

# **SMART METERS BILL**

## **Memorandum from the Department for Business, Energy and Industrial Strategy to the Delegated Powers and Regulatory Reform Committee**

### **A. INTRODUCTION**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Smart Meters Bill (“the Bill”). The Bill was introduced in the House of Commons. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure proposed.

2. Policy statements for each of these powers are contained in Annex A to this memorandum.

### **B. PURPOSE AND EFFECT OF THE BILL**

3. The Bill aims to support the achievement of the Government’s manifesto commitment for every home and small business in Great Britain to be offered a smart meter by the end of 2020. In summary, if agreed by Parliament, the Bill will:

- extend the duration of the Secretary of State’s power in the Energy Act 2008, which allows the Secretary of State to modify energy licence conditions and industry codes for the purposes of the smart meter rollout, and associated powers in the Electricity Act 1989 and Gas Act 1986, from November 2018 to November 2023. This would allow Government to propose amendments to regulation to overcome barriers to smart meter delivery, to secure benefits for consumers and industry from the rollout and to protect consumers during the rollout and beyond; and
- allow the Secretary of State (or Ofgem with approval of the Secretary of State) to apply to court for a special administration order where the smart meter communication licensee is insolvent or facing insolvency. This will ensure continuity of the functions performed by the smart meter communication licensee (currently the Data and Communications Company or DCC) under its relevant licence(s) pending the company being rescued or its business being transferred to another company. The DCC is a monopoly service provider of the national data and communication services needed to support smart metering.

### **C. DELEGATED POWERS**

4. The Bill contains nine delegated powers set out in further detail below.

5. Two of the delegated powers, one of which is a Henry VIII power, relate to the measure extending by five years existing Secretary of State powers. This measure would allow us to overcome barriers to delivery, secure benefits for consumers and industry, and protect consumers. Without extended regulatory powers Government would be critically undermined from leading the Programme. Government would be

unable to effect regulatory changes, where required and evidenced, to ensure the significant benefits case is met (some £17 billion of benefits); to drive delivery of the manifesto commitment to “ensure that smart meters will be offered to every household and business by the end of 2020” and to maintain adequate consumer safeguards

6. The remaining seven delegated powers, three of which are Henry VIII powers, relate to the measure introducing a special administration regime (“SAR”) in relation to the smart meter communication licensee. We consider that these powers are needed for the effective operation of the SAR. Six of these powers are based on those contained in provisions of the Energy Act 2004 that established the SAR for network operators. One power does not have precedent and allows the Secretary of State to specify which smart meter communication services the administrator must prioritise and how this should be done.

7. The measure introducing the SAR works by applying and, where relevant, modifying the network operator SAR provisions in the Energy Act 2004. This is similar to the approach taken by provisions in the Energy Act 2011 introducing an energy supply company SAR. The network operator SAR provisions in turn apply and, where relevant, modify certain provisions in the Insolvency Act 1986.

#### **Clause 1(1): Smart meters: extension of time for exercise of powers**

*Power conferred on: Secretary of State*

*Power exercised by: Licence or code modification (not by statutory instrument)*

*Parliamentary Procedure: Equivalent to negative procedure*

#### Context and Purpose

8. This provision would extend by five years (from 1 November 2018 to 1 November 2023) the period within which the Secretary of State can exercise his power in section 88 of the Energy Act 2008 (“Section 88”) to modify energy licence conditions and industry codes for the purposes of smart metering.

#### Justification for taking the power

9. The Government leads the delivery of the Smart Metering Implementation Programme (“the Programme”). The Energy Act 2008 gave the Government the necessary powers to do this. The Government’s manifesto included a continued commitment to the delivery of the Programme. The Government is accountable for the benefits of the Programme and is an enabler and facilitator of the activities of others within the overall regulatory framework that we have defined for smart meters. Stakeholders continue to make clear that they see a leadership role for the Government in overseeing the Programme.

10. We consider this extension is necessary so that the Government can remove any barriers to the rollout of smart meters which emerge and ensure benefits for consumers are maximised in the continuing operation of smart meters following completion of the rollout. The Government has made public commitments to undertake reviews in the following areas of the smart meter rollout:

- data access and privacy to ensure the regulatory framework remains fit for purpose (in 2018);
- benefits realised during the rollout to assess whether we can do anything to encourage greater benefits (in 2019); and
- overall effectiveness of the policy framework post-implementation for future smart metering operations (in 2021).

11. Changes to energy licence conditions and industry codes may be appropriate following these reviews. The industry regulator, Ofgem, has the power to modify energy licence conditions and industry codes. We consider however that the Secretary of State continues to need this power to implement any changes as the subject matters of these reviews fall squarely within the remit of the Department for Business, Energy and Industrial Strategy (“BEIS”) rather than Ofgem. The review of data access and privacy policy, for example, will consider whether the balance is correct between access and privacy, which is a public policy decision for the Government rather than the regulator. As regards the other reviews, the Government is accountable for smart meter benefits being realised so monitoring the delivery and effectiveness of the regulatory regime and policy framework as a whole is a task only we can undertake.

12. This provision will not change the nature of the power. It only seeks to extend the duration in which the existing power can be exercised and the power will therefore remain time-limited. In addition, section 88(2) of the Energy Act 2008 would continue to limit the purposes for which the power may be exercised.

#### Justification for the procedure

13. Before exercising the power under Section 88, the Secretary of State must consult any affected licensees, Ofgem and any other persons considered appropriate. Any use of this power would be accompanied by an assessment of the benefits of the proposed intervention. Section 89 of the Energy Act 2008 provides for any changes to energy licence conditions and industry codes made under Section 88 to be subject to a level of Parliamentary scrutiny equivalent to a negative resolution procedure. We have used this power extensively since 2008 to make changes to licences and the Smart Energy Code.

14. Licence condition and industry code modifications for the most part are technical, operational and not contentious. It is atypical for such modifications to be subject to Parliamentary control but the provision for a Parliamentary procedure in Section 88 recognised the strategic importance of the Programme and the uncertainty in 2008 on the scope of the regulatory framework needed for the Programme. This framework is now largely in place and a large proportion of the possible amendments are likely to be detailed operational rules. For example:

- in response to the data privacy review, we may wish to amend how suppliers seek and store consumer consent records or the procedures around a change in tenancy;
- in response to the benefits review we may wish to amend underlying baseline technical specifications for meters and other devices;
- in response to the post-implementation review we may wish to consider whether the industry governance arrangements in place for overseeing the Smart Energy Code strike the right membership balance.

15. In keeping with the existing power, we consider it is appropriate and proportionate to the nature of the possible amendments which we would bring forward, that they continue to be subject to a level of Parliamentary scrutiny equivalent to a negative resolution procedure.

**Clause 1(2)(b) and (3)(b): Smart meters: extension of time for exercise of powers**

*Power conferred on: Secretary of State*

*Power exercised by: Order*

*Parliamentary Procedure: Affirmative procedure*

Context and Purpose

16. This provision seeks to extend by five years (from 1 November 2018 to 1 November 2023) the period within which the Secretary of State can exercise his power in section 56FA of the Electricity Act 1989 and section 41HA of the Gas Act 1986 to amend Parts 1 of the Gas Act 1986 and the Electricity Act 1989 (“the Gas and Electricity Acts”) so as to add new licensable activities relating to relevant (smart) meters. This power is therefore a Henry VIII power.

Justification for taking the power

17. We consider that this extension is necessary as the Secretary of State might in future consider that certain activities are required to be licensable activities in order to remove barriers to the rollout of smart meters and to ensure benefits for consumers are maximised. Whilst there are no specific plans to exercise this power, the smart metering programme continues to develop policy under a number of discrete areas and one of the tools we may wish to use to deliver the policy intent is requiring activity to be licensed. Indicative examples are:

- Currently the first generation of smart meters are not capable of communicating with the national DCC infrastructure. Work is being undertaken by the DCC, supported by the Government, which seeks to allow these first generation smart meters to communicate with the DCC. It may be considered appropriate to create a licensable activity that relates to the communication services provided to these meters.
- Smart meters make use of a home area network to link the smart meter to consumer devices such as the in-home display or smart appliances. The technical solutions already being delivered currently apply to approximately 96.5% of premises. In some premises such as apartments in high rise buildings where there is a long distance between the smart meter and the premises, these solutions are not viable. It is necessary to provide a technical solution to ensure that all devices in these premises are linked to the smart meter using the home area network (“HAN”). This work is currently being progressed through the Alternative HAN Forum (which brings together suppliers to develop and procure new solutions for these premises). It might be considered appropriate to separately license these activities to provide a greater degree of regulatory control over them.

- Over 99% of premises in Great Britain are capable of connecting to the DCC through the wide area network (the national communications network operated by the DCC). A different solution may be necessary to provide coverage to smart meters in the remaining hard to reach premises which the wide area network does not cover. It might be considered appropriate to create a licensable activity that relates to arranging the establishment of communications to these properties.

18. This provision will not change the nature of the power. It only seeks to extend the duration in which the existing power can be exercised and so the power will still be time-limited. The activities that can be added as licensable activities under this power would continue to be limited to those set out in section 56FA(3) of the Electricity Act 1989 and section 41HA(3) of the Gas Act 1986.

19. This power also enables the Secretary of State to remove any licensable activities added by virtue of the power. However, this Government has no intention to use the power in this way. At the moment, the only licensable activity that could be removed is the provision of a smart meter communication service (the DCC's service). This is a monopoly service which is necessary to allow the smart meter rollout to progress cost-effectively – for example, it assists interoperability so meters work with any supplier (for example after a consumer has switched supplier) and provides a level playing field between suppliers in support of competition. Without evidence that consumer benefits were at risk of being outweighed by cost it is unlikely that any future government would remove this as a licensable activity before the power expires as the smart meter rollout is already happening across Great Britain and the DCC service is live nationally.

#### Justification for the procedure

20. Before exercising the power under section 41HA of the Gas Act 1986 and section 56FA of the Electricity Act 1989, the Secretary of State must consult Ofgem and any other persons considered appropriate. Any use of this power would be accompanied by an assessment of the benefits of the proposed intervention using the information obtained in the consultation and any other information that the Secretary of State considered relevant.

21. Any orders made under section 41HA of the Gas Act 1986 and section 56FA of the Electricity Act 1989, as amended by this clause, would be subject to an affirmative resolution procedure which would provide comprehensive Parliamentary scrutiny of any orders containing provisions to introduce new licensable activities into the framework of the Gas and Electricity Acts and any consequential, transitional, incidental or supplementary provisions.

## **Clause 3(6): Objective of smart meter communication licensee administration**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

22. If approved by parliament, clause 3(6) would grant the Secretary of State the power to make regulations specifying the activities carried out by the smart meter communication licensee (currently the DCC) that the smart meter communication administrator must give priority to and how this should be done.

23. The DCC already provides core communication services (the communication and data service that it must provide to underpin the operation of smart meters) but is expected to take on elective services (additional and optional energy-related services which users of its core services may request but that are not fundamental to the operation of smart meters). As the smart metering environment evolves, the DCC may be required to provide additional mandatory services in the future. The regulations will set out the detail to help the administrator prioritise these different aspects of the DCC's business.

### Justification for taking the power

24. Clause 3 sets out the objective of smart meter communication licensee administration. In meeting the objective, the administrator may be faced with a judgement on which services to prioritise. This may not be immediately clear to the administrator and there may be a trade-off between the different services. As the DCC's services change over time, there will likely be a concomitant change in the prioritisation of the DCC's services required to meet the objective under clause 3. Some elective services may have importance, for example suppliers may contract with consumers to offer add-on services such as personalised energy saving advice or recommended energy efficiency measures based on their energy use. Conversely, it may be in the interests of consumers and the wider energy market for the administrator to prioritise the continuation of the core services, even if that means a loss of the elective services, as this is fundamental to the operation of smart meters. It is therefore considered that there is a role for Government to provide guidance to the administrator and the intention of the regulations would be to aid achievement of the objective in clause 3 of this Bill.

25. The DCC has been offering live services since November 2016. During the rollout period until the end of 2020 and beyond, we expect the number of services that are offered by the DCC to increase beyond the core services it currently provides to support smart metering. We currently do not know what these expanded services will entail and we therefore do not consider that it would be useful or efficient to undertake a prioritisation exercise at this time. As the smart metering services offered by the DCC develop, the range and importance of the services may also vary and so we consider that this power is needed to provide the necessary flexibility to assist the administrator in meeting the objective in clause 3.

### Justification for the procedure

26. We consider that Parliament should have an opportunity to see the policy considerations and potential trade-offs that are needed to be made to ensure that the objective of smart meter communication licensee administration is met. The negative resolution procedure provides Parliament with oversight of any regulations made under this power. .

27. However, this will be a largely administrative set of technical regulations focused on the specifics of implementation and acting to narrow rather than add to policy scope, with the core aim of protecting consumers' interests. We therefore do not consider affirmative resolution procedure or new primary legislation to be appropriate given the nature of the changes.

### **Clause 4(1): Application of certain provisions of the Energy Act 2004**

#### **Application of paragraph 33 of Schedule 20 to the Energy Act 2004**

*Power conferred on:* Secretary of State

*Power exercisable by:* Order

*Parliamentary procedure:* Negative procedure

### Context and Purpose

28. Paragraph 33 of Schedule 20 to the Energy Act 2004, as applied by clause 4(1), grants the Secretary of State a power to make modifications to:

- the provisions of Schedule B1 to the Insolvency Act 1986, which are specified in paragraph 2 of Schedule 20 to the Energy Act 2004 (as applied by clause 4(1)), and
- paragraphs 35 to 40 of Schedule 20 to the Energy Act 2004 (as applied by clause 4(1)),

in respect of non-GB companies (defined in clause 10(1) as a company incorporated outside Great Britain). This is a Henry VIII power.

### Justification for taking the power

29. The SAR has largely been formulated with GB-registered companies in mind, since non-GB companies do not currently play a role in the relevant activities. The earliest the licence is expected to be re-tendered and could potentially be transferred to a non-GB company would be 23 September 2025. A number of adaptations to the SAR to cater for non-GB companies have been made by Part 3 of Schedule 20 to the Energy Act 2004, as applied by clause 4(1). If non-GB companies become active in the provision of smart meter communication services we may find however that further, as for now unforeseen, modifications are needed to Schedule B1 to the Insolvency Act 1986 to account for this and ensure the SAR will operate effectively to protect consumers.

30. This power is limited as any modifications will only apply where the relevant provisions of Schedule B1 to the Insolvency Act 1986 and of the Energy Act 2004 (both as applied by clause 4) have effect in relation to a non-GB company.

#### Justification for the procedure

31. Although this is a Henry VIII power, we consider that the negative resolution procedure is justified for providing for what would be detailed modifications narrowly focused on particular provisions of insolvency legislation and their specific application to a non-GB company. Affirmative resolution procedure or new primary legislation is not considered to be appropriate given the nature of the changes.

32. In effect we are proposing to extend the application of the existing power and procedure in the Energy Act 2004 in relation to the network operator SAR. There is precedent for this in the Energy Act 2011 in relation to the energy supply company SAR. The intention of this power is the same as the powers in those previous Energy Acts. As this power is provided for in the application of paragraph 33 of Schedule 20 to the Energy Act 2004, the same procedure as in that provision is also automatically applied by the Bill drafting.

#### **Application of paragraph 6 of Schedule 21 to the Energy Act 2004**

*Power conferred on: Smart meter communication licensee administrator acting on behalf of the smart meter communication licensee, but subject to Secretary of State approval. The court must appoint a time for a scheme to take effect.*

*Power exercisable by: Transfer scheme*

*Parliamentary procedure: None. The court must appoint a time for a scheme to take effect.*

#### Context and Purpose

33. Schedule 21, as applied by clause 4, provides for transfer schemes to achieve the objective of a smart meter communication licensee administration. The smart meter communication licensee in respect of which the administration order has been made (“the old licensee”) may make a scheme for the transfer of property, rights and liabilities to a company (“the new licensee”) which is to take on all or part of the business of the old licensee as a going concern. Under paragraph 6 the scheme may contain provision for the transfer of statutory powers and duties of the old licensee. A transfer scheme under Schedule 21 will not take effect unless the scheme has been approved by the Secretary of State and the Secretary of State may modify a transfer scheme before approving it, but only if the old licensee and new licensee have consented to the modifications.

#### Justification for the power

34. This power is needed to give effect to a transfer as a going concern that may be required to achieve the objective of a smart meter communication licensee administration.

### Justification for the procedure

35. By contrast with the similar power under Schedule 11 to the Postal Services Act 2011, an energy transfer scheme under Schedule 21, as applied by clause 4, only takes effect at the time appointed by the court in accordance with paragraph 3(4). This means that unlike the postal transfer scheme, whilst there is no Parliamentary procedure, an energy transfer scheme would have the additional layer of scrutiny by the court. We consider that such a procedure would provide both adequate scrutiny and the ability for such an energy transfer scheme to be put in place at short notice if necessary.

36. In effect we are proposing to extend the application of the existing power and procedure in the Energy Act 2004 in relation to the network operator SAR. There is precedent for this in the Energy Act 2011 in relation to the energy supply company SAR. The intention of this power is the same as the powers in those previous Energy Acts. As this power is provided for in the application of Schedule 21 to the Energy Act 2004, the same procedure as in that Schedule is also automatically applied by the Bill drafting.

### **Clause 5: Conduct of administration, transfer schemes, etc**

*Power conferred on: Lord Chancellor with the concurrence of the Secretary of State (in relation to England and Wales) and the Secretary of State (in relation to Scotland)*

*Power exercisable by: Rules*

*Parliamentary procedure: Negative procedure*

### Context and Purpose

37. Clause 5 extends the power to make company insolvency rules conferred by section 411 of the Insolvency Act 1986 (“Section 411”), for the purposes of giving effect to smart meter communication licensee administration under the relevant clauses of the Bill. Such rules would be likely to cover procedural issues such as the quorum required for various meetings and the detail of what constitutes service of documents.

### Justification for taking the power

38. As with a normal administration procedure, this power is necessary to provide the detailed procedural requirements applicable to the administration regime which is provided for in the primary legislation. Without it the provisions in the Bill would need to be significantly expanded to address the very detailed issues of procedure applicable to the various aspects of a smart meter communication licensee administration.

39. The power is limited to making rules for the purpose of giving effect to Chapter 3 of Part 3 of the Energy Act 2004 (as applied by clause 4 of the Bill) as it applies for the purpose of giving effect to Parts 1 to 7 of the Insolvency Act 1986.

### Justification for the procedure

40. The rules that are envisaged in this clause have been prepared for other energy industry SARs and have been made using the same Parliamentary procedure. These rules can be detailed, technical and complex relating to aspects such as the machinery of proving a debt and the manner in which a claim can be quantified. Furthermore, under section 413 of the Insolvency Act 1986, before making any rules under Section 411 the Lord Chancellor must consult the Insolvency Rules Committee. Affirmative resolution procedure or new primary legislation is therefore not considered to be appropriate whereas a negative procedure is justified considering the technical nature of the rules to be made.

41. In effect we are proposing to extend the application of the existing power in the Energy Act 2004 in relation to the network operator SAR. There is precedent for this in the Energy Act 2011 in relation to the energy supply company SAR. The intention of this power is the same as the powers in those previous Energy Acts. As this power is provided for in the application of section 159(3) of the Energy Act 2004, which in turn applies Section 411, the same procedure as in the Insolvency Act 1986 is automatically applied by the Bill drafting.

### **Clause 6 – Modifications of particular or standard conditions**

*Power conferred on: Secretary of State*

*Power exercisable by: Modification of licence conditions*

*Parliamentary procedure: None*

### Context and Purpose

42. Clause 6 grants the Secretary of State the power to make modifications to gas and electricity licence conditions where he considers it appropriate to do so in connection with the SAR. This power includes the power to make incidental, consequential or transitional modifications so that we can ensure the new amended licence conditions work as a whole and ensure a smooth transition between existing licence conditions and new ones where appropriate.

43. Draft licence modifications are provided in Annex B to this memorandum. Explanatory notes for the modifications are in Annex C.

### Justification for taking the power

44. We consider that this power is needed in order to allow the costs of smart meter communication licensee administration, including any funding provided by the Government by way of grants and loans, or indemnity payments or payments under guarantee, to be recouped from industry via a licence mechanism, insofar as these cannot be met through the proceeds of sale or restructuring. Without this procedure, expenses arising out of the administration might not be recovered.

45. This power is time-limited as it is exercisable only during the eighteen months beginning with commencement of clause 6. It is also limited in scope as the

Secretary of State may only make such modifications as he considers appropriate in connection with the SAR provisions set out in these Bill clauses.

46. The licence modifications that are envisaged as being made under this power have already been drafted and have been made available to the Committee along with explanatory notes.

#### Justification for the procedure

47. Whilst no Parliamentary procedure is stipulated, before making a modification under clause 6 the Secretary of State must consult affected licensees and such other persons as he considers appropriate. In addition, every modification made must be published. Sections 3A to 3D of the Electricity Act 1989 and sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) also apply to the exercise of this power by the Secretary of State as they apply in relation to his functions under Part 1 of the respective Acts. Therefore there are parameters set around the way in which this power can be exercised by the Secretary of State.

48. The envisaged modifications are narrowly focussed on a mechanism for recouping administration costs from industry and work by amending existing licence conditions that already operate and allow for the costs of other energy SARs to be recouped. It is accordingly considered that it is not necessary to have Parliamentary oversight of the changes and that safeguards exist to ensure scrutiny by stakeholders.

49. In addition, there is precedent for this power and procedure in the Energy Act 2004 in relation to the network operator SAR and in the Energy Act 2011 in relation to the energy supply company SAR. The intention of this power is the same as the powers in the previous Energy Acts.

#### **Clause 8: Modifications under the Enterprise Act 2002**

*Power conferred on: Secretary of State*

*Power exercisable by: Order*

*Parliamentary procedure: Negative procedure*

#### Context and Purpose

50. The Enterprise Act 2002 made a number of changes to insolvency law, including the regime for administration. The SAR introduced by this Bill has been formulated against this background.

51. Clause 8 provides that the power of modification or application conferred on the Secretary of State by sections 248, 254 and 277 of the Enterprise Act 2002 (which provide for consequential amendments and for application of insolvency law to foreign companies) includes the power to make such consequential modifications to the SAR provisions set out in these Bill clauses, and to Chapter 3 of Part 3 of the Energy Act 2004 as applied by clause 4 of this Bill, as the Secretary of State considers appropriate in connection with any other provision made under those sections. It is a Henry VIII power.

### Justification for taking the power

52. By extending this power to the smart meter communication licensee SAR, Parliament would enable the Secretary of State to make consequential modifications where the need arises because of modifications or applications of enactments by the Enterprise Act 2002 provisions cited. We consider that this power is needed to ensure that the current SAR provisions do not get out of line where the Enterprise Act 2002 provisions are used to modify or apply enactments. Failure to make consequential modifications may have negative impacts on the operability of the SAR. It is not possible to make these consequential modifications now as they are dependent on any future use of the Enterprise Act 2002 provisions cited.

53. The scope of this power is limited as it can only be used to make consequential modifications to the SAR provisions set out in these Bill clauses. Furthermore, such consequential modifications can only be made in connection with provisions made under those three sections of the Enterprise Act 2002.

### Justification for the procedure

54. The modifications envisaged in this clause are consequential to provisions made under sections 248, 254 and 277 of the Enterprise Act 2002. The nature of these modifications will be narrowly focussed as they will not only be specific to the SAR introduced by this Bill but will be consequential to provisions related to particular parts of insolvency legislation. As these would be consequential rather than substantive modifications, it is considered that, whilst this is a Henry VIII power, it is logical and consistent to reflect the negative procedure used for making the provisions under sections 248, 254 and 277 rather than impose a more stringent form of scrutiny than is required for the provisions giving rise to the consequential modifications. The provisions that can be made under sections 248, 254 and 277 of the Enterprise Act 2002 are either consequential amendments themselves or specific to the application of insolvency legislation in relation to a company incorporated outside of Great Britain, and so the negative procedure is considered appropriate for these types of provisions.

55. In effect we are proposing to extend the application of existing powers in the Enterprise Act 2002 and Energy Act 2004. There is precedent for this in the Energy Act 2004 in relation to the network operator SAR and in the Energy Act 2011 in relation to the energy supply company SAR. The intention of this power is the same as the powers in the previous Energy Acts. As this power is provided for in the application of the relevant sections of the Enterprise Act 2002, the same procedures as in that Act are also automatically applied by the Bill drafting.

### **Clause 9: Power to make further modifications of insolvency legislation**

*Power conferred on:* Secretary of State

*Power exercisable by:* Regulations

*Parliamentary Procedure:* Affirmative procedure

## Context and Purpose

56. Clause 9 grants the Secretary of State a power to provide for insolvency legislation to apply and to make such modifications of insolvency legislation (including any applied by virtue of clause 9) as he considers appropriate in relation to any provision made by or under the SAR provisions set out in this Bill. This is a Henry VIII power.

## Justification for taking the power

57. This power is broadly based on an existing power under the Energy Act 2004 (see paragraph 46 of Schedule 20) but it has been drafted as a freestanding power to ensure a clearer result. Additionally, the power allows the Secretary of State to apply and not just modify the insolvency legislation. The insolvency legislation covered also includes subordinate legislation made after this Bill receives Royal Assent and not just primary legislation passed before this Bill receives Royal Assent.

58. We consider that this power is needed to enable modifications to be made to the insolvency regime, insofar as it impacts on smart meter communication licensee administration. There is a need to be able to amend the detail of the regime as experience of its application highlights any difficulties or areas of concern. The reason for including subordinate legislation made after the Bill receives Royal Assent has been prompted by recent amendments to the Insolvency Act 1986 made by the Small Business, Enterprise and Employment Act 2015 and Deregulation Act 2015

59. The future exercise of the powers under those Acts to make consequential amendments by way of subordinate legislation could not extend to the SAR provisions in this Bill (because they will have been passed after the end of the 2014-15 Session). However, we anticipate that some of the changes made under those 2015 Acts will need to be incorporated in the Energy Act 2004 and so we need the ability to apply to the smart meter communication licensee SAR provisions any such changes that are incorporated in the Energy Act 2004 and to make any further modifications to the Energy Act 2004 by way of direct amendments to the SAR provisions in this Bill. This will ensure the smart meter communication licensee SAR works as and when the Energy Act 2004 is amended.

60. For the reasons set out above, it is not possible to make these modifications and amendments now as part of the Bill.

61. The power is limited in scope insofar as it can only be exercised in relation to provision made by or under the SAR provisions in this Bill. The primary legislation that can be applied or modified under this power is limited to the Insolvency Act 1986, Chapter 3 of Part 3 of the Energy Act 2004 and any other provision contained in an Act passed before or in the same session as this Bill that relates to insolvency, or makes provision by reference to anything that is or may be done under the Insolvency Act 1986. It is only subordinate legislation made after the Bill receives Royal Assent that can be applied or modified under this power, not primary legislation enacted after that date.

Justification for the procedure

62. As this is a Henry VIII power it is considered justified that the affirmative resolution procedure applies.

**Department for Business, Energy and Industrial Strategy**  
**October 2017**

# SMART METERS BILL

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## **INTRODUCTION**

These Policy Statements have been prepared to provide informed consideration of the delegated legislative powers in the Smart Meters Bill (“the Bill”), to supplement the memorandum to the Committee. The Bill, as currently drafted, contains 9 delegated legislative powers. Each delegated power is considered separately in these policy statements.

Each Policy Statement:

- Describes the policy intent of the delegated legislation;
- Provides an outline of the proposed content with our current knowledge;
- Sets out the proposed approach to preparing the delegated legislation; and
- Provides indicative timings for when the delegated legislation made under these proposed powers may be submitted for Parliament scrutiny

We have also produced one set of draft licence modifications. These are at Annex B to the memorandum to the Committee.

Department for Business, Energy and Industrial Strategy

October 2017

## **Clause 1(1): Smart meters: extension of time for exercise of powers**

### Policy intent

This clause of the Bill is intended to provide the Government with a way of ensuring the Smart Metering Implementation Programme (“the Programme”) is successfully delivered in line with its commitment for all households and small businesses to be offered a smart meter by the end of 2020; securing the significant benefits on offer to consumers and the energy industry both during and after the rollout. These powers were introduced by the Energy Act 2008 and are currently due to end on 1 November 2018. This provision would extend these powers by 5 years.

In order to ensure an effective rollout of smart meters, we consider that it is essential for the Secretary of State to have the ability to modify electricity and gas licence conditions, smart meter communication licence conditions and industry codes for the purposes of smart metering. Without these powers the Secretary of State would not be able to act on evidence to remove barriers to the rollout of smart meters and ensure that benefits for consumers are fully realised, further to consultation with stakeholders.

Government has previously announced that it would seek to review the Programme, or may otherwise need to intervene, in the following areas:

- i. Complete by the end of 2018 a review, including a call for evidence from stakeholders, of the data access and privacy arrangements to ensure the regulatory framework remains fit for purpose.
- ii. There is an ongoing assessment of the benefits of smart meters. In 2019, a review of evidence collected as part of ongoing monitoring and evaluation, may identify amendments which would increase the net positive benefits of smart metering; and
- iii. Review by the end of 2021 the overall effectiveness of the smart metering policy and regulatory framework following completion of the rollout to ensure it can meet ongoing smart metering operational needs.
- iv. Remove unforeseen barriers to the rollout such as addressing technical issues or any legal interpretation issues.

### Outline of proposed content

Amendments following these reviews or in the light of wider evidence could include, respectively:

- i. Amendments to the Smart Energy Code (“SEC”) and licences to ensure the balance between data access and privacy is fit for purpose in meeting wider public policy aims as well as ensuring that benefits from smart meters are maximised.
- ii. Additional requirements on users of smart meter data to support new or additional benefits building on the £16.7 billion in projected benefits already identified.
- iii. While we cannot foresee what may be required following the post-rollout review, the powers would be necessary to implement any conclusions that impact the content of licences or codes.

- iv. Providing support for operational delivery where barriers have emerged. For example, we modified the SEC to allow energy suppliers to work together to develop alternatives to the standard wireless home area network, which connects the smart meter to devices in consumers' homes such as the in-home display or smart appliances. Alternatives are required for the small number of premises where the standard signal cannot stretch from the meter to the devices, for example because the meter is a large distance from the devices.

#### Approach to preparation

Before using this power we would need to go through the normal policy making process. This includes consulting with licensees, Ofgem and other stakeholders with an interest in both the policy and draft proposed modifications. Following the consultation period, we would publish a Government response and lay the draft proposed modifications before Parliament for a period of 40 days using a procedure that is equivalent to a negative resolution procedure.

#### Timing

On the basis of the planned reviews set out above, which relate to the planned rollout trajectory, and an assumption that they lead to a determination of the need to amend policy, draft proposed modifications could be expected to be laid before Parliament in spring 2019, spring 2020 and mid to late 2022 respectively.

## **Clause 1(2)(b) and (3)(b): Smart meters: extension of time for exercise of powers**

### Policy intent

This power was introduced into the Electricity and Gas Acts by the Energy Act 2008 and is currently due to expire in November 2018. These clauses are intended to provide the Government with the ability to ensure that the Programme is successfully delivered and that smart meters secure the significant benefits on offer.

These provisions would extend by 5 years the power to establish licensable activities in relation to smart meters. This gives the Government a means by which to establish monopoly providers of specific services, or to establish binding rules in licences for anyone wishing to provide a service competitively. This power was previously used to establish the provision of a smart meter communication service as a licensable activity, which led to the granting of the smart meter communication licences (“the DCC Licence”) currently held by the Data and Communications Company (“the DCC”).

We have no plans to use this power but there are scenarios which could develop in which we may wish to use this power in order to overcome rollout barriers and to ensure benefits are realised. Indicative scenarios of how this power could be used include:

- I. Supporting the solution for centralising communications to the first generation of smart meters through the DCC which currently sit under a variety of providers and architectures;
- II. Supporting the new solution or solutions for the home area network (i.e. the communications between meters and in-home smart devices) in the small number (approximately 3.5%) of properties for which the standard communications services will not work by themselves. For example, some multi dwelling units have a range between meters and devices that will be too great for the meters to function adequately as they are unable to connect to the DCC services; and
- III. Supporting wide area network communications between energy suppliers and customers in the very small number (<1%) of properties which the wide area network does not currently cover.

### Outline of proposed contents

Until we identify a reason for requiring an activity to be licensable, it is not possible to be precise about the contents of any order(s).

### Approach to preparation

Before using this power we would need to go through the normal policy development process, considering policy options, impacts and stakeholder views. Once we have determined that the preferred approach would be to create a new licensable activity to deliver the policy, we would follow the procedure set out in section 41HB of the Gas Act 1986 and section 56FB of the Electricity Act 1989. This would involve consulting on the policy and the draft order with relevant stakeholders, including those directly impacted, and Ofgem. Following the consultation period, a draft of the statutory instrument containing the order would be

laid before each House of Parliament and would not be made unless approved by resolution of each House of Parliament.

### Timing

As we do not have any current plans to use this power, we cannot provide certainty on timing. On the basis of the first two scenarios highlighted above, we would expect to know whether we need to use the power to create a licensable activity for non-standard home area network solutions by no later than end 2018 and could expect to seek to establish the regulatory rules by the end of 2019 in order to support the efficient rollout of smart meters to these properties by the end of 2020.

Regarding the third scenario, our current expectation is that we may know which solutions are needed for those areas without wide area network coverage towards the end of the rollout in 2020, or even after the rollout is completed. We therefore do not expect to bring regulatory provisions forward until 2021 at the earliest.

### **Clause 3(6): Objective of smart meter communication licensee administration**

#### Policy intent

This clause would grant the Secretary of State the power to make regulations specifying the activities carried out by the smart meter communication licensee (currently the DCC) that the smart meter communication administrator must give priority to, and how this should be done.

The DCC already provides core services (the communication and data service that underpins the operation of smart meters and which it must provide) but is expected to take on both additional core services (to manage the centralised registration platform supporting next day switching) and elective services (additional energy-related services which users of its core services may request but that are not fundamental to the operation of smart meters). The DCC may also in the future provide additional mandatory services.

In the unlikely event that the DCC becomes insolvent, it may be necessary to prioritise certain activities of the DCC. This could be to prioritise certain critical services above other services to ensure smart services and benefits are maintained. The regulations allowed by this power would allow the Secretary of State to direct the administrator which different aspects of the DCC's business to prioritise in order to meet the objective of the smart meter communication licensee administration.

We are not yet in a position to set out the prioritisation of the DCC's services, so soon after the start of live services (in November 2016) and in advance of the development of elective services. We believe that this will be possible ahead of the completion of the rollout when demand from suppliers for DCC to provide other services could be expected to have materialised. Beyond the end of the rollout, it will be important to provide flexibility so that the prioritisation can be updated in line with the services the DCC provides.

The regulations would assist the administrator when faced with a judgement on which DCC services to prioritise. This may not be immediately clear to the administrator and there may be a trade-off between the different services. This may also change over time as the DCC's services change. It is therefore considered necessary for the Government to provide direction to the administrator, but it would need to reflect the full services offered once the DCC is mature.

#### Outline of proposed contents

The content would consist of a prioritisation of activities that the DCC undertakes. Some elective services may have importance, for example suppliers may contract with consumers to offer add-on services such as personalised energy saving advice or recommended energy efficiency measures based on their energy use. Conversely, it may be in the interests of consumers and the wider energy market for the administrator to prioritise the continuation of the core service, even if that means a loss of the elective services, as this is fundamental to the operation of smart meters.

### Approach to preparation

Once we have determined the prioritisation and how it should be done, we would prepare a statutory instrument that would be subject to annulment in pursuance of a resolution of either House of Parliament.

### Timing

It is expected that we would look to provide an initial set of regulations before the end of the rollout and having regard for a DCC which is operating at scale. This could be expected to be late 2019 or early 2020. It is likely that additional elective services will gradually be added to the DCC core services. The addition of these services will result in the initial set of regulations being reviewed and potentially amended. Both supplier capacity for promoting new services and consumer demand for such services are expected to build on the provision of the core smart metering platform. Smart meters will provide a step change in available energy data, prompt consumers to increase their engagement in energy use and the energy market and create an environment for related market offerings that allow consumers to manage their energy use.

## **Clause 4(1): Application of certain provisions of the Energy Act 2004**

### **Application of paragraph 33 of Schedule 20 to the Energy Act 2004**

#### Policy intent

The SAR has largely been formulated with GB-registered companies in mind, since non-GB companies do not play a role in the relevant activities at present. The current licensee is a GB company whose licence is currently due to expire in September 2025.

As smart metering develops, there is a possibility that at some point in the future, the licence holder could be a non-GB company. Although a number of adaptations to the special administration regime to cater for non-GB companies have been made by Part 3 of Schedule 20 to the Energy Act 2004, as applied by clause [4(1)], we may find that further modifications are needed to those provisions in Schedule 20 to the Energy Act 2004 and to Schedule B1 to the Insolvency Act 1986 to account for any new dynamic and to ensure the SAR will operate effectively to protect consumers.

#### Outline of proposed contents

It is currently not possible to formulate possible changes that could be required in the future, but we consider that this power is essential to allow the Secretary of State to address any operational issues with the SAR which arise as a result of a non-GB company being the smart meter communication licensee.

#### Approach to preparation

If we determine that the preferred approach would be to address any operational issues with the SAR by using this power, the proposed legislation would require us to prepare an order that would be subject to the negative resolution procedure.

#### Timing

We will only know if we need to make use of this power if a non-GB company becomes or is about to become the smart meter communication licensee, it is therefore impossible to set out any timeframe at this point in time. It is unlikely that there would be any need to use this power prior to September 2025.

## **Clause 4(1): Application of paragraph 6 of Schedule 21 to the Energy Act 2004**

### Policy intent

This clause, in its application of Schedule 21 to the Energy Act 2004, provides for transfer schemes to transfer the assets and business of the smart meter communication licensee, including its statutory powers and duties, to one or more other companies. The purpose of transfer schemes is to give the administrator flexibility to find the best solution to meet the objective of the SAR and ensure the continuity of the smart meter communication service. It may be the case that a transfer to another company is the most appropriate way of achieving this rather than rescuing the smart meter communication licensee.

### Outline of proposed contents

It is not possible at this stage to set out the proposed contents of a transfer scheme. We will not know the proposed contents of such a scheme unless the smart meter communication licensee enters into smart meter communication licensee administration and the administrator decides to pursue a transfer.

### Approach to preparation

It would be the smart meter communication administrator, acting on behalf of the smart meter communication licensee, that would prepare the scheme but the scheme will not take effect without approval from the Secretary of State and the court appointing a time for it to take effect.

In deciding whether to approve a scheme, the Secretary of State would have to have regard to the public interest and the effect the scheme is likely to have (if any) upon the interests of third parties. Before approving a scheme, the Secretary of State would also have to consult Ofgem.

### Timing

We will only be able to establish whether we need to make use of this power if the smart meter communication licensee enters into smart meter communication licensee administration, therefore it is impossible to set out any timeframe.

## **Clause 5: Conduct of administration, transfer schemes etc**

### Policy intent

A SAR for the smart meter communication licensee would have to be governed by a set of rules setting out the manner in which the SAR operates. All SARs require rules to govern procedural issues and we intend to use this power to provide the detailed procedural requirements.

In the absence of this power, it would be necessary to expand the provisions of the Bill to include all of the detailed procedural issues, which are long and technical in nature, applicable to the smart meter communication licensee administration.

### Outline of proposed contents

The networks and energy supply company SARs have both had detailed rules made under a similar power. The smart meter communication licensee SAR rules would be similar to the rules for those energy SARs. Examples of what they would cover are:

- The steps to be followed in company administration proceedings, including the notification and advertisement of the administrator's appointment and the preparation of a statement of the company's affairs and the information that must be given to creditors.
- How the administrator must conduct company meetings.
- Provisions governing distributions to creditors, including the procedure to be followed to prove a debt.
- Details of how the remuneration of the administrator will be fixed by the court.
- The arrangements for ending company administration.

We would need to provide for detailed regulatory rules (the energy supply administration order ran to some 100 pages) which specifically address the commercial and regulatory framework for the smart meter communication service and cannot simply replicate the provisions of those energy SARs. However, we do intend to use the energy network SAR and energy supply company SAR rules as the basis for these SAR rules. We anticipate that the rules relating to the networks SAR (and energy supply company SAR) will need to be reviewed and amended to incorporate recent amendments to insolvency legislation by the Small Business, Enterprise and Employment Act 2015 and Deregulation Act 2015. The exact content of any amendments to the rules is not yet known, but the two main changes by the Small Business, Enterprise and Employment Act 2015 that the rules could be expected to incorporate are the removal of meetings of creditors as the default position in insolvencies and the ability for creditors to opt not to receive certain notices.

### Approach to preparation

In accordance with Section 411, the rules would be made by the Lord Chancellor with the concurrence of the Secretary of State (in relation to England and Wales) and by the Secretary of State (in relation to Scotland).

Once the set of rules relating to England and Wales are drafted, the Lord Chancellor would consult the Insolvency Rules Committee pursuant to section 413

of the Insolvency Act 1986. Each set of rules would be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Timing

It is not certain when the review and updating of the other energy SAR rules will be complete. Once it is finalised we can begin the process of drafting, consulting on and bringing our rules before Parliament.

## **Clause 6: Modifications of particular or standard conditions**

### Policy intent

This power is needed in order to allow the costs of smart meter communication licensee administration, including any funding provided by the Government by way of grants and loans, or indemnity payments or payments under guarantee, to be recouped via a licence mechanism from industry, insofar as these cannot be met through the proceeds of sale or restructuring. Without this procedure, expenses arising out of the administration might not be recovered.

The power in this clause would allow us to amend licences to establish a mechanism for the recovery of the costs of the smart meter communication licensee administration through raising charges from industry participants. We have drafted the licence modifications, which are set out at [Annex B]. The cost recovery mechanism follows the arrangements already in place for the energy networks and energy supplier SARs.

### Outline of proposed contents

The proposed amendments described below and set out at [Annex B] in essence mirror those made in relation to the energy supply company SAR that was introduced in the Energy Act 2011. Explanatory notes for the draft licence modifications are provided for information at [Annex C].

A shortfall direction occurs where there is a shortfall in the assets available to a company in smart meter communication licensee administration to repay relevant debts. Relevant debts include the following; funding provided by the Secretary of State, other specified debts (such as the payment and expenses of the administrator) and debts arising out of contracts entered into by the company while it is in administration.

Condition C24 of National Grid's Electricity Transmission Licence and Special Condition 11D of the National Grid Gas plc (NTS) Gas Transporter Licence would be amended so that they allow the Secretary of State to direct that the licensees modify the charges they levy on electricity suppliers and gas shippers (respectively) to raise the amounts determined in the direction in relation to smart meter communication licensee administration.

Standard Condition 19 of the Gas Shipper Licence would be amended to make clear that shippers are required to pay charges that are modified to raise sums used in making good a smart meter communication licensee administration shortfall.

Condition 15 of the Electricity Supply Licence would be amended to allow electricity suppliers to raise charges in response to a shortfall direction in relation to a smart meter communication administration.

### Approach to preparation

The proposed licence condition modifications have been drafted and are attached hereto as [Annex B]. If the Bill is enacted, the Secretary of State will consult affected licensees and such other persons as he considers appropriate on these proposed

licence condition modifications. These modifications will also be published as per the procedure set out in clause 6.

#### Timing

If the Bill is enacted, BEIS will consult on these proposed licence condition modifications and ensure that they are brought into effect within the 18 month period set out in clause 6(9).

## **Clause 8: Modifications under the Enterprise Act 2002**

### Policy intent

It is important to ensure the operability of the SAR after the commencement of this Bill. This power would enable the Secretary of State to make appropriate consequential modifications in connection with modifications or applications of enactments by certain Enterprise Act 2002 powers relating to insolvency law. We propose that this power is needed to ensure that the current SAR provisions do not get out of line where the Enterprise Act 2002 provisions are used to modify or apply enactments. Failure to make consequential modifications may have negative impacts on the operability of the SAR. It is not possible to make these consequential modifications now as they are dependent on any future use of the Enterprise Act 2002 provisions.

This power would only be used to ensure the policy intent of the SAR is delivered.

### Outline of proposed contents

We do not know whether the provisions in the Enterprise Act 2002 will be used and, if they are, in what specific way, so we cannot know at this stage what consequential modifications might be required to the SAR as a result. The scope of this power is limited in that it can only be used to make consequential modifications to the SAR provisions, and Chapter 3 of Part 3 of the Energy Act 2004 as applied by clause 4 of this Bill, and those consequential modifications can only be made in connection with provisions made under those Enterprise Act 2002 powers.

### Approach to preparation

Once we are made aware of plans to use any of the powers in the Enterprise Act 2002, we would consider its impact on the SAR and whether consequential modifications are required. If we consider that modifications are required, then we would prepare an order to be made by statutory instrument, which will be subject to annulment in pursuance of a resolution of either House of Parliament.

### Timing

At the present time we cannot foresee any imminent need to use this power. We cannot be certain when we would need to use this power.

## **Clause 9: Power to make further modifications to insolvency legislation**

### Policy intent

We consider that this is an important provision to be contained in the Bill as it provides the Secretary of State with the ability to ensure the SAR's operability, especially as experience of its application highlights any difficulties or areas of concern.

Clause 9 allows the Secretary of State to make modifications to the insolvency regime insofar as it impacts on this SAR. This is an important mechanism as it allows us to ensure that the smart meters SAR remains aligned to insolvency legislation and other SARs.

For example, the Small Business, Enterprise and Employment Act 2015 and the Deregulation Act 2015 recently amended the Insolvency Act 1986 and there is a power under those Acts to make consequential amendments by way of subordinate legislation. If there is a decision to amend the energy network company SAR under the Energy Act 2004 using the power under those 2015 Acts, this will not automatically be applied to the smart meter communication licensee SAR as the future exercise of that power could not extend to the SAR provisions in the Bill (because they will have been passed after the end of the 2014-15 Session). We would therefore need the ability to apply to the smart meter communication licensee SAR provisions any such changes that are incorporated in the Energy Act 2004 and to make any further modifications to the Energy Act 2004 by way of direct amendments to the SAR provisions in this Bill. This will ensure the smart meter communication licensee SAR works as and when the Energy Act 2004 is amended.

### Outline of proposed contents

The exact content of any amendments to the Energy Act 2004 to reflect the recent amendments to the Insolvency Act 1986 is not yet known, but the two main changes by the Small Business, Enterprise and Employment Act 2015 that the Energy Act 2004 could be expected to incorporate are the removal of meetings of creditors as the default position in insolvencies and the ability for creditors to opt not to receive certain notices. Any amendments would be made with a view to ensuring that the energy network company SAR under the Energy Act 2004 works and to bring it in line with the Insolvency Act 1986 amendments to the extent appropriate.

For the purpose of ensuring that the smart meter communication licensee SAR works, we may decide to seek to apply any such modifications made to the Energy Act 2004 so that they are incorporated in the smart meter communication licensee SAR and, depending on the exact modifications made to the Energy Act 2004, we may need to make our own further modifications to the Energy Act 2004 by way of direct amendments to clause 4.

Aside from the amendments envisaged above, without experience of the application of the SAR or knowledge of future changes to the insolvency regime, insofar as they impact on the SAR, it is not possible to set out any further proposed content.

### Approach to preparation

Once the necessary policy considerations have been made and a decision has been made to use this power, we would draft the statutory instrument making the regulations and would lay it before Parliament. The regulations would not be made unless the draft statutory instrument is approved by a resolution of each House of Parliament.

### Timing

The project to amend the Energy Act 2004 to reflect the recent amendments to the Insolvency Act 1986 is to take place in due course so we cannot be certain when we will need to use this power. At the present time we cannot foresee any other imminent need to use this power.

**SMART METERS BILL**  
**DELEGATED POWERS MEMORANDUM ANNEX B: DRAFT LICENCE**  
**AMENDMENTS**

**ELECTRICITY TRANSMISSION LICENCE**

***Condition C24: Energy Administration, Energy Supply Company Administration and Smart Meter Communication Licensee Administration: National Electricity Transmission System Operator Shortfall Contribution Obligations***

1. The purpose of this condition is to require the licensee, in specified circumstances, to modify the charges imposed by it in carrying on its licensed activities (“charges”) to raise such amounts as are specified by the Secretary of State in a shortfall direction:
  - (i) from the persons; and
  - (ii) in the manner,specified in such shortfall direction, and to pay such amounts to the persons specified in the shortfall direction.
  
2. Where there is a shortfall during or at the completion of an energy administration, energy supply company administration or smart meter communication licensee administration, the Secretary of State, after consultation with the Authority and the licensee, may issue one or more shortfall directions (including one or more shortfall directions to modify or replace any previously issued shortfall direction or directions) to the licensee specifying:
  - (a) the amount of the shortfall (including the amount of any interest accruing on the shortfall calculated to the date specified in sub-paragraph (f));
  - (b) the amount to be raised by the licensee and applied in making good the shortfall;
  - (c) the persons to whom the amount referred to in sub-paragraph (b) above is to be paid (“shortfall payment recipients”);

- (d) the rate or rates of interest applicable to any part or parts of the amount referred to in sub-paragraph (b) above, and any other relevant information to enable the licensee to calculate liability (if any) for payment of any interest in respect of any late payment of such amount to or by the licensee;
- (e) the method or methods by which the licensee may raise the amount referred to in sub-paragraph (b) above (including, without limitation, the manner in which and persons from whom it is to be raised and whether such amount is to be raised within or outside the licensee's normal billing cycle);
- (f) the date by which the licensee is required to pay the shortfall payment recipients the amount referred to in sub-paragraph (b) above (or, where payment of the amount is required in instalments, the dates on which the licensee is required to make payment of each instalment);
- (g) where the shortfall includes relevant debts owed to more than one shortfall payment recipient, the priority in which the amount referred to in sub-paragraph (b) above is to be applied in discharging those debts;
- (h) the extent to which a subsequent shortfall direction modifies or replaces a previously issued shortfall direction;
- (i) where a shortfall direction is to modify or replace any previously issued shortfall direction, where appropriate, a requirement not to modify charges further pursuant to paragraph 5 below; and
- (j) the amount the licensee is permitted to raise and retain for administering the mechanism contained in this condition ("permitted administration fee") and the manner in which the permitted administration fee is to be raised,

and the licensee shall comply with any such shortfall direction.

3. As soon as reasonably practicable after receiving a shortfall direction, the licensee shall:

- (a) modify its charges (in accordance with any method or methods specified in the shortfall direction) so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue resulting from the modification will equal the amount to be raised by it as specified in the shortfall direction (including, at the licensee's discretion, any permitted administration fee); and

- (b) notify the persons who are subject to the charges so modified of:
  - (i) the modifications made to the charges;
  - (ii) any modification to the date or time period within which such charges shall be paid;
  - (iii) the reason for those modifications; and
  - (iv) the interest rate applicable to late payment of such modified charges.
  
- 4. The licensee shall on or before the date (or dates) specified in the shortfall direction pay the amount raised under sub-paragraph 3(a), (excluding any permitted administration fee), to the shortfall payment recipients, in accordance (where applicable) with any priority set out in the shortfall direction. For the avoidance of doubt the licensee shall not at any time be under any liability:
  - (i) to make any payments to any shortfall payment recipient, to the extent that those payments exceed the amount of additional revenue which the licensee has already received pursuant to the modification of its charges in accordance with this condition (excluding any permitted administration fee); or
  - (ii) to pay interest to any shortfall payment recipient in respect of any period for which any payment is late (in whole or in part) where the delay to such payment arises from the late payment of monies to the licensee.
  
- 5. Save where the Secretary of State specifies otherwise in a shortfall direction modifying or replacing a previously issued shortfall direction, if the amount raised by the licensee under sub-paragraph 3(a) (excluding any permitted administration fee):
  - (a) is less than the amount the licensee is obliged to raise by the shortfall direction to be applied in making good the shortfall (other than as a result of late, partial or non-payment of the modified charges by one or more party subject to those charges), the licensee shall:
    - (i) as soon as reasonably practicable, modify its charges (in accordance with any method or methods specified in the shortfall direction) so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue

effected by such modification will equal the amount of that deficit together with any interest as specified in the shortfall direction; and

(ii) pay that amount to the shortfall payment recipients as soon as reasonably practicable but otherwise in accordance with the shortfall direction; or

(b) is more than the amount the licensee is obliged to raise by the shortfall direction to be applied in making good the shortfall, the licensee shall, as soon as reasonably practicable, further modify its charges so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue effected by such modification will equal the amount of the excess together with any accrued interest thereon.

6. For the purposes of sub-paragraph 3(a) and paragraph 5:

(a) the licensee may modify its charges notwithstanding that it has not given prior notice of such a variation required by any other condition of this licence and/or the CUSC and any charges levied by the licensee after modification pursuant to sub-paragraph 3(a) or paragraph 5 of this condition shall be deemed to be compliant with the licensee's obligations under Condition C4 (Charges for use of system), Condition C5 (Use of system charging methodology) and Condition C13 (Adjustments to use of system charges (small generators)) as from time to time amended;

(b) the licensee shall not enter into any agreement with another party which does not permit it to vary its charges in pursuance of this condition and shall take all steps within its power to amend, where necessary, any existing agreement to permit such variation; and

(c) in modifying its charges for the purposes of this condition the licensee shall not discriminate between any person or class or classes of person, except in so far as any differences in charges reasonably reflect objective differences between such persons or classes of persons or such differences in charges are required to give effect to the shortfall direction.

7. The licensee shall, immediately after making any payment under paragraphs 4 or 5 above, send a notice to the Authority and to the Secretary of State specifying the amount of that payment, the shortfall payment recipients to whom it was paid, the

date on which it was paid and whether any of the payment was made up of interest resulting from late payment.

8. In calculating the licensee's revenue during any period for the purposes of any charge restriction condition, any change in the licensee's revenue attributable to the licensee's compliance with this condition shall be treated as if it had not occurred.
9. The licensee shall prepare, in respect of each period of 12 months ending on 31 March in which its charges are modified in pursuance of sub-paragraph 3(a) or paragraph 5, a statement showing:
  - (a) the aggregate amount of its revenue derived from any modification to charges in pursuance of sub-paragraph 3(a);
  - (b) the aggregate amount of its revenue derived from any modification to charges in pursuance of sub-paragraph 5(a);
  - (c) the aggregate amount of the change in its revenue resulting from any modification to charges in pursuance of sub-paragraph 5(b); and
  - (d) the aggregate payments made by the licensee during that period of 12 months ending on 31 March in accordance with paragraph 4 and, where applicable, subparagraph 5(a),

and shall give the statement to the Authority within four months of the expiration of the period to which it relates.

10. On giving the statement mentioned in paragraph 9 to the Authority, the licensee shall also publish it on its website.
11. In this condition:
  - (a) any words or expressions used in Chapter 3 of Part 3 of the Energy Act 2004 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;
  - (b) any words or expressions used in Chapter 5 of Part 2 of the Energy Act 2011 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;

- (c) any words or expressions used in the Smart Meters Act 2017 shall, unless the contrary intention appears, have the same meaning as they do in that Act when used in this condition;
- (d) “charge restriction condition” means any condition (including, without limitation, any revenue restriction condition) of this licence which places a monetary limitation on the revenue which may be recovered by the licensee during a given period; and
- (e) “shortfall direction” means a direction issued by the Secretary of State for the purpose of meeting any “relevant debt”, within the meaning given to those words:
  - (i) in relation to energy administration, in section 169(4) of the Energy Act 2004;
  - (ii) in relation to energy supply company administration, section 99 (4) of the Energy Act 2011;
  - (iii) in relation to smart meter communication licensee administration, in section 7(4) of the Smart Meters Act 2017,(including (A) any modifications to such direction made by any subsequent shortfall direction, or (B) any shortfall direction replacing a previous shortfall direction).

## **NATIONAL GRID GAS TRANSPORTER (NTS) LICENCE**

### **Special Condition 11D. Energy Administration: NTS Shortfall Contribution Obligations**

- (1) The purpose of this condition is to require the licensee, in specified circumstances, to modify the charges imposed by it in carrying on its licensed activities (“charges”) to raise such amounts as are specified by the Secretary of State in a shortfall direction:
  - (i) from the persons; and
  - (ii) in the manner,specified in such shortfall direction, and to pay such amounts to the persons specified in the shortfall direction.
  
- (2) Where there is a shortfall during or at the completion of an energy administration, energy supply company administration or smart meter communication licensee administration the Secretary of State, after consultation with the Authority and the licensee, may issue one or more shortfall directions (including one or more shortfall directions to modify or replace any previously issued shortfall direction or directions) to the licensee specifying:
  - (a) the amount of the shortfall (including the amount of any interest accruing on the shortfall calculated to the date specified in sub-paragraph (f));
  - (b) the amount to be raised by the licensee and applied in making good the shortfall;
  - (c) the persons to whom the amount referred to in sub-paragraph (b) above is to be paid (“shortfall payment recipients”);
  - (d) the rate or rates of interest applicable to any part or parts of the amount referred to in sub-paragraph (b) above, and any other relevant information to enable the licensee to calculate liability (if any) for payment of any interest in respect of any late payment of such amount to or by the licensee;

- (e) the method or methods by which the licensee may raise the amount referred to in sub-paragraph (b) above (including, without limitation, the manner in which and persons from whom it is to be raised and whether such amount is to be raised within or outside the licensee's normal billing cycle);
- (f) the date by which the licensee is required to pay the shortfall payment recipients the amount referred to in sub-paragraph (b) above (or, where payment of the amount is required in instalments, the dates on which the licensee is required to make payment of each instalment);
- (g) where the shortfall includes relevant debts owed to more than one shortfall payment recipient, the priority in which the amount referred to in sub-paragraph (b) above is to be applied in discharging those debts;
- (h) the extent to which a subsequent shortfall direction modifies or replaces a previously issued shortfall direction;
- (i) where a shortfall direction is to modify or replace any previously issued shortfall direction, where appropriate, a requirement not to modify charges further pursuant to paragraph 5 below; and
- (j) the amount the licensee is permitted to raise and retain for administering the mechanism contained in this condition ("permitted administration fee") and the manner in which the permitted administration fee is to be raised,

and the licensee shall comply with any such shortfall direction.

- (3) As soon as reasonably practicable after receiving a shortfall direction, the licensee shall:
  - (a) modify its charges (in accordance with any method or methods specified in the shortfall direction) so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue resulting from the modification will equal the amount to be raised by it as specified in the shortfall direction (including, at the licensee's discretion, any permitted administration fee); and
  - (b) notify the persons who are subject to the charges so modified of:
    - (i) the modifications made to the charges;

- (ii) any modification to the date or time period within which such charges shall be paid;
  - (iii) the reason for those modifications; and
  - (iv) the interest rate applicable to late payment of such modified charges.
- (4) The licensee shall on or before the date (or dates) specified in the shortfall direction pay the amount raised under sub-paragraph 3(a), (excluding any permitted administration fee), to the shortfall payment recipients, in accordance (where applicable) with any priority set out in the shortfall direction. For the avoidance of doubt the licensee shall not at any time be under any liability:
  - (i) to make any payments to any shortfall payment recipient, to the extent that those payments exceed the amount of additional revenue which the licensee has already received pursuant to the modification of its charges in accordance with this condition (excluding any permitted administration fee); or
  - (ii) to pay interest to any shortfall payment recipient in respect of any period for which any payment is late (in whole or in part) where the delay to such payment arises from the late payment of monies to the licensee.
- (5) Save where the Secretary of State specifies otherwise in a shortfall direction modifying or replacing a previously issued shortfall direction, if the amount raised by the licensee under sub-paragraph 3(a) (excluding any permitted administration fee):
  - (a) is less than the amount the licensee is obliged to raise by the shortfall direction to be applied in making good the shortfall (other than as a result of late, partial or non-payment of the modified charges by one or more party subject to those charges), the licensee shall:
    - (i) as soon as reasonably practicable, modify its charges (in accordance with any method or methods specified in the shortfall direction) so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue effected by such modification will equal the amount of that deficit together with any interest as specified in the shortfall direction; and

- (ii) pay that amount to the shortfall payment recipients as soon as reasonably practicable but otherwise in accordance with the shortfall direction; or
  - (b) is more than the amount the licensee is obliged to raise by the shortfall direction to be applied in making good the shortfall, the licensee shall as soon as reasonably practicable, further modify its charges so as to secure that, in its reasonable estimation (such estimate to be agreed with the Authority), the change in its revenue effected by such modification will equal the amount of the excess together with any accrued interest thereon.
- (6) For the purposes of sub-paragraph 3(a) and paragraph 5:
- (a) the licensee may modify its charges notwithstanding that it has not given prior notice of such a variation required by any other condition of this licence and/or the uniform network code and any charges levied by the licensee after modification pursuant to sub-paragraph 3(a) or paragraph 5 of this condition shall be deemed to be compliant with the licensee's obligations under Standard Special Condition A4 (Charging - General) and Standard Special Condition A5 (Obligations as Regard Charging Methodology) as from time to time amended;
  - (b) the licensee shall not enter into any agreement with another party which does not permit it to vary its charges in pursuance of this condition and shall take all steps within its power to amend, where necessary, any existing agreement to permit such variation; and
  - (c) in modifying its charges for the purposes of this condition the licensee shall not discriminate between any person or class or classes of person, except in so far as any differences in charges reasonably reflect objective differences between such persons or classes of persons or such differences in charges are required to give effect to the shortfall direction.
- (7) The licensee shall, immediately after making any payment under paragraphs 4 or 5 above, send a notice to the Authority and to the Secretary of State specifying the amount of that payment, the shortfall payment recipients to whom it was paid, the date on which it was paid and whether any of the payment was made up of interest resulting from late payment.

- (8) In calculating the licensee's revenue during any period for the purposes of the charge restriction conditions, any change in the licensee's revenue attributable to the licensee's compliance with this condition shall be treated as if it had not occurred.
- (9) The licensee shall prepare, in respect of each period of 12 months ending on 31 March in which its charges are modified in pursuance of sub-paragraph 3(a) or paragraph 5, a statement showing:
- (a) the aggregate amount of its revenue derived from any modification to charges in pursuance of sub-paragraph 3(a);
  - (b) the aggregate amount of its revenue derived from any modification to charges in pursuance of sub-paragraph 5(a);
  - (c) the aggregate amount of the change in its revenue resulting from any modification to charges in pursuance of sub-paragraph 5(b); and
  - (d) the aggregate payments made by the licensee during that period of 12 months ending on 31 March in accordance with paragraph 4 and, where applicable, subparagraph 5(a), and shall give the statement to the Authority within four months of the expiration of the period to which it relates.
- (10) On giving the statement mentioned in paragraph 9 to the Authority, the licensee shall also publish it on its website.
- (11) In this condition:
- (a) any words or expressions used in Chapter 3 of Part 3 of the Energy Act 2004 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;
  - (b) any words or expressions used in Chapter 5 of Part 2 of the Energy Act 2011 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;
  - (c) any words or expressions used in the Smart Meters Act 2017 shall, unless the contrary intention appears, have the same meaning as they do in that Act when used in this condition;
  - (d) "charge restriction condition" means any condition (including, without limitation, any revenue restriction condition) of this licence which places a

monetary limitation on the revenue which may be recovered by the licensee during a given period; and

(e) “shortfall direction” means a direction issued by the Secretary of State for the purpose of meeting any “relevant debt”, within the meaning given to those words:

(i) in relation to energy administration, in section 169(4) of the Energy Act 2004;

(ii) in relation to energy supply company administration, section 99 (4) of the Energy Act 2011;

(iii) in relation to smart meter communication licensee administration, in section 7(4) of the Smart Meters Act 2017,

(including (A) any modifications to such direction made by any subsequent shortfall direction, or (B) any shortfall direction replacing a previous shortfall direction).

## **GAS SHIPPER LICENCE**

### **Condition 19. Energy Administration, Energy Supply Company Administration and Smart Meter Communication Licensee Administration: Shortfall Contribution Obligations**

1. Pursuant to Chapter 3 of Part 3 of the Energy Act 2004, Chapter 5 of Part 2 of the Energy Act 2011 and the Smart Meters Act 2017 and in accordance with this condition, the licensee shall, for the purpose of raising any sums specified in a shortfall direction, pay to the NTS operator such monies as result from any modification or modifications to the charges of the NTS operator made pursuant to Special Condition 11D (Energy Administration: NTS Shortfall Contribution Obligations) of the NTS operator's gas transporter licence.
2. For the avoidance of doubt, the modified charges to be paid by the licensee in accordance with paragraph 1 above shall be payable in accordance with the licensee's obligations governing the payment of those charges to the NTS operator, except insofar as required by the shortfall direction and so notified to the licensee by the NTS operator.
3. If it does not make the payment or payments required by this condition on or before the date required in accordance with paragraph 2 above, the licensee shall pay to the NTS operator an amount representing the rate or rates of interest applicable to any part or parts of the amount to be raised by the NTS operator, specified in the shortfall direction issued to the NTS operator pursuant to Special Condition 11D (Energy Administration and Energy Supply Company Administration: NTS Shortfall Contribution Obligations) of the NTS operator's licence and set out in the notice given to the licensee by the NTS operator, which interest payment shall be made by the licensee as soon as possible after, and in any event within 28 days, of the date of the invoice from the NTS operator for such payment.
4. In this condition:
  - (a) any words or expressions used in Chapter 3 of Part 3 of the Energy Act 2004 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;

- (b) any words or expressions used in Chapter 5 of Part 2 of the Energy Act 2011 shall, unless the contrary intention appears, have the same meaning as they do in that Chapter when used in this condition;
- (c) any words or expressions used in the Smart Meters Act 2017 shall, unless the contrary intention appears, have the same meaning as they do in that Act when used in this condition;
- (d) “NTS operator” shall have the same meaning as in Standard Special Condition A3 of National Grid Gas plc’s gas transporter licence in respect of the NTS; and
- (e) “shortfall direction” shall have the same meaning as in the Special Condition 11D (Energy Administration and Energy Supply Company Administration: NTS Shortfall Contribution Obligations) of National Grid Gas plc’s gas transporter licence in respect of the NTS.

## **ELECTRICITY SUPPLY LICENCE**

### **Condition 15. Assistance for areas with high distribution costs scheme, Energy Administration Orders, ESC Administration Orders and SMCL Administration Orders: payments to System Operator**

15.1 This condition sets out the obligations of the licensee in relation to payments to be made to the System Operator for the purpose of:

- (a) providing assistance with the high costs of distributing electricity incurred by a Relevant Distributor in a Specified Area; and
- (b) raising any sums specified in a Shortfall Direction in order to recover costs arising from the application of:
  - (i) an Energy Administration Order to a Protected Energy Company;
  - (ii) an ESC Administration Order to an Energy Supply Company; or
  - (iii) an SMCL Administration Order to a Smart Meter Communication Licensee.

15.2 The payments to which paragraph 15.1 refers are payments made pursuant to:

- (a) in the case of sub-paragraph 15.1(a), the Energy Act 2004 (Assistance for Areas with High Distribution Costs) Order 2005; and
- (b) in the case of sub-paragraph 15.1(b):
  - (i) in respect of sub-paragraph (i), the provisions of Chapter 3 of Part 3 of the Energy Act 2004;
  - (ii) in respect of sub-paragraph (ii), the provisions of Chapter 5 of Part 2 of the Energy Act 2011; or
  - (iii) in respect of sub-paragraph (iii), the provisions of the Smart Meters Act 2017.

#### **Licensee's duty to pay**

- 15.3 In accordance with paragraph 15.1, the licensee must pay to the System Operator:
- (a) the sums resulting from the pence per kWh tariff specified in accordance with the terms set out in standard condition C21 (Assistance for areas with high distribution costs scheme: payments from authorised suppliers) (for this condition only, “standard condition C21”) of the Transmission Licence; and
  - (b) where applicable, such additional sums as result from any modification of those charges made pursuant to standard condition C24 (Energy Administration, Energy Supply Company Administration and Smart Meter Communication Licensee Administration: National Electricity Transmission System Operator Shortfall Contribution Obligations) (for this condition only, “standard condition C24”) of the Transmission Licence.
- 15.4 Subject to paragraph 15.5, the sums to be paid by the licensee in accordance with paragraph 15.3 must be payable on a quarterly basis in each Financial Year (or such other basis as may be specified in standard condition C21 of the Transmission Licence) by:
- (a) the date indicated in each invoice received by the licensee from the System Operator requiring such payment; or
  - (b) where no such date is indicated, no later than 28 days after the date of the invoice.
- 15.5 In the case of sums payable in accordance with sub-paragraph 15.3(b), the licensee must comply with any basis of payment different from that set out in paragraph 15.4 if this is required by the Shortfall Direction and has been notified to the licensee by the System Operator.

#### **Late payment charges**

- 15.6 In relation to sums required to be paid by sub-paragraph 15.3(a), the licensee must pay to the System Operator an amount representing 8% above the Base Interest Rate of any payment not made to the System Operator on the date specified pursuant to paragraph 15.4, calculated for each day after the date on which that payment should have been made, until the payment is made.
- 15.7 In relation to any sums required to be paid by sub-paragraph 15.3(b), if the licensee does not make that payment on or before the date required in accordance with paragraph 15.4 or 15.5, it must pay to the System Operator an amount representing

the rate of interest applicable to any part of the amount to be raised by the System Operator that is specified in the Shortfall Direction and set out in the System Operator's notice given to the licensee under standard condition C24 of the Transmission Licence, until the payment is made.

- 15.8 Any interest payment owed under paragraph 15.6 or 15.7 must be made by the licensee as soon as possible after, and in any event no later than 28 days after, the date of the System Operator's invoice for such payment.

#### **Definitions for condition**

- 15.9 For the purposes of this condition:

**Act** means the Electricity Act 1989.

**Base Interest Rate** means, in respect of any day, the rate per annum which is equal to the base lending rate from time to time of Barclays Bank plc as at the close of business on the immediately preceding Business Day.

**Business Day** means any day of the week, other than a Saturday, on which banks are open for domestic business in the City of London.

**Energy Administration Order** has the same meaning as in section 154 of the Energy Act 2004.

**ESC Administration Order** has the same meaning as in section 94 of the Energy Act 2011.

**Financial Year** means a period of 12 months beginning on 1 April each year and ending on 31 March of the next calendar year.

**Protected Energy Company** has the same meaning as in section 154 of the Energy Act 2004.

**Energy Supply Company** has the same meaning as in section 94 of the Energy Act 2011.

**Relevant Distributor** has the same meaning as in section 184 of the Energy Act 2004.

**Shortfall Direction** has the same meaning as in standard condition C24 of the Transmission Licence.

**Smart Meter Communication Licensee** has the same meaning as the "smart meter communication licensee" in section 2(5) of the Smart Meters Act 2017.

**SMCL Administration Order** has the same meaning as a "smart meter communication licensee administration order" in section 2(1) of the Smart Meters Act 2017.

**Specified Area** means the area specified in the Energy Act 2004 (Assistance for Areas with High Distribution Costs) Order 2005.

**System Operator** means the holder, from time to time, of a Transmission Licence.

**Transmission Licence** means a licence granted, or treated as granted, under section 6(1)(b) of the Act and in which Section C of the standard conditions of that licence has effect.

## **SMART METERS BILL**

### **ANNEX C: DRAFT LICENCE AMENDMENTS EXPLANATORY NOTES**

#### **Introduction**

This explanatory note has been prepared by BEIS to support the attached draft licence condition amendments and detail how we plan to exercise certain powers in the Smart Meters Bill.

#### **Purpose**

The draft licence condition modifications would be made using a power proposed in clauses 6 and 7 of the Smart Meters Bill. The power provides the Secretary of State with the ability to modify licence conditions in order to extend existing mechanisms for other special administration regimes to allow the expenses of the smart meter communication licensee administration, including certain debts, to be recovered from the users of the smart meter communication licensee's system.

Subject to the Smart Meters Bill being enacted, these licence condition modifications would be consulted on and published within 18 months of commencement as set out in clause 6.

#### **Legislative Context**

The envisaged modifications establish a mechanism for recouping smart meter communication licensee administration costs from industry and work by amending existing licence conditions that already operate and allow for the costs of other energy SARs to be recouped. The power to modify the licence conditions is time-limited. It is exercisable only during the eighteen months beginning with commencement of clause 6. Sections 3A to 3D of the Electricity Act 1989 and sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply to the exercise of this power by the Secretary of State as they apply in relation to his functions under Part 1 of the respective Acts.

#### **Extent and Territorial Background**

In line with the Bill, the subject matter is reserved in Great Britain. This instrument applies only to England, Wales and Scotland.

#### **Policy Background**

The Bill would establish a special administration regime for the smart meter communication licensee (currently the Data and Communications Company, the DCC), the company that provides the national data and communications infrastructure for smart metering.

The purpose of the special administration regime is to ensure that in the unlikely event that the licensee faces insolvency or becomes insolvent, the service will continue to operate until the company is rescued or the activity is transferred to another company. This is to ensure continuity of smart services for consumers.

Once the licensee is in smart meter communication licensee administration, the administrator may need to be able to make good any shortfall in the property available to a company in administration for meeting relevant debts. Relevant debts include: repaying certain funding provided by the Government, other specified debts (such as the remuneration and expenses of the administrator) and debts or liabilities of the company arising out of contracts entered into by the administrator while a smart meter communication licensee administration order is in place.

There are a number of controls in place in the regulatory regime for the DCC which prevents it from raising charges flexibly to manage an insolvency situation. Therefore, there is a need for a different mechanism for raising charges for the specific purpose of paying for the expenses of a smart meter communication licensee administration.

A mechanism already exists for energy network and energy supplier special administration regimes. We intend to use the existing mechanism and extend its scope so that it can be used for this special administration regime for the smart meter communication licensee.

The cost recovery mechanism follows the already well-established principle in energy market trading arrangements that if a market participant, as a result of insolvency, defaults on any charges it is required to pay under industry codes, the cost is socialised across market participants.

Under the existing mechanism, electricity suppliers pay charges to National Grid<sup>1</sup> for the transmission of electricity. Gas shippers pay charges to National Grid<sup>2</sup> for the conveyance of gas. Gas shippers pass these costs on to gas suppliers. Most suppliers also hold a shipper licence. This mechanism ensures the cost is socialised across the energy industry.

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<sup>1</sup> In National Grid's capacity as the electricity System Operator, operating under National Grid's Electricity Transmission Licence.

<sup>2</sup> In National Grid's capacity as the gas System Operator, operating under the National Grid Gas Plc (NTS) Gas Transporter Licence.

## **Legal Background**

In the event that a shortfall occurs during or at the end of administration, the Secretary of State can choose to trigger the cost recovery mechanism. The Secretary of State, after consultation with relevant stakeholders, would issue a direction to National Grid, in its role as the national system operator for the gas and electricity transmission systems in Great Britain, to raise a specified amount to make good any shortfall through the charges it levies on gas shippers and electricity suppliers.

### *Charges levied on electricity suppliers*

Electricity suppliers are required to sign up to the requirements of the Connection and Use of System Code (CUSC). The CUSC requires them to pay National Grid's Transmission Network Use of System (TNUoS) charge and the Balancing Services Use of System (BSUoS) charge.

Electricity suppliers also pay National Grid a charge for the purpose of providing assistance with the high costs of distributing electricity in certain areas, pursuant to Electricity Supply Standard Licence Condition (SLC) 15.

### *Charges levied on gas shippers*

The Uniform Network Code (UNC) forms the contractual framework between National Grid as the national gas transporter and shippers whose gas is transported. Under the UNC gas shippers are liable for a number of payments and charges to National Grid Gas plc in its capacity as system operator of the National Transmission System (NTS).

## **Details of Draft Licence Modifications**

### *National Grid's Electricity Transmission Licence*

We propose modifying condition C24 of National Grid's Electricity Transmission Licence. Condition C24 requires National Grid to modify the charges it levies on electricity suppliers to raise the amounts specified by the Secretary of State in a shortfall direction. The proposed changes allow the Secretary of State, after consultation with relevant stakeholders, to issue a shortfall direction where there is a shortfall during or at the completion of a smart meter communication licensee administration. The draft modifications are contained in Annex B.

The shortfall direction would include:

- the details of the amount of the shortfall;
- the details of the amount to be raised and applied in making good the shortfall;
- to whom it will be paid and, where there is more than one recipient, the priority in which it is to be applied;
- which charges will be modified;
- when the amount will be raised and when the amount will be paid to the specified recipients;
- any interest to be charged on a late payment; and
- the details of the amount that can be raised and retained for administering this cost recovery mechanism and the manner in which it is to be raised.

As soon as reasonably practicable after receiving the shortfall direction, National Grid will modify its charges and notify those to whom the modified charges apply (most likely it will be both gas shippers and electricity suppliers) of:

- the modified charges;
- any changes to the date or time period within which the charges are to be paid;
- the reason for the modified charges; and
- any interest rate applicable to late payment of the modified charges.

The Secretary of State will decide which charge to modify when issuing the shortfall direction. As the cost recovery mechanism works by modifying an existing charge, the starting point for allocation of the costs will depend on the way in which the underlying charge is calculated.

National Grid will be able to recover its administrative costs for operating the cost recovery mechanism and the Secretary of State will specify a permitted administration fee in the shortfall direction and the manner in which the fee is to be raised. This is in line with the existing special administration regimes for energy network and supply companies.

#### *National Grid Gas Plc Gas Transporter (NTS) Gas Transporter Licence*

We propose changing special condition 11D of the National Grid Gas Plc Gas Transporter (NTS) Gas Transporter Licence. Special condition 11D requires National Grid to modify the charges that it levies on gas shippers to raise amounts specified by the Secretary of State in a shortfall direction. The proposed changes allow the Secretary of State, after consultation with relevant stakeholders, to issue a shortfall direction where there is a shortfall during or at the completion of a smart meter communication licensee administration. The draft modifications are contained in Annex B.

The cost recovery mechanism in special condition 11D mirrors that in condition C24 of National Grid's Electricity Transmission Licence and so the proposed changes to special condition 11D mirror those to condition C24 .

### *Gas Shipper Licence*

In 2006, following consultation with the industry, SLC 19 was inserted into the Gas Shipper Licence to include explicit references to the energy administration (the special administration regime for energy network companies) cost recovery mechanism to make clear that gas shippers are required to pay charges that are modified for the purpose of raising any sums specified in a shortfall direction. In 2013, the Government amended SLC 19 to ensure gas shippers pay the charges National Grid levies on them in order to comply with a shortfall direction in relation to energy supply company administration. The proposed changes, set out in Annex B, would mirror these amendments and require gas shippers to pay charges National Grid levies on them in order to comply with a shortfall direction in relation to smart meter communication licensee administration.

### *Electricity Supply Licence*

We consider that TNUoS (Transmission Network Use of System) and BSUoS (Balancing Services Use of System) charges are sufficiently broad in scope to allow National Grid to increase them for the purpose of complying with a shortfall direction issued by the Secretary of State, without needing to change the licence.

However, in order to allow the Secretary of State maximum flexibility in deciding which charges should be raised if he issues a shortfall direction, we propose amending special licence condition 15. The original intention of this charge was to raise money from suppliers to provide assistance in respect of areas with high distribution costs (the assistance for areas with High Electricity Distribution costs scheme).

This condition was amended in 2006 by adding a new requirement for electricity suppliers to pay such additional sums as result from the modified charges for the purpose of raising any sums specified in a shortfall direction in relation to an energy administration (the special administration regime for energy network companies). This condition was further amended in 2013 to cover a shortfall direction in relation to energy supply company administration. The Government is proposing a further amendment so that electricity suppliers are required to pay additional sums resulting from modified charges for the purpose of raising any sums specified in a shortfall direction in relation to a smart meter communication licensee administration. The proposed modifications to the licence condition are set out in Annex B.

## **Consultation**

Before making these modifications the Secretary of State must consult affected licensees and such other persons as he considers appropriate. This would be undertaken subject to the relevant Bill clauses being enacted.