR) whereby they can direct licensee(s) to make changes to relevant industry codes to deliver outcomes specified in a Direction made but it does not control the code modification process or timetable and neither can it make or propose changes to code modifications during their development.
- 26 Under section 11A of the Electricity Act 1989 and 23 of the Gas Act 1986 the Authority has the power to amend gas and electricity supply licences. Under these powers the Authority must allow a minimum of 56 days before the licence modification can take effect. In the context of the switching and settlement reform programme we anticipate that there may be some circumstances when the Authority will need to make urgent modifications to codes and licences, for example, to address an issue that has arisen in testing or after the new arrangements have gone live. In such cases allowing 56 days before a licence modification comes into effect could be an unwelcome delay.

COMPETITIVE TENDERS

- 27 Broadly, the Electricity Act 1989 prohibits participation in the transmission or distribution of electricity without a licence (or exemption) to do so, and gives the Authority the power to grant those licences. The Energy Acts of 2004 and 2008 amended the Electricity Act 1989 to enable the Authority to identify on a competitive basis the party to be licenced to operate offshore transmission connections between offshore electricity generating stations (to date, windfarms) and the mainland network. The first competitive tender for an offshore connection was launched in June 2009 and the regime has to date resulted in the grant of 13 licences in respect of transmission assets worth £2.6 billion. In August 2014, an independent report commissioned by the Authority found that across the first nine projects and £1.1 billion worth of investment, the competitive offshore transmission regime generated savings of £200-£400 million against any other plausible counterfactual regime (see:

www.ofgem.gov.uk/publications-and-updates/consultation-cepabdo-evaluation-offshore-transmission-tender-round-1-benefits). The experience of the competitive allocation of licences for offshore transmission suggests that significant savings can be made through a competitive approach to network licensing.

Territorial extent and application

- 28 The Smart Meters provisions extend to England, Wales and Scotland.
- 29 The Supply and Switching provisions extend to England, Wales and Scotland.
- 30 The competitive tendering provisions, and the Schedule, extend to England, Wales and Scotland.

Commentary on the Provisions

Part 1: SMART METERS

Clause 1: Smart meters: extension of time for exercise of powers etc.

- 31 Subsection (1) amends section 88(5) of the Energy Act 2008 to extend the period within which the Secretary of State can exercise the powers under section 88(1) until 1 November 2023. Section 88(1) provides for the Secretary of State to modify conditions of licences, and documents maintained in accordance with licence conditions (and agreements giving effect to such documents), for example industry codes.
- 32 Subsections (2)(a) and (3)(a) amend section 7A(10D) of the Electricity Act 1989 and section 8AA(10D) of the Gas Act 1986 to extend the expiry date for the provisions allowing for the Secretary of State to veto a proposed transfer of the DCC Licence to 1 November 2023.
- 33 Subsections (2)(b) and (3)(b) amend section 56FB(2) of the Electricity Act 1989 and section 41HB(2) of the Gas Act 1986 to extend the period within which the Secretary of State can exercise the powers to provide for activities connected with smart meters to be licensable activities until 1 November 2023. Licensable activities are those determined in legislation to be prohibited to undertake without being the holder of a licence or without an exemption from the requirement to hold a licence.
- 34 Subsection (4) makes consequential repeals.

Clause 2: Smart meter communication licensee administration orders

- 35 Subsection (1) describes a “smart meter communication licensee administration order” (or an “smcl administration order”) as an order made by the court in relation to a smart meter communication licensee, which directs that the affairs, business and property of the company are to be managed by a person appointed by the court, while the order is in force.
- 36 Subsections (2) and (3) explain that the person appointed by the court for the purposes of an smcl administration order is known as the “smart meter communication administrator”, who must perform the duties of a smart meter communication administrator so as to achieve the objective set out in clause 3 (see below).
- 37 Subsection (4) establishes that an smcl administration order can only apply to the affairs and business of a non-GB company (i.e. a company incorporated outside Great Britain and including a Northern Ireland company) which are carried out in Great Britain and to its property in Great Britain.
- 38 Subsection (5) sets out which licence holders may be subject to an smcl administration order.

Clause 3: Objective of a smart meter communication licensee administration

- 39 Subsection (1) establishes that the objective of the smart meter communication administrator in performing his duty is (1) to ensure that the functions that a smart meter communication licensee performs under its licence are provided efficiently and economically and (2) to render the continuation of the smart meter communication licensee administration unnecessary for this purpose by rescuing the company or making a transfer in accordance with subsection (2).
- 40 Subsection (2) sets out the means by which the continuation of the smart meter communication licensee administration may be made unnecessary. These are either the rescue of the company as a going concern, or transfers which satisfy subsection (3). Subsection (3) provides for the transfer to a single company or different parts of the undertaking to multiple

companies. Subsection (4) provides for how such transfers may take place.

- 41 Subsection (5) provides that rescue is to be preferred to transfer in achieving the objective of smart meter communication licensee administration. Transfers are only to be effected when rescue is not reasonably practicable without transfers, where the objective of the smart meter communication licensee administration cannot be achieved through rescue without transfers or where such transfers would produce a better result for the creditors or members of the company
- 42 Subsection (6) allows the Secretary of State to make regulations by negative statutory instrument specifying the activities carried out by the company that the smart meter communication administrator must give priority to, and how this should be done.

Clause 4: Application of certain provisions of the Energy Act 2004

- 43 This clause modifies the provisions in sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (the existing special administration regime for energy licensees), and sections 171 and 196 (interpretation) so they apply in relation to an smcl administration order.
- 44 The provisions applied include:
 - Section 156 of the Energy Act 2004, which provides that an application to the court for an smcl administration order can be made only by the Secretary of State or by the Authority with the consent of the Secretary of State;
 - Section 157 which empowers the court in relation to an application for an smcl administration order. The court can make an smcl administration order only if it is satisfied that the company is insolvent, facing insolvency or that on a petition from the Secretary of State under section 124A of the Insolvency Act 1986 (c.45) it would be just and equitable (aside from the objective of smart meter communication licensee administration) to wind up the company in the public interest;
 - Section 158 which stipulates the status of the smart meter communication administrator. It provides that the administrator must exercise management functions for the purpose of achieving the objective of the smart meter communication licensee administration as quickly and efficiently as is reasonably practicable and must exercise powers and perform duties in the manner which, in so far as it is consistent with the objective of the smart meter communication licensee administration, best protects the interests of the creditors of the company as a whole and, subject to those interests, the interests of the members of the company as a whole;
 - Section 159 and Schedule 20 which apply the rule making power in section 411 of the Insolvency Act 1986 (c.45). Schedule 20 provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect in relation to smart meter communication licensee administration. It also grants the Secretary of State the power to make such modifications to primary legislation relating to insolvency (including the provisions of the Act) as the Secretary of State considers appropriate in relation to smart meter communication licensee administration;

- Schedule 21, which provides for the transfers to another company or companies as a going concern of so much of the smart meter communication licensee's assets as are necessary to ensure that the objective of the smart meter communication licensee administration is met. Such transfer schemes are to be made by the smart meter communication administrator with the approval of the Secretary of State, after she has consulted the Authority;
- Sections 160 to 164, which prevent smart meter communication licensee administration being frustrated by prior orders of various types being granted before the Secretary of State or the Authority have been given an opportunity to apply for an smcl administration order or by other steps being taken when an smcl administration order has been made or an application is outstanding;
- Section 165 which enables the Secretary of State, with the consent of the Treasury, to give a grant or loan to a company in smart meter communication licensee administration in order to achieve the objective of smart meter communication licensee administration. It also enables the Secretary of State to set the terms of a grant or loan including the requirement that all or part of a grant should be repaid;
- Section 166 which enables the Secretary of State, with the consent of the Treasury, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the smart meter communication administrator's powers and duties;
- Section 167 which enables the Secretary of State, with the consent of the Treasury, to provide guarantees in relation to a smart meter communication licensee in smart meter communication licensee administration and requires the Secretary of State to lay a statement of any guarantees given before Parliament as soon as practicable; and
- Section 171, which provides interpretations of various specific terms and Section 196 which provides interpretations of various general terms.

Clause 5: Conduct of administration, transfer schemes, etc.

- 45 This clause gives the Secretary of State powers to make rules under section 411 of the Insolvency Act 1986 in order to give effect to these clauses.

Clause 6: Modifications of particular or standard conditions

- 46 Subsection (1) enables the Secretary of State to modify the conditions of any one licence of a specific person and the standard conditions of gas or electricity licences in relation to the new regime for smart meter communication licensee administration. The modifications that can be made are specified in clause 7, and include the making of incidental, consequential or transitional modifications.
- 47 Subsection (3) requires the Secretary of State to consult the holder of any licence being modified and anyone else she thinks appropriate before making a modification. Subsection (4) enables the consultation to take place before the commencement of these provisions. Subsections (5) and (6) require the Secretary of State to publish the modifications made under this clause.

- 48 Subsection (8) requires that where the Secretary of State has made modifications to the standard conditions of licences of any type, the Authority must ensure that the modification is incorporated into the standard conditions for future grants of licences and must publish these modifications.
- 49 Subsection (9) limits the exercise of the powers under this clause to eighteen months after commencement of the clause. This reflects the Government's intention to promptly put in place the necessary provisions through subordinate legislation.
- 50 Subsections (10) and (11) provide that modifications made under this clause to standard conditions of (i) electricity generation, distribution and supply licences and (ii) gas transporter, supply and shipping licences, are reflected in the sections of the Utilities Act 2000 which govern the standard conditions of those licences.
- 51 Subsections (12) and (13) require the Secretary of State to act for the purposes of this clause in accordance with the Principal Objective to protect the interest of consumers and general duties as set out in the Gas Act 1986 and Electricity Act 1989.

Clause 7: Licence conditions to secure funding of smart meter communication licensee administration

- 52 This clause specifies the modifications that the Secretary of State can make to gas and electricity licences to secure funding of smart meter communication licensee administration.
- 53 Subsections (1) and (2) state the modifications that the Secretary of State can make under clause 6 include requiring the holder of the licence to raise the charges imposed by those modifications so as to raise such amounts as may be determined by the Secretary of State and to pay the amounts raised to specified persons for the purpose of making good a shortfall in the property of a smart meter communication licensee available to meet the expenses of smart meter communication licensee administration. This will allow the costs of smart meter communication licensee administration to be recouped via the licence mechanism from the industry and ultimately from consumers.
- 54 Subsection (3) defines a 'shortfall' in meeting the expenses of smart meter communication licensee administration as the property of the company being insufficient to meet the costs of smart meter communication licensee administration. It also defines making payment to make good the shortfall as discharging 'relevant debts' which cannot otherwise be met out of the available property.
- 55 Subsection (4) defines relevant debts and includes obligations to repay the grants, loans, sums paid out under an indemnity and sums paid out under guarantees under sections 165, 166 and 167 of the Energy Act 2004 as applied by clause 4.

Clause 8: Modifications under the Enterprise Act 2002

- 56 This clause provides the power to modify or apply enactments conferred on the Secretary of State by sections 248, 277 and 254 of the Enterprise Act 2002 and includes a power to make consequential modifications to these clauses where the Secretary of State considers this appropriate. This power is designed to ensure that the current provisions do not get out of line where the Enterprise Act 2002 provisions are used to modify or apply enactments.

Clause 9: Power to make further modifications of insolvency legislation

- 57 This clause gives the Secretary of State the power to make modifications to any provisions under these clauses. This power is designed to enable the Secretary of State to amend the detail of the regime as experience of its application highlights any difficulties or areas of concern. This is particularly so as the smart metering Programme, and in particular the smart

meter communication service, continues to develop rapidly.

Clause 10: Interpretation

58 This clause defines the terms used in clauses 2 to 9.

Part 2: SUPPLY AND SWITCHING

Clause 11: Power to modify energy codes etc: supply and switching

- 59 This clause confers powers on the Authority to modify industry codes and multi-party agreements. The power to make modifications includes the power to remove or replace all of the provisions of a code, to make different provision for different purposes and to make incidental, supplementary, consequential for transitional modifications.
- 60 There are two situations in which code modifications can be made. The first situation is where the Authority judges the modification necessary or desirable in order to create and operate new centralised arrangements for compiling, managing and providing access to information relating to electricity and gas supply points and electricity export points. The second situation is where the Authority considers the modification necessary or desirable to speed up, simplify or improve the change of supplier process. The power will cease to exist after 5 years from the coming into force date.

Clause 12: Modification under section 11

- 61 Clause 12 sets out the process that the Authority must follow in order to propose and make these modifications. The clauses require the Authority to publish the proposed modification setting out its intended effect, the reasons why the Authority is proposing the modification and the Authority's proposed timing for bringing the modification into effect. The Authority is required to send a copy of the notice, setting out the proposed modification to each relevant licence holder, the Secretary of State, Citizens Advice and Citizens Advice Scotland.
- 62 It must allow a period of at least 28 days for representations to be made about the proposed modification. If the Authority decides to proceed with the modification it is required to publish a notice setting out its effect, specifying the date from which the modification takes effect, how it has taken account of any representations and the reason for any changes from the modification it originally proposed.
- 63 Subsections (8) and (9), applies the Authority's principal objective and general duties found in sections 4AA to 4B of the Gas Act 1986 and in sections 3A to 3D of the Electricity Act 1989 in respect to code modifications made under this new power.

Clause 13: Power to modify electricity codes etc: settlement

- 64 Clause 13 confers powers on the Authority similar to those conferred by clause 11. The power to make modifications under clause 13 may be exercised when the Authority judges they are necessary or desirable for the purpose of enabling or requiring that suppliers use information about their customers' actual consumption of electricity on a half-hourly basis in the electricity settlement processes. The power will cease to exist after 5 years from the coming into force date. The power will be commenced by regulations.

Clause 14: Modification under section 13

- 65 This clause sets out the procedure for the Authority to exercise the powers conferred by clause 13. This is the same procedure as set out above in clause 12, with the exception that the Authority's principal objectives and general duties in the Gas Act 1986 do not apply (as the powers relate to codes maintained in accordance with electricity licences only).

Clause 15: Date from which modifications of energy licence conditions may have effect

- 66 Clause 15 amends sections 11AA of the Electricity Act 1989 and 23(9) of the Gas Act 1986 to enable the Authority to make modifications to licenses, in certain circumstances, without having to provide for a 56 day standstill period before the modifications come into force. The circumstances in which the Authority can do this are firstly, where the modifications relate to new centralised arrangements for compiling, managing and providing access to information relating to electricity and gas supply points and electricity export points, faster switching or half-hourly settlement (in relation to electricity settlement only) and secondly, where the Authority consider that the reduction in the 56 day period is necessary or expedient.
- 67 If the Authority wants to reduce the normal 56 day standstill period, they will be required to explain this in the consultation on the proposed licence modification that they are required to carry out and they will need to explain why the reduction will not have a material adverse effect on licence holders affected by the change.
- 68 Consequential changes are also being made to the appeal mechanism that applies in respect of licence modifications under the Electricity Act 1989 and the Gas Act 1986, to ensure that the appeal body - the Competition and Markets Authority - has the ability to suspend a licence modification which may already be in effect by the time an appeal is brought as a result of a reduction in the normal 56 day standstill period.

Part 3: AMENDMENTS TO ELECTRICITY ACT 1989

Clause 16: Competitive tenders for transmission and distribution licences

- 69 Clause 16 and the schedule amend the Electricity Act 1989.

The Schedule - Competitive tenders for transmission and distribution licences

- 70 Paragraph 1 of the schedule states that the amendments described by paragraphs 2 to 20 are made to the Electricity Act 1989.
- 71 Paragraph 2 of the schedule inserts a new section 6BA into the Electricity Act 1989. In order to define the scope of the situations in which the Authority is enabled to award licences competitively pursuant to section 6C, it creates the concept of a “relevant licence” and sets out the conditions which a licence must meet in order to be considered relevant. Under clause 6BA(1)(a), all offshore transmission licences which allow the licensee to participate in transmission by making available an electricity transmission asset are considered relevant licences. This means that such licences may continue to be the subject of competitive tenders as they are currently. Under clause 6BA(1)(b), a relevant licence can be a transmission licence which is not an offshore transmission licence and which allows the party which holds it to participate in transmission by making available an asset which meets the requirements set out in regulations made by the Secretary of State. Paragraph 2, clause 6BA(2), means that only licences which authorise participation in transmission under section 4(3A)(b) of the Electricity Act 1989 (as opposed to system operation under section 4(3A)(a) of the Electricity Act 1989), can be considered relevant. Under clause 6BA(1)(c), a relevant licence can be a distribution licence which allows the party which holds it to distribute electricity by means of an asset which fulfils the requirements set out in regulations made by the Secretary of State.
- 72 Paragraph 2, clause 6BA(3) enables the Secretary of State to specify in regulations the technical criteria which network assets (other than offshore transmission assets) will have to fulfil in order for the licences that relate to them to be considered relevant licences. Clause 6BA(4) allows regulations made by the Secretary of State to specify different sets of requirements for

licences of different descriptions, or not to make provision for licences of certain descriptions. Clause 6BA(5) requires that before making any regulations under section 6BA, the Secretary of State consults the Authority and, if the Secretary of State considers it appropriate, licence holders and other persons. By virtue of section 106 of the Electricity Act 1989, such regulations will be statutory instruments and subject to negative resolution procedure.

- 73 Paragraph 3 expands the current scope of section 6C. It enables the Authority, where it considers appropriate, to make a competitive determination of the person to whom a relevant licence is to be granted, and to make regulations to facilitate the making of that determination. Clause 6C(4) states that the approval of the Secretary of State is required for those regulations to be made.
- 74 Paragraph 3 inserts a new section 6CA into the Electricity Act 1989. This combined with modifications made to section 6D expands the current scope of section 6D. Section 6CA gives the Authority the ability to make regulations to recover the costs it incurs in administering tender exercises. This includes the ability to require particular payments (clause 6CA(1)) to be made, and limits the particular parties (clause 6CA(2)) from whom payments can be requested. For example (and not exclusively), the Authority might expect to recover:
- payments from those who submit a bid in a tender exercise (clause 6CA(2)(b)) to cover the cost of a particular tender exercise (clause 6CA(1)(a));
 - provision of deposits or other such security (such as a letter of credit or bond), as the Authority agrees (clause 6CA(1)(c) and 6CA(1)(d)), of an amount set by the Authority in respect of the Authority's tender costs, by any person who has made a connection request for the purposes of which the tender exercise has been or is being held (clause 6CA(2)(a)); or
 - payments from any holder of an electricity transmission or distribution licence (clause 6CA(2)(c)), in the event that a tender process fails in circumstances in which there is no party who has made a connection request and it would be inappropriate to recover costs from bidders.
- 75 Clauses 6CA(3) and 6CA(4) specify a number of other provisions which may be made by the regulations made under section 6C. Clauses 6CA(5) and 6CA(6) prevent the Authority from recovering amounts (specified in clause 6CA(7)) the aggregate of which is greater than costs it has incurred in carrying out each specific tender exercise or a series of exercises. At any particular time during a tender exercise the Authority may hold amounts which exceed the amount of its tender costs, but at the end of the exercise or series of exercises, it must ensure (for example, by making refunds) that it retains no more than its actual costs.
- 76 Paragraphs 4(1) to 4(10) make a series of consequential amendments to section 6D of the Electricity Act 1989, including:
- the omission of subsections (1) and (2) on the grounds that they have been superseded by new clauses 6CA(1) to 6CA(4);
 - the omission of subsection (5) on the grounds that it has been superseded by new clauses 6CA(5) to 6CA(7).
- 77 Paragraph 4(7)(b) enables the Authority to recover those costs it incurs in assessing the expenditure which has been incurred, or will be incurred, on assets which are the subject of a competitive process. The Authority will need to undertake such assessments in cases where,

for example, transmission assets need to be transferred to the new transmission licence holder from the current asset owner. The assessment will enable the Authority to determine the appropriate transfer value of those assets.

- 78 Paragraph 4(8) inserts new subsections 8A and 8B into section 6D of the Electricity Act 1989 to ensure that where the Authority makes a competitive determination to grant a relevant licence to a party that already holds a transmission or distribution licence, the Authority may choose to amend the existing transmission or distribution licence, as opposed to issuing a new licence.
- 79 Paragraph 5 amends section 6E of the Electricity Act 1989 to ensure that it has application to any relevant licence.
- 80 Paragraph 6 amends section 6F of the Electricity Act, and in particular the four conditions it contains, to extend the circumstances in which a person is not to be regarded as participating in the transmission of electricity during a commissioning period.
- 81 Paragraph 6(2) amends the first condition such that the transmission during a commissioning period can take place over any transmission system.
- 82 Paragraphs 6(3) and 6(4) amend the third condition such that during the commissioning period, the transmission may take place either over an offshore transmission system, or over any other transmission system which has been or will be the subject of a competitive determination but which has not yet been transferred to the successful bidder.
- 83 Paragraph 7 makes a series of consequential amendments to section 6G of the Electricity Act 1989 in light of the extension in paragraph 6 of the circumstances in which a person is not to be regarded as participating in the transmission of electricity during a commissioning period. Paragraph 7(3) repeals three subsections of section 6G which are no longer needed.
- 84 Paragraph 8, and in particular paragraph 8(2), modifies section 6H of the Electricity Act 1989 to enable the Authority to amend codes maintained in accordance with transmission and distribution licences, and agreements which give effect to such codes, for the purposes of implementing any competitive determination made under section 6C or for implementing the operation of section 6F or 6G. Paragraph 8(3) places new obligations on the Authority, in addition to its existing obligation to consult, to publish a notice stating that it intends to make a modification under 6H(1), its reasons for doing so, the modification it intends to make, the intended effect of the modification, and the time period within which representations relating to the modification may be made.
- 85 Paragraph 9 amends section 64 of the Electricity Act 1989 to insert a number of definitions which are required by the changes made to Part 1 of the Act.
- 86 Paragraph 10 states that changes made by paragraphs 11 to 20 are made to Schedule 2A of the Electricity Act 1989.
- 87 Amended paragraph 1(1) of Schedule 2A states that a property transfer scheme can be made in accordance with Schedule 2A wherever a tender exercise is held in relation to a relevant licence.
- 88 Amended paragraph 1(2) of Schedule 2A specifies that a scheme may be made in relation to property, rights or liabilities necessary or expedient for operational purposes. Paragraph 12 excludes from a property scheme property, rights or liabilities which the Authority considers it appropriate for the successful bidder to acquire by other means.
- 89 Paragraph 13 repeals paragraph 5 of Schedule 2A, which is no longer needed.

- 90 Paragraph 14 replaces paragraph 13 of Schedule 2A to account for the fact that the scope of the Authority’s ability to make a property transfer scheme has been broadened.
- 91 Paragraph 15 repeals paragraph 16(1)(d) of Schedule 2A, which is no longer needed.
- 92 Paragraph 16 amends paragraph 35(2) of Schedule 2A to account for the fact that the scope of the Authority’s ability to make a property transfer scheme has been broadened.
- 93 Paragraph 17 amends paragraph 36 of Schedule 2A to account for the fact that the scope of the Authority’s ability to make a property transfer scheme has been broadened.
- 94 The Authority is currently able to appoint an “operator of last resort” to act as transmission owner in the event that a competition is unsuccessful or a market participant exits the market. This ensures the secure and efficient operation of the system. Paragraph 18 inserts a new paragraph 36A into schedule 2A, with the effect that an operator of last resort is to be treated for the purposes of Schedule 2A as though it is a successful bidder, and a party which the Authority proposes to name as an operator of last resort is to be treated for the purposes of Schedule 2A as though it is a preferred bidder. This has the effect of enabling the operator of last resort to be the beneficiary of a property transfer scheme made under the Schedule.
- 95 Paragraph 19 repeals paragraph 37 of Schedule 2A, which is no longer needed.
- 96 Paragraph 20 amends paragraph 38(1) of Schedule 2A to account for the fact that the scope of the Authority’s ability to make a property transfer scheme has been broadened.

Part 4: GENERAL

Clause 17: Commencement

- 97 Commencement of the provisions of the measures is specified in clause 17. Part 4 of this Act comes into force on the day on which the provisions are passed.

Clause 18: Extent

- 98 Clause 18 sets out the extent of the Bill.

Commencement

- 99 The Smart Meter and sections 11, 12 and 15 of Supply and Switching provisions come into force at the end of the period of two months beginning with the day on which the Act is passed. The remaining provisions will come into force on such day or days the Secretary of State may by regulations appoint.

Extent

- 100 All of the provisions extend to England and Wales and Scotland

Related documents

101 The following documents are relevant to these provisions:

- Impact Assessments

Annex A - Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
1 SMART METERS Clause 1 -10	YES	YES	NO	YES	NO	NO	NO
2 SUPPLY AND SWITCHING Clause 11 - 15	YES	YES	NO	YES	NO	NO	NO
3 AMENDMENTS OF ELECTRICITY ACT 1989 Clause 16 Schedule	YES	YES	NO	YES	NO	NO	NO

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