

SMART METERS BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Smart Meters Bill as brought from the House of Commons on 6 February 2018 (HL Bill 83).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Smart Meters Bill brought from the House of Commons on 6 February 2018 (HL Bill 83)

Overview of the Bill

- 1 The Bill deals with three matters related to smart meters and smart metering data. This Bill makes provision for:
 - the extension of existing powers the Secretary of State has to develop, amend and oversee regulations relating to smart metering.
 - the introduction of a special administration regime for the national smart meter communication and data service provider to ensure the service continues to be provided in the unlikely event of its insolvency.
 - new powers allowing Ofgem to directly modify industry codes and documents for the purposes of delivering market-wide half-hourly settlement (see paragraph 12) which uses smart metering data.

Policy background

- 2 Smart meters, rolled out as part of the Smart Metering Implementation Programme (the 'Programme'), are the next generation of gas and electricity meters. They will provide consumers with near-real time information on their energy consumption to help them control and manage their energy use and in turn save money and reduce emissions.
- 3 The Government is facilitating the smart metering rollout by developing a regulatory framework comprising licence conditions (in supply licences, network operator licences, and smart meter communication licences) and a new industry code called the Smart Energy Code (the SEC). Together, these establish the rights and obligations for all aspects of smart metering design, development, installation and operation, as well as monitoring and reporting.
- 4 Central to the operation of smart metering is the activity of communicating to and from smart metering systems. The GB-wide smart meter communication service is provided by a national smart meter communication and data service provider called the 'Data and Communications Company', or 'DCC'. The DCC is a licensed entity (Smart DCC Ltd) regulated by the Gas and Electricity Markets Authority ('the Authority') and holds smart meter communication licences (the 'DCC Licence') awarded under the Electricity Act 1989 and the Gas Act 1986 (the 'Electricity and Gas Acts').
- 5 Smart meters can record the amount of electricity consumed within every half-hour period and provide this data to energy suppliers remotely, which presents an opportunity to improve the accuracy and timeliness of the electricity settlement process (see paragraph 12). In particular, smart meters will enable half-hourly settlement by improving the process by which the volume of electricity purchased by a supplier for a particular half-hour period is compared to the volume of electricity consumed by the supplier's customers for the same period using information about customers' actual consumption of electricity on a half-hourly basis.

Extension of powers

- 6 The Energy Act 2008 and the Electricity and Gas Acts provide the Secretary of State with a number of powers in relation to smart metering including powers to:
 - a. make activities relating to smart metering licensable;
 - b. modify licence conditions and industry codes; and
 - c. veto any proposal by the Authority to consent to the transfer of the DCC Licence.
- 7 The Government has used the first of these powers to make the provision of the smart meter communication service licensable, and the second to develop the regulatory framework. The regulatory framework continues to develop to facilitate the realisation of a full DCC service to cover all premises and smart meter types. The third power has not yet been used but is provided in order to maintain regulatory stability and Government oversight of smart metering.
- 8 These powers are currently due to expire on 1 November 2018. The Smart Meters Bill provides for these powers to continue to be available to the Secretary of State until 1 November 2023 so he or she has the ability to intervene where required to drive the timely completion of the rollout of smart meters by the end of 2020, to protect consumers and to ensure benefits enabled by the rollout are being fully realised.

Special administration regime

- 9 Through the DCC, energy companies (alongside networks and other third parties) can collect energy usage data remotely to deliver the benefits of smart metering, including bringing an end to estimated bills and facilitating faster switching between energy suppliers.
- 10 The DCC's continued operation is fundamental to providing uninterrupted services, protecting consumers and securing benefits for both consumers and industry. Whilst the DCC is subject to the provisions of the Insolvency Act 1986, there are currently no special statutory provisions to deal with the threatened or actual insolvency of the DCC. This is in contrast with the position for water, railways, the transportation or supply of gas and the transmission, distribution and supply of electricity.
- 11 The Government considers that the risk of the DCC's insolvency is very low. However, the Government is concerned that the impact for consumers would be high, potentially resulting in a loss of energy billing services, including prepayment services which would particularly affect vulnerable consumers. This Bill introduces a special administration regime ('SAR') for the smart meter communication licensee, which is currently the DCC. The objective of the SAR is to ensure the continuity of the smart meter communication service.

Half-hourly settlement

- 12 In Great Britain electricity is traded in a wholesale market, with generators and suppliers entering into contracts with each other for every half-hour of every day. Electricity suppliers are required to buy enough energy to meet their consumers' needs in each half-hour period, and 'settlement' is the process for determining, after the event, whether what they bought matched what their customers consumed. Any shortfall or excess is charged or refunded to the supplier accordingly.

- 13 However the majority of domestic and smaller non-domestic consumers currently do not have meters capable of recording their consumption by half-hour period – the total amount of energy consumed is recorded, but the timing of when it is consumed is not recorded. For these consumers their half-hourly consumption is based on an estimate according to a profile of the average consumer.
- 14 Smart meters can record the amount of energy consumed or exported within every half-hour period and provide this data to energy suppliers remotely. The roll-out of smart meters to domestic and smaller non-domestic consumers therefore presents an opportunity to improve the accuracy and timeliness of the electricity settlement process, as they enable information about customers’ actual consumption of electricity on a half-hourly basis to be used in settlement. As the actual cost of generating and transporting electricity varies throughout the day (for example, at times of peak demand the average cost of electricity generation tends to be higher than at off-peak periods), half-hourly settlement is expected to provide commercial incentives on energy suppliers to encourage their customers to change when they consume energy (e.g. through time of use tariffs). This can help reduce the costs of the future energy system and so the costs for consumers. It would also make the energy system more resilient as we move towards an increasingly low carbon generation mix, and assist distribution networks in managing the additional load resulting from the take-up of electric vehicles and potentially the electrification of heat. Half-hourly settlement is a central aspect of the Government’s Smart Systems & Flexibility Plan that was published in July 2017.¹
- 15 Ofgem launched a Significant Code Review on market-wide half-hourly settlement in July 2017.² They have committed to take a decision on if, when and how to implement market-wide half-hourly settlement by the second half of 2019. The powers proposed in the Bill would allow Ofgem to deliver market-wide half-hourly settlement more swiftly and smoothly, without them having to rely on industry code processes to the same extent. This will help ensure that the benefits to consumers of new tariffs, products and services enabled by smart metering and half-hourly settlement will become available sooner.

Legal background

Extension of powers

- 16 The Energy Act 2008 and Electricity and Gas Acts provide the Secretary of State with a package of powers related to smart metering to enable the delivery of the Programme (see paragraph 2). Sections 88(1) and 88(2) of the Energy Act 2008 allow the Secretary of State to modify the conditions of licences for electricity transmission, distribution and supply, and gas transporter, shipping and supply, and the DCC Licence, as well as documents made under licence conditions (e.g. industry codes). Section 91 of, and Schedule 4 to, the Energy Act 2008 inserted new provisions into the Electricity and Gas Acts to create new licensable activities relating to smart metering (Section 41HA-HC Gas Act 1986 and 56FA-FC Electricity Act 1989). The Electricity and Gas Acts give the Secretary of State the power to veto the transfer of the DCC Licence or any part of it (section 7A(10A) - (10D) of the Electricity Act 1989 and section 8AA(10A) - (10D) of the Gas Act 1986).

¹ <https://www.gov.uk/government/publications/upgrading-our-energy-system-smart-systems-and-flexibility-plan>

²

https://www.ofgem.gov.uk/system/files/docs/2017/07/electricity_settlement_reform_significant_code_review_launch_statement.pdf

- 17 The activity of providing the smart meter communication service is controlled by a system of prohibitions and licences. The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (SI 2012/2400) amends the scope of prohibited activities defined in the Electricity and Gas Acts to include providing a communication service to and from smart meters that are installed at domestic premises. This is the smart meter communication service. Provision of the service is permitted by the DCC Licence which was granted by the Secretary of State under sections 6(1A) and (1C) of the Electricity Act 1989 and sections 7AB(2) and (4) of the Gas Act 1986 and which took effect from 23 September 2013. The term of the licence is 12 years until 22 September 2025, unless it is extended or revoked. A number of conditions have also been added to energy supply licences, notably the requirement on energy suppliers to take all reasonable steps to complete the rollout of smart meters to all domestic and small non-domestic sites by the end of 2020.

Special administration regime

- 18 Many of the clauses in the Bill in relation to the SAR mirror those that apply to other energy licensees as set out in the Energy Act 2004. These are explained in more detail in the commentary on draft clauses below. The SAR will provide for a special administration order to be sought by the Secretary of State (or the Authority with agreement of the Secretary of State) from a court. The order will provide that for the period during which the order remains in force the affairs, business and property of the DCC shall be managed by a person appointed by the court to ensure that the DCC continues to perform its functions under the DCC Licence until the DCC is rescued as a going concern, or transferred to another company (or companies) as a going concern. Any transfer would require approval by the Secretary of State.

Half-hourly settlement

- 19 The Electricity Act 1989 provides that particular activities relating to electricity must be licenced by Ofgem. As a condition of the licences, licence holders must be a party to and/or comply with detailed technical documents, usually known as “Codes”. These Codes are multiparty agreements entered into by industry stakeholders and managed by a Code Panel (a representative group of relevant industry stakeholders who oversee the modification process for each industry code), supported by a dedicated Code Administrator (an organisation appointed for the purposes of managing the code).
- 20 The process for modification of Codes rests with the industry signatories to the Codes, overseen by Ofgem. Ofgem currently takes a decision on whether to approve a material code modification at the end of the process but has limited involvement in developing or coordinating proposed modifications. Until August 2016, Ofgem had powers to launch a Significant Code Review (SCR) whereby they could direct licensee(s) to raise modifications to relevant industry codes to deliver outcomes specified in a Direction made by Ofgem. Following a review of code governance arrangements, Ofgem made changes to licences to provide it with additional powers to allow it to run an SCR as an end-to-end process. Under this process, Ofgem would lead the code modification process and be able to make a final decision on code modifications following consultation with stakeholders and the relevant code panel.
- 21 Under section 11A of the Electricity Act 1989 Ofgem has the power to amend electricity supply licences. Under these powers Ofgem must allow a minimum of 56 days following a direction to modify a licence before the licence modification can take effect. In the context of the half-hourly settlement programme we anticipate that there may be some circumstances when it

may be necessary for Ofgem to implement changes to licences in less than 56 days. For example, the procedure for code modification does not contain this time limit and therefore, removal of this time limit will enable amendments to codes and licences for the purpose of half-hourly settlement to be delivered concurrently. There may also be relatively minor or consequential amendments for which a 56 day stand still period is unnecessary. In such cases allowing 56 days before a licence modification comes into effect could unduly delay progress of the reforms, particularly where the proposed licence changes are relatively minor.

Territorial extent and application

- 22 Clause 14 sets out the territorial extent of the Bill, that is the jurisdictions of whose law the Bill forms part. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. The Bill's provisions extend and apply to England, Wales and Scotland.
- 23 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament or the National Assembly for Wales without the consent of the legislature concerned.
- 24 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament or the National Assembly for Wales, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament or the National Assembly for Wales, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 25 See the table in **Annex A** for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of the Bill

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

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

Clause 2: Smart meter communication licensee administration orders

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

Clause 3: Objective of a smart meter communication licensee administration

- 34 Subsection (1) establishes that the objective of the smart meter communication administrator in performing his duties is (1) to ensure that the functions that a smart meter communication licensee performs under its licences are provided efficiently and economically and (2) to render the continuation of the smart meter communication licensee administration unnecessary for this purpose by rescuing the company or making a transfer in accordance with subsection (2).
- 35 Subsection (2) sets out the means by which the continuation of the smart meter communication licensee administration may be made unnecessary. These are either the rescue of the company as a going concern, or transfers which fall within subsection (3). Subsection (3) provides for the transfer of the undertaking, or part of it, as a going concern to a single company or different parts of the undertaking to multiple companies. Subsection (4) provides for how such transfers may take place.
- 36 Subsection (5) provides that rescue is to be preferred to transfer in achieving the objective of smart meter communication licensee administration. Transfers are only to be effected when rescue is not reasonably practicable without a transfer, where the objective of the smart meter communication licensee administration cannot be achieved through rescue without a transfer or where such a transfer would produce a better result for the creditors or members of the company.
- 37 Subsections (6) and (7) allow the Secretary of State to make regulations by statutory instrument subject to a negative resolution procedure specifying the activities carried out by the company that the smart meter communication administrator must give priority to, and how this should be done.

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

- 38 This clause modifies the provisions in sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (the existing special administration regime for energy licensees), and sections 171 and 196 (interpretation) so they apply in relation to an smcl administration order.
- 39 The effect of applying those provisions includes:
- a. Section 156 of the Energy Act 2004, which provides that an application to the court for an smcl administration order can be made only by the Secretary of State or by the Authority with the consent of the Secretary of State;

- b. Section 157 which empowers the court in relation to an application for an smcl administration order. The court can make an smcl administration order only if it is satisfied that the company is insolvent, facing insolvency or that on a petition from the Secretary of State under section 124A of the Insolvency Act 1986 (c.45) it would be just and equitable (aside from the objective of smart meter communication licensee administration) to wind up the company in the public interest;
- c. Section 158 which stipulates the status of the smart meter communication administrator. It provides that the administrator must exercise management functions for the purpose of achieving the objective of the smart meter communication licensee administration as quickly and efficiently as is reasonably practicable and must exercise powers and perform duties in the manner which, in so far as it is consistent with the objective of the smart meter communication licensee administration, best protects the interests of the creditors of the company as a whole and, subject to those interests, the interests of the members of the company as a whole;
- d. Section 159 which apply the rule making power in section 411 of the Insolvency Act 1986 (c.45). Schedule 20 provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect in relation to smart meter communication licensee administration;
- e. Schedule 21, which provides for the transfers to another company or companies as a going concern of the whole or part of the smart meter communication licensee's assets to ensure that the objective of the smart meter communication licensee administration is met. Such transfer schemes are to be made by the smart meter communication administrator with the approval of the Secretary of State, after he has consulted the Authority;
- f. Sections 160 to 164, which prevent smart meter communication licensee administration being frustrated by prior orders of various types being granted before the Secretary of State or the Authority have been given an opportunity to apply for an smcl administration order or by other steps being taken when an smcl administration order has been made or an application is outstanding;
- g. Section 165 which enables the Secretary of State, with the consent of the Treasury, to give a grant or loan to a company in smart meter communication licensee administration in order to achieve the objective of smart meter communication licensee administration. It also enables the Secretary of State to set the terms of a grant or loan including the requirement that all or part of a grant should be repaid;
- h. Section 166 which enables the Secretary of State, with the consent of the Treasury, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the smart meter communication administrator's powers and duties and requires the Secretary of State to lay a statement of any such agreement to indemnify persons before Parliament as soon as practicable;
- i. Section 167 which enables the Secretary of State, with the consent of the Treasury, to provide guarantees in relation to a smart meter communication licensee in smart meter communication licensee administration and requires the Secretary of State to lay a statement of any guarantees given before Parliament as soon as practicable; and

- j. Section 171 which provides interpretations of various specific terms and Section 196 which provides interpretations of various general terms.

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

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

Clause 6: Modifications of particular or standard conditions

- 41 Subsection (1) enables the Secretary of State to modify the conditions of any gas or electricity licence held by a particular person and the standard conditions of gas or electricity licences in relation to the new regime for smart meter communication licensee administration. The modifications that can be made are specified in clause 7, and include the making of incidental, consequential or transitional modifications.
- 42 Subsection (3) requires the Secretary of State to consult the holder of any licence being modified and anyone else he thinks appropriate before making a modification. Subsection (4) enables the consultation to take place before the commencement of these provisions. Subsections (5) and (6) require the Secretary of State to publish the modifications made under this clause.
- 43 Subsection (8) requires that where the Secretary of State has made modifications to the standard conditions of gas or electricity licences of any type, the Authority must ensure that the modifications are incorporated into the standard conditions for future grants of licences and must publish these modifications.
- 44 Subsection (9) limits the exercise of the powers under this clause to eighteen months after commencement of the clause.
- 45 Subsections (10) and (11) provide that modifications made under this clause to standard conditions of (i) electricity generation, distribution and supply licences and (ii) gas transporter, supply and shipping licences, are reflected in the sections of the Utilities Act 2000 which govern the standard conditions of those licences.
- 46 Subsections (12) and (13) require the Secretary of State to act for the purposes of this clause in accordance with the principal objective to protect the interests of consumers and general duties as set out in the Gas Act 1986 and Electricity Act 1989.

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

- 47 This clause specifies the modifications that the Secretary of State can make to gas and electricity licences to secure funding of smart meter communication licensee administration.
- 48 Subsections (1) and (2) state the modifications that may be made under clause 6 include requiring the holder of the licence to raise the charges imposed on its customers or users so as to raise such amounts as may be determined by the Secretary of State and to pay the amounts raised to specified persons for the purpose of making good a shortfall in the property of a smart meter communication licensee available to meet the expenses of smart meter communication licensee administration. This will allow the costs of smart meter communication licensee administration to be recouped via the licence mechanism from the industry.
- 49 Subsection (3) defines a 'shortfall' in meeting the expenses of smart meter communication licensee administration as the property of the company being insufficient to meet the costs of smart meter communication licensee administration. It also defines making payment to make good the shortfall as discharging 'relevant debts' which cannot otherwise be met out of the available property.

- 50 Subsection (4) defines relevant debts and includes obligations to repay the grants, loans, sums paid out under an indemnity, and sums paid out under guarantees under sections 165, 166 and 167 of the Energy Act 2004 as applied by clause 4.

Clause 8: Modifications under the Enterprise Act 2002

- 51 This clause provides that the power to modify or apply enactments conferred on the Secretary of State by sections 248, 277 and 254 of the Enterprise Act 2002 includes a power to make consequential modifications to these clauses relating to the SAR, and to Chapter 3 of Part 3 of the Energy Act 2004 as applied by clause 4, where the Secretary of State considers this appropriate. This power is designed to ensure that the current provisions do not get out of line where the Enterprise Act 2002 provisions are used to modify or apply enactments.

Clause 9: Power to make further modifications of insolvency legislation

- 52 Subsection (1) 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 or she considers appropriate in relation to any provision made by or under these clauses relating to the SAR. Subsection (2) defines 'insolvency legislation' and includes both primary and subordinate legislation that relate to insolvency. Subsection (3) states that provision made under subsection (1) may take the form of direct amendments to these clauses relating to the SAR. This power is designed to enable the Secretary of State to amend the detail of the regime as experience of its application highlights any difficulties or areas of concern.

Clause 10: Interpretation

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

Clause 11: Modification of electricity codes etc: settlement using smart meter information

- 54 This clause gives powers to the Authority to make modifications to a document maintained in accordance with an electricity licence, and to an agreement that gives effect to such a document.
- 55 Subsection (2) provides that this power is exercisable when the Authority considers that it is necessary or desirable for the purpose of enabling or requiring suppliers to calculate half-hourly electricity imbalances using information about their customers' actual consumption of electricity on a half-hourly basis..
- 56 Subsection (3) provides that the power to make modifications under this clause includes a power to make provision about the determination of payment in connection with half-hourly electricity imbalances, a power to remove or replace all of the provisions of a document, a power to make different provision for different purposes and a power to make incidental, supplementary, consequential or transitional amendments.
- 57 Subsection (4) provides that the power will cease to be exercisable 5 years after the power comes into force.
- 58 Subsection (5) defines the terms used in Clause 11.

Clause 12: Modification under section 11

- 59 Clause 12 sets out the procedure that the Authority must follow before making modifications under clause 11.

- 60 Subsection (1) sets out the notice requirements, including a requirement that the Authority considers representations made by parties in relation to the proposed modification received within a specified period.
- 61 Subsection (2) provides a list of parties that the notice must be sent to.
- 62 Subsection (3) provides that the Authority must allow parties at least 28 days from when the notice under subsection (1) is published for representations to be made and considered.
- 63 Subsection (4) states that the notice under subsection (1) must include information on the modification and its intended effect, the reasons why the Authority is proposing the modification and when the Authority proposes that the modification will come into effect.
- 64 Subsection (5) states that if the Authority proceeds with making the modification, it must publish a further notice, setting out the effect of the modification, when it comes into effect, consideration of representations made by parties under subsection (1) and, if there are changes from the original proposal notified under subsection (1), the reason for those changes.
- 65 Subsection (8) provides that the exercise of the power under Clause 11 is subject to the Authority's principal objective and general duties found in sections 3A to 3D of the Electricity Act 1989.
- 66 Subsection (9) provides that impact assessment procedures under section 5A of the Utilities Act 2000 apply to the power to make modifications under Clause 11.
- 67 Subsection (10) provides that the impact assessment duties under subsection (9) are also subject to the Authority's principal objective and general duties under sections 3A to 3D of the Electricity Act 1989.

Clause 13: Date from which modifications of electricity licence conditions may have effect

- 68 Clause 13 inserts a new section 11AA in the Electricity Act 1989 to enable the Authority to make modifications to licences, in certain circumstances, without having to provide for the usual 56 day period before the modifications take effect. The circumstances in which the Authority can do this are where the modifications are necessary or desirable for half-hourly settlement, where the Authority consider that the reduction in the 56 day period is necessary or expedient and where the consultation and time limit conditions are satisfied.
- 69 Subsection (3) provides the consultation requirement and states that if the Authority wish to reduce the usual 56 day period, they must explain this in the consultation on the proposed licence modification and explain why the reduction will not have a material adverse effect on licence holders.
- 70 Subsection (4) provides that the time limit for exercising the power to modify licences in these circumstances ceases 5 years after Clause 11 comes into force.

Clause 14: Short title, commencement and extent

- 71 This clause makes provision about the short title, commencement and extent and is self-explanatory.

Commencement

- 72 Subsection (2) of clause 14 provides for clauses 1 and 14 to come into force on the day on which the Act is passed. Subsections (3) and (4) of clause 14 provide for clauses 11 to 13 to come into force on a day set by regulations made by the Secretary of State. Subsection (5) of clause 14 provides for clauses 2 to 10 to come into force two months after the Bill receives Royal Assent.

Financial implications of the Bill

- 73 Clause 4 of the Bill applies sections 165 to 167 of the Energy Act 2004 in relation to an smcl administration order and, through the application of those sections, gives the Government the ability to provide grants and loans to, and guarantees in relation to, the company in smart meter communication licensee administration, and to indemnify persons in respect of liabilities incurred and loss or damage sustained in connection with the exercise of the smart meter communication administrator's powers and duties. This expenditure would fall on the Consolidated Fund.
- 74 Any expenditure would be expected to be a short term cash flow injection and the Bill gives the Government the power in clause 6 to introduce a mechanism for recovering sums paid out through the application of those sections of the Energy Act 2004 (see paragraphs 41-50 of these notes).
- 75 While the Government would be able to provide financial support should it be required to prevent insolvency, any support would be at the Department's discretion and with the approval of HM Treasury. This does not create a contingent liability as there is no requirement to provide the support.
- 76 Granting the Authority powers to support half-hourly electricity settlement under clauses 11 to 13 does not require public expenditure or changes to public service manpower.

Parliamentary approval for financial costs or for charges imposed

- 77 A money resolution for the Bill was passed on 24 October 2017. A money resolution was required because clause 4 of the Bill applies sections 156 to 167 of the Energy Act 2004 to the special administration regime for smart meter communication licensees. Those sections of the 2004 Act include provision that authorises the Secretary of State to make grants and loans (section 165), to give indemnities (section 166), and to give guarantees (section 167).
- 78 A ways and means resolution for the Bill was also passed on 24 October 2017. A ways and means resolution was required because clause 6 authorises the Secretary of State to modify gas and electricity licences, and clause 7 provides that the modifications could increase charges imposed by licence holders.
- 79 The ways and means resolution also authorises payments into the Consolidated Fund.

Compatibility with the European Convention on Human Rights

- 80 The Parliamentary Under Secretary of State has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights, on introduction of the Bill in the House of Lords.
- 81 Clauses 1, 6 and 11 may engage Article 6 (right to a fair trial) of the European Convention of Human Rights ('the ECHR') to the extent that the modification of licence conditions and codes is determinative of civil rights and obligations. However, there are sufficient safeguards to ensure that there is no actual interference with Article 6 rights. Clauses 1, 6 and 11 may also engage Article 1 of Protocol 1 (protection of property) of the ECHR. Changes to licence conditions may interfere with energy companies' licences and changes to codes may interfere with the contractual rights and obligations of companies. We nevertheless consider that these powers fairly balance those rights of individual licensees and companies with the general public interest and that they are proportionate to the aims to be achieved. These powers support the continued benefits of smart metering, maintaining the continuation of services that the smart meter communication licensee is required to provide under its licence(s) and the use of the smart meter technology to implement the provision of half-hourly settlement.
- 82 The smart meter communication licensee SAR may also engage Article 1 of Protocol 1 as regards potential interference with the rights of creditors and third parties. However, there are sufficient safeguards to ensure that the SAR's provisions can be operated in a way that is compliant with property rights and that any interference with such is justified. We therefore consider that clauses 2 to 5 strike a fair balance between the general public interest, namely maintaining the continuation of the services that the smart meter communication licensee is required to provide under its licence(s), and the rights of creditors and third parties, and are proportionate to the aims to be achieved.

Related documents

- 83 The following documents are relevant to the Bill:
- Smart Metering Implementation Programme Impact Assessment:
<https://www.gov.uk/government/publications/smart-meter-roll-out-gb-cost-benefit-analysis>
 - Half-hourly settlement Significant Code Review launch statement:
https://www.ofgem.gov.uk/system/files/docs/2017/07/electricity_settlement_reform_significant_code_review_launch_statement.pdf
 - Memo to the Delegated Powers and Regulatory Reform Committee:
<https://services.parliament.uk/bills/2017-19/smartmeters/documents.html>
 - Pre-legislative scrutiny report by the Energy and Climate Change (ECC) Committee (Commons):
<https://www.publications.parliament.uk/pa/cm201516/cmselect/cmenergy/776/776.pdf>
 - Government response to the pre-legislative scrutiny report by the ECC Committee (Commons):
<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmenergy/581/581.pdf>

Annex A - Territorial extent and application in the United Kingdom

Each clause in the Bill extends and applies to England, Wales and Scotland. The Bill does not extend or apply to Northern Ireland. The table below shows the extent and application of each clause. As all the clauses apply to Great Britain it is not necessary to consider whether corresponding provision would be within the competence of the devolved legislatures.³

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 1-14	Yes	Yes	Yes	No	N/A	N/A	N/A	No

Minor or consequential effects⁴

All the clauses apply to England, Wales and Scotland and there are none that apply to England, or England and Wales, and have minor or consequential effects outside England.

³ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

⁴ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

SMART METERS BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Smart Meters Bill as brought from the House of Commons on 6 February 2018 (HL Bill 83).

Ordered by the House of Lords to be printed, 6 February 2018

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