

# Smart metering Implementation Programme

A consultation on a draft Statutory Instrument *the Electricity and Gas (Prohibition of Communications Activities) Order 2012*

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[http://www.decc.gov.uk/en/content/cms/consultations/cons\\_smip/cons\\_smip.aspx](http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx)

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# Executive Summary

This consultation seeks views on a draft Statutory Instrument that will enable the licensing of a new national provider of communications services to and from gas and electricity smart meters. This new organisation is referred to as the Data and Communications Company (“DCC”).

The first part of this document provides the policy context for this major programme. The second part explains the Government’s approach to setting the regulatory framework for smart metering. The DCC will be established within that framework through five regulatory interventions:

- the DCC Prohibition Order – to establish the requirement for DCC to be regulated;
- the DCC Licence – to place obligations and restrictions on the DCC’s conduct;
- the DCC Licence Application Regulations – the process for the competition for the award of the DCC licences;
- a range of new conditions in existing licences and changes to existing codes; and
- a Smart Energy Code (SEC) – to establish the operational arrangements for DCC.

The first intervention, the DCC Prohibition Order, will create a new licensable activity under the Electricity and Gas Acts for the DCC. This Order is the subject of the present consultation. The third part of this document explains the proposed definition of this licensable activity. A number of consequential amendments to legislation and licences arise directly from the creation of the new licensable activity and these are also described.

A consultation on the detailed policy design of the regulatory and commercial framework for DCC was held in September 2011. The responses to that consultation have informed the development of the conclusions set out here. The Government’s response to the views expressed by those who responded to questions relevant to the DCC licensable activity are included throughout the text.

Views are now sought on the legal drafting of the Order and on a limited number of policy questions which have arisen. Taking into account responses to this consultation, the Government will present the finalised Statutory Instrument for debate in Parliament in due course.

**Responses to this consultation are requested by 23 March 2012. Details of how to respond can be found below.**

## General information about this consultation

### How to respond

Your response will most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Responses to this consultation should be sent to [dccg@decc.gsi.gov.uk](mailto:dccg@decc.gsi.gov.uk). The consultation closes on **23 March 2012**.

Responses should be clearly marked: *consultation on a draft Statutory Instrument the Electricity and Gas (Prohibition of Communications Activities) Order 2012*. Responses and any enquiries related to the consultation, should be addressed to:

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Consultation reference: URN 11D/957

### Territorial extent

This consultation applies to the gas and electricity markets in Great Britain. Responsibility for energy markets in Northern Ireland lies with the Northern Ireland Executive's Department of Enterprise, Trade and Investment.

### Additional copies

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### Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

The Department will summarise all responses and place this summary on its website. This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

### Quality assurance

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found at [www.bis.gov.uk/files/file47158.pdf](http://www.bis.gov.uk/files/file47158.pdf). If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator  
3 Whitehall Place London  
SW1A 2AW  
Email: [consultation.coordinator@decc.gsi.gov.uk](mailto:consultation.coordinator@decc.gsi.gov.uk)

### What happens after the consultation

Responses should be submitted by **23 March 2012**. The Government will consider responses to the consultation and make any appropriate amendments to the draft Statutory Instrument, which will be finalised and subsequently laid before Parliament.

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# 1. Introduction

## Policy context

1. The Government's vision is for every home in Great Britain to be equipped with Smart Metering Equipment, with businesses and public sector users also having smart or Advanced Meters suited to their needs. The rollout of smart meters will give people far better information about, and control over, their energy consumption and deliver other significant benefits to consumers. For example, it will bring an end to estimated billing and make it easier to switch energy supplier. Smart metering will also play an important role in Britain's transition to a low-carbon economy and help to meet the long-term challenge of ensuring an affordable, secure and sustainable energy supply.

2. The Government's impact assessments<sup>1,2</sup> estimate that the total cost of the rollout programme will be around £11.7 billion. The impact assessments present a strong business case for taking the Smart Metering Implementation Programme forward, estimating benefits across the domestic and smaller non-domestic sectors<sup>3</sup> of over £18.7 billion in the period up to 2030, implying a net benefit of £7.1 billion. These benefits derive in large part from reductions in energy consumption and from cost savings in industry processes.

3. Realising this policy goal will be a major undertaking. Regulatory obligations will help make sure gas and electricity suppliers do what is necessary to deliver the rollout in a way that meets the Government's objectives. However, a comprehensive package of changes to the existing regulatory framework will be necessary to implement the Government's policies in relation to smart meters.

4. The range of issues arising from the rollout of smart meters has been the subject of considerable attention and extensive consultation. In March 2011, DECC and Ofgem published the Response to the Prospectus consultation ('the Response')<sup>4</sup>. The Response set out the Government's proposed approach to the design of the new obligations on energy suppliers to install Smart Metering equipment in the domestic and in the smaller non-domestic sectors. Since then there have been further detailed consultations taking the overall design to the next level of detail, including in September last year a consultation on the detailed policy design of the regulatory and commercial framework for the DCC (the "September consultation")<sup>5</sup>. The present consultation document responds to comments received on those aspects of the September consultation relating to the DCC Prohibition Order and sets out the Government's further legislative proposals for establishing the DCC as a regulated entity.

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<sup>1</sup> [DECC, \*Impact Assessment for the Smart Meter Roll-out for the Domestic Sector \(GB\)\*, August 2011.](#)

<sup>2</sup> [DECC, \*Impact Assessment for the Smart Meter Roll-out for the Small and Medium Non-domestic sector \(GB\)\*, August 2011.](#)

<sup>3</sup> Non Domestic Coverage: Electricity, those customers at sites in electricity profile groups 3 and 4. Gas, those customers at non-domestic sites with consumption of less than 732 MWh per annum.

<sup>4</sup> [DECC/ Ofgem, \*Smart Meter Implementation Programme, Response to Prospectus Consultation\*, March 2011.](#)

<sup>5</sup> [DECC, \*A consultation on the detailed policy design of the regulatory and commercial framework for DCC\*, September 2011](#)

## Overview of the end-to-end smart meter system

5. The smart meter system comprises equipment in the home which will be linked together through a home area network, with the capability of sending and receiving data and instructions from parties (for example energy suppliers or distributors) outside the home.

6. The communication of data to and from smart metering equipment in the domestic sector will be managed centrally by the DCC. The DCC will be the new GB provider of communications and data services to and from gas and electricity smart meters. Its role will be central to the smooth operation of the smart meter system providing a two-way communications channel between smart meters and a central data hub to which smart meter data users (energy suppliers, network companies and other authorised third parties) will have access for specified purposes.

7. The DCC links the elements of the smart meter system in the home with authorised parties outside the home enabling the secure flow of data and instructions.

## 2. The smart metering regulatory framework: the Government's general approach

8. The current regulatory framework for the gas and electricity sectors is structured under two separate legislative frameworks, the Electricity Act 1989 and the Gas Act 1986. The Acts regulate the delivery and supply of electricity and gas to consumers. Both Acts oblige suppliers to ensure that energy is supplied through an appropriate meter. This legislation, and a series of accompanying statutory instruments (secondary legislation) sets the strategic context for the regulatory framework in the sector.

9. The transmission, distribution and supply of electricity, and the transportation, shipping and supply of gas, are activities that can only be undertaken under a licence granted by the Gas and Electricity Markets Authority (otherwise referred to as “the Authority”, or “Ofgem”)<sup>6</sup>, using powers given to it under both Acts. These licences include conditions that licensees must comply with in undertaking their respective functions. Licences, and the conditions they contain, are the primary tool of the Authority to regulate the sector and control the behaviour of firms operating in the gas and electricity markets. The Authority has enforcement powers enabling it to take action if it considers a licence holder is in breach of the conditions of its licence. Ultimately, the Authority can impose a financial penalty of up to 10% of the annual turnover of a licensee in the case of serious breach of licence conditions.

10. In addition to the Acts, relevant statutory instruments and licence conditions, there are also a number of industry codes and agreements mandated through licences to which the licensees must adhere. These codes, for example, in the case of transportation or distribution networks, set out the commercial and technical arrangements between the network operators and the users of their networks.

### The smart metering regulatory regime

11. Implementation of the Government's smart metering policy will require changes to the existing regulatory and commercial framework governing the electricity and gas markets. The Energy Act 2008 gives the Secretary of State for Energy and Climate Change (‘the Secretary of State’) powers to amend existing licences and codes, and to create new licences and industry codes for the purpose of delivering smart metering. In addition, under powers introduced by that Act, the Secretary of State can also introduce a new smart metering licensable activity into the Electricity and Gas Acts that will underpin the introduction of a new single central communications provider – the DCC – and allow for its regulation. Any changes made under these powers, must first be the subject of consultation, including with the Authority, before being presented to Parliament.

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<sup>6</sup> This consultation will, in general, refer to “the Authority” which is the Gas and Electricity Markets Authority and the name used in legislation for the regulator. Ofgem is, in effect, the secretariat for the Authority.

### Objectives for the smart metering regulatory regime

12. Where the Government's policy objectives can only be satisfactorily achieved by requiring industry parties to take certain steps, or by prescribing the manner in which steps are taken, regulation needs to be imposed. The overarching objective for the smart metering regulatory regime is to transpose any such policies into changes to the existing regulatory framework that place any new rights or obligations in the correct place in the hierarchy of regulatory obligations, that is as changes to legislation, licences or industry codes. No single regulatory instrument will be able to deliver all of the Programme's objectives. It is the whole regulatory framework working together that will achieve these objectives.

### Establishing the DCC in the regulatory framework

13. The Government will create a fit-for-purpose regulatory framework to appoint competitively a commercially viable and operationally effective DCC. The DCC and the parties that it provides services to will be subject to appropriate regulatory controls through five separate regulatory interventions:

- the DCC Prohibition Order – to establish the requirement for DCC to be regulated;
- the DCC Licence – to place obligations and restrictions on the DCC's conduct;
- the DCC Licence Application Regulations – the process for the competition for the award of the DCC licences;
- a range of new conditions in existing licences and changes to existing codes; and
- the Smart Energy Code (SEC) – to establish the operational arrangements for DCC.

14. The first intervention, the DCC Prohibition Order, will create a new licensable activity in the Electricity and Gas Acts. This will make it unlawful to undertake the activities intended to be performed by the DCC without a licence. This new licensable activity will be introduced through a Statutory Instrument – *the Electricity and Gas (Smart Meters Licensable Activity) Order 2012* – which is the subject of this consultation document (generally referred to here as the *DCC Prohibition Order* or *the Order*). Further details are set out in Chapter 3 Part.1. In addition to the licensable activity, the Prohibition Order contains consequential amendments to existing legislation and regulation that arise directly from creating a new licensable activity relating to the DCC. The consequential amendments are discussed in Chapter 3 Part 2.

15. Once the licensable activity relating to the activity of the DCC has been established in the regulatory framework, the DCC will need a licence in order to operate lawfully. The DCC licence will impose a range of controls over the behaviour of the DCC, determining for example how its revenues will be regulated and controlled, and setting the core terms of the award of the licence, such as its duration. It is the Government's intention to appoint only one organisation as the DCC – this will require them to hold licences under both the Electricity and Gas Acts (though if DCC services are being handed-over, for example on the expiry of a licence, both the new and old DCCs may hold licences simultaneously for a period). The DCC licence will be the key tool to regulate the DCC: it will set out what activities the DCC must undertake, what is permitted to undertake and also what it is not allowed to undertake. The DCC licence will be the subject of a future consultation that will be published in Spring 2012.

16. The third regulatory intervention is needed to identify the organisation that will be awarded the DCC licence. The DCC Licence Application Regulations will set out the competitive process which the Authority (or in some cases, including for the initial licence, the Secretary of State) will

run to identify the organisation that will be appointed as the DCC. The DCC Application Regulations will be the subject of a future consultation that will also be published in Spring 2012.

17. Once the DCC licensee has been appointed, changes to the rights and obligations of other parties will need to be made. Key changes that will be made to the supplier licences will be obligations to enrol metering equipment into the DCC and in supplier and network licences, obligations requiring them to pay for the DCC's services. Those new licence conditions will play a central role in ensuring the DCC has a monopoly over communication services with domestic smart meters and therefore remains commercially viable. These will be implemented through new conditions in existing licences or changes to existing industry codes. Where relevant, the proposed licence condition changes associated with the introduction of the DCC licence are discussed in policy terms in this consultation document, although they will be the subject of a future consultation later this year.

18. The final element of the regulatory framework is the Smart Energy Code (SEC). The SEC will set out the detailed day-to-day operational arrangements for the end-to-end smart metering system. For example, it will define the detailed services offered by the DCC and the methodology by which it will charge users of the system. It will provide the terms of a binding contract between the DCC and the users of the system, setting out rights and obligations at an operational level. Through a condition of its licence, the DCC will be required to maintain the SEC and relevant licensees will be obliged, through new conditions in their own licences, to become parties to the Code. The SEC will be the subject of a future consultation, again in Spring 2012.

19. Together, these regulatory interventions will be used to deliver the objective of creating a fit-for-purpose regulatory framework to appoint competitively a commercially viable and operationally effective DCC, which is subject to appropriate regulatory controls through the five separate regulatory interventions described.

### Scope of this consultation

20. This consultation is concerned with the first of these regulatory interventions – the establishing of the new DCC-related licensable activity in the Electricity and Gas Acts. The Order comprises the prohibition and consequential amendments to legislation and industry licences. It sets out the Government's approach to defining the DCC licensable activity, the prohibition from carrying out this activity without a licence, and the consequential amendments to legislation and licences resulting from its creation.

21. The Government's response to comments on the questions relevant to the Prohibition Order in the September consultation are incorporated below, and a draft Statutory Instrument is at Annex 2. Views are sought on the legal drafting and on a limited number of policy questions which have arisen. Taking into account responses to this consultation the Government will present the finalised Statutory Instrument for debate in Parliament in due course.

22. The licensable activity should not be seen in isolation. It will set down the scope of the activities that can only be undertaken if granted a licence (or under an exemption). The granting of a licence does not, of itself, require that those activities are undertaken. Nor does it limit the scope of any other activities that can be undertaken by the DCC licensee.

23. As described above, the licence conditions imposed on the DCC will set down the scope of what the DCC must do, what it may do, and what it must not do. In addition, conditions incorporated into electricity and gas supplier, electricity distribution and gas transportation

licences relating to their use of the DCC will further define activities and behaviours. These licence conditions will be consulted on in due course. The SEC will also further define the contractual relationships between the DCC and various parties. Again, there will be consultation on the detail of the SEC in due course.

24. The scope of the current consultation is therefore relatively narrow, enabling the process of appointing the DCC to proceed. As described above, further consultations will follow addressing the range of detailed issues related to the establishment of the DCC.

## 3. The draft Prohibition Order

### Introduction

25. The Electricity and Gas Acts<sup>7</sup> prohibit the undertaking of certain activities (“licensable activities”) except under licence. Examples of licensable activities include the generation of electricity, the shipping of gas and the supply of gas or electricity. Licences include conditions that the licensee must adhere to, which can be enforced by the Gas and Electricity Markets Authority, as the sector regulator.

26. As set out in the September consultation, the Government intends to use powers in section 56FA of the Electricity Act 1989 and section 41HA of the Gas Act 1986 to introduce new licensable activities into those Acts relating to activity of the DCC. The Secretary of State is required to consult on the contents of the Prohibition Order with the Authority and any other appropriate persons before laying a draft for approval in each House of Parliament.

27. There will in fact be two licensable activities, one under the Electricity Act 1989 and one under the Gas Act 1986. However, the activity in the draft order in each case is substantively the same, save for the reference to gas or electricity suppliers as relevant. Furthermore, in practice we expect that there will be a single combined DCC licence document having effect for the purposes of both Acts, but (strictly speaking) incorporating two licences.

28. This consultation sets out the approach adopted to developing the Order and the creation of a new licensable activity related to the DCC, and the legal drafting to underpin it. It reviews the approach set out in the September consultation and summarises the responses to that element of the consultation (Questions 1-4, 7-8). It also sets out the issues considered since publication of the consultation and the Government’s decisions on the approach to the licensable activity and the relevant consequential amendments to legislation and licences. The draft licensable activity, including draft consequential amendments, is provided for comment (Annex 2).

### 3.1 Licensable activity

29. There were three questions on the subject of the licensable activity in the September consultation (Questions 1-3). These questions requested views on the approach of basing the prohibition on the activity of *contracting with all licensed suppliers*, and on whether the scope of the licensable activity was likely to catch persons other than the DCC. General comments on the licensable activity were also invited. A summary of the responses received is set out and considered within the discussion below, together with the conclusions drawn. The responses received to the three questions have been grouped into the following broad issues:

- A. Proposed general approach in September consultation.
- B. Prohibition on communicating with meters; or on providing a service to suppliers of communicating with meters?

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<sup>7</sup> Electricity Act 1989 and Gas Act 1986, as amended and supplemented by the Gas Act 1995, Utilities Act 2000, Energy Act 2004, Energy Act 2008, Energy Act 2010 and consequential amendments from other legislation.

- C. Scope of the licensable activity.
- D. Should all communication with smart meters be covered?
- E. All Domestic Suppliers or only Active Domestic Suppliers?
- F. Definition of Smart Meter.

30. A number of miscellaneous points related to the approach to the licensable activity were also made and are addressed at the end of this section.

#### **A. Proposed general approach in September consultation**

31. The September consultation explained that the principal purpose of the prohibition is to ensure that the organisation undertaking the DCC activity needs a licence, which allows control to be exercised over the way in which it carries out that activity through the application of licence conditions.

32. The licensable activity does not have to describe everything that the DCC will do – the DCC licence conditions do not have to relate solely to the licensable activity itself, and other elements of the regulatory framework can define roles and responsibilities in more detail. The imposition of licence conditions could require the DCC to provide a communications service broader than the service of communicating information that relates to the supply of electricity and gas, as set out in the draft Order. The wording of the licensable activity can therefore be narrow, to reduce the risk of capturing third parties who it is not intended to regulate.

33. Approaches based on the DCC's activities such as procurement or contract management were considered because they would enable a narrow licensable activity, reflecting the activities of the DCC. However, each of these had drawbacks: 'procurement activities' may not be undertaken by the initial DCC; and 'contract management' is a colloquial concept, difficult to define legally.

34. The approach proposed instead in the September consultation was to structure the licensable activity around the *services* DCC will be providing to users: specifically, the concept of *contracting with all licensed domestic suppliers, in respect of every smart meter installed at domestic premises, to provide a service of communicating information to and from those smart meters*.

35. Seventeen respondents to the September consultation provided views on this approach, and on the way in which the specific wording of the prohibition should be developed. Fifteen were supportive of the approach to the licensable activity set out in the consultation.

36. Two respondents did not support the approach set out in the consultation. The first considered the scope of the licensable activity was too wide and should be limited to communications for supply purposes to avoid only suppliers being able to utilise additional features of the meter not related to supply. However, the prohibition would not in fact prevent the DCC from also contracting with others to provide smart meter communication services in relation to features of the meter not related to supply. The DCC will be required to offer other types of services to other licensees and unlicensed parties, subject to gaining the consumer's permission. As set out below, the Government is however proposing to narrow the definition to 'relevant information' being information related to the supply of electricity or gas.

37. The second respondent considered that the activity was too narrow and should be extended to communications with all network operators and transmission companies, to limit

DCC discretion over providing such services. However, the licensable activity is only one aspect of the regulatory framework. Licence conditions on the DCC or others will ensure that network operators or energy service companies are able to access DCC services; the Government considers that such additional conditions will meet these concerns.

### **Conclusion**

38. The Government concludes that the general approach set out in the September consultation is sound, and had the support of most respondents. The definition of licensable activity for the Prohibition Order now proposed therefore follows the general approach, with some modifications being made arising from detailed points raised in the consultation or otherwise identified. These changes are set out in the following discussion.

### **B. Prohibition on communicating with meters or on providing a service to suppliers of communicating with meters?**

39. The September consultation proposed prohibiting contracting with suppliers to provide communication services to smart meters. An alternative, which has been considered by the Government, would be to structure the licensable activity around simply “*communicating with domestic smart meters (or procuring such communication)*”. This would achieve the same practical outcome as the combination of the proposed approach and the accompanying regulatory changes (that is new supplier licence conditions).

40. A potential advantage of this alternative method is that, by creating the monopoly in the statutory instrument, it would be backed by a criminal offence. As well as protecting the revenue stream of the DCC, this would mean that if someone – for example a ‘hacker’ – communicated with a meter without a licence they would be committing an offence which could be prosecuted. Whilst this would be an advantage, there are other existing provisions to protect against “hacking” and therefore the practical advantages in this respect may be limited. A person who “hacked” into a smart meter (whether directly or via a DCC system) and used that access to extract data, so as to cause damage or reconfigure the meter, would be likely to be committing a criminal offence under the Data Protection Act 1998, the Computer Misuse Act 1990 or the Electricity and Gas Acts.

41. The Government’s proposed model instead relies on enforcement of licence conditions by the Authority to achieve such regulation if this is required.

42. Another potential advantage of the alternative approach would also allow direct regulation by licence of anyone who it is determined should be able to communicate with smart meters in future.

43. The downside to this alternative approach is that the risk of inadvertently capturing other legitimate activities is much greater. ‘Communicating’ is very wide, and would potentially capture communication where it is not the intention to regulate. Because DCC will provide services through sub-contractors, the drafting to ensure the right parties are captured would be complex. In any event it would be likely to capture suppliers rolling-out meters in the Foundation period. It would also potentially prohibit consumers from communicating with their meters locally to access information (and potentially their own communications service providers – for example for Internet access or ESCOs – could be captured). Avoiding this difficulty would require a significant number of wide and continuing exemptions, adding complexity to the regulatory framework. Finally, it offers less future flexibility because the prohibition would be relatively wide potentially requiring more exemptions to be granted, for example as smart grids develop.

## Conclusion

44. The Government has therefore concluded that we should adopt the narrower “contracting” with suppliers approach to the licensable activity. This approach is the more efficient in regulatory terms, being less intrusive and costly to business. It meets the requirement to license and control the DCC without also preventing others from undertaking similar activities which it is not the intention to obstruct. It also affords greater flexibility for unforeseen future developments.

### C. Scope of the licensable activity

45. As well as ensuring that the DCC’s activity is captured by the definition of the licensable activity, it is important to ensure that others carrying out smart meter-related activities are not inadvertently caught. Otherwise, they would need a licence or a licence exemption to continue to carry out such activities. In addition, adjustments to the nature of the licensable activity relating to the extent of the DCC’s communications services are proposed, so it is also necessary to consider inadvertent capture again in light of the changes.

46. In response to the September consultation, fourteen respondents commented on whether persons other than DCC might inadvertently be captured by a definition structured in the way proposed. Nine did not consider that other persons would inadvertently be captured. The remaining five highlighted some potential for the proposed approach to capture persons other than DCC, or raised questions about its operation. These included companies currently servicing advanced meters at domestic sites or those servicing smart meters before migration to DCC, meter operators and/or installers, mobile phone providers servicing existing domestic meters, data aggregators and potentially the consumer. The communications coverage of DCC was also noted as a potential issue.

47. It is recognised that, in the transitional period prior to the DCC’s services being available, other companies may be contracting with domestic suppliers to provide communication services for domestic smart meters. However, the effect of the Prohibition Order would only require them to have a licence to do so if they were contracting with each domestic supplier in GB to provide this service. It is also recognised that smart meter services will evolve in the future and that this could include smart meter data aggregation services. Other parties will be able to contract with DCC to provide them with such data and the SEC will set out how such arrangements could be governed. In terms of the Prohibition it is considered unlikely that these parties would contract with all suppliers to provide these services.

48. Following the September consultation, further consideration and analysis has been given to the nature of the licensable activity related to the coverage of the DCC’s communications services. The proposed approach has been modified, structuring the licensable activity around the concept of *contracting with each domestic supplier to provide a communication service in relation to smart meters installed in domestic premises*. The key difference from the September consultation proposal is that the activity does not now relate to *every* domestic smart meter in *every* domestic premises. This is considered prudent in case circumstances arise under which *every* smart meter or *every* domestic premise could not be provided with a communication service.

## Conclusion

49. As described above responses to the September consultation identified a number of parties who might have been caught by the prohibition as previously proposed. It is recognised that the approach now set out in the draft Order potentially increases the likelihood of capturing these or other parties. This may be a particular issue during the period prior to the DCC’s services being available, because there are likely to be parties contracting with licensed

suppliers, and potentially with all licensed suppliers, to provide smart meter communication services.

50. On balance an approach based on contracting to provide a service to smart meters (rather than to every smart meter) is considered more appropriate. The draft Order therefore removes the reference to contracting to communicate with every smart meter in every domestic premises. However it is accepted that a general transitional exemption regime may be required and that further specific exemptions may also need to be considered. Furthermore because the prohibition will come into effect almost as soon as it is passed by Parliament, any transitional general exemption may need to be included as part of the final Order.

51. In light of the proposed changes discussed above, the Government again invites views on whether the draft Order would capture parties other than DCC, who they would be and whether they would be caught in the short term or on an enduring basis.

#### **D. Should all communication with smart meters be covered?**

52. The definition proposed in the September consultation covered communication of any type of information from the smart meter. However, further analysis suggests this may be too broad, creating a risk of inadvertently capturing third parties that might be seeking to provide non-energy related smart meter communication services. We do not at this stage believe that such communication requires regulation, and it is not clear that the DCC should be the sole provider of such services. It would therefore be sensible to focus the definition on communications for which regulatory oversight and control would always be appropriate.

53. Narrowing the types of communication covered by the prohibition would mean that communicating information to/from smart meters that falls outside the prohibition would not require an Electricity or Gas Act licence. It is important to note that should it be considered desirable, for example on security grounds or for activity scheduling, to control the communication of other types of information to/ from the smart meter, this could still be achieved. It can be done through the imposition of licence conditions on suppliers (stipulating to whom communications access to their domestic smart meters should be provided and for what purposes) and through the imposition of licence conditions on the DCC (stipulating the communications services that it must provide and to whom it must provide them). Narrowing the licensable activity provides a more flexible system whereby these licence conditions could evolve, for example with developments in security technology.

#### **Conclusion**

54. It is considered sensible to narrow the licensable activity further by relating the activity to the communication of only certain types of information to/from the smart meter, specifically information related to the supply of electricity or gas (as relevant). The draft Order therefore narrows the reference to information by changing it to information *relevant to the supply of gas/electricity*. This reflects the fact that communication of only certain types of information to/from the smart meter will always require regulatory oversight and that this captures the activities expected of the DCC.

#### **E. All Domestic Suppliers or only Active Domestic Suppliers?**

55. An electricity supplier is defined in section 6(9) of the Electricity Act as being “any person who is authorised by a supply licence to supply electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence”. Section 7A(11) of the Gas Act 1986 contains a similar definition with respect to gas suppliers.

56. The prohibition as proposed in the September consultation would effectively capture the new licensee (the DCC) only if all supply licensees contracted with the DCC for the provision of meter communication services. This would be achieved through a licence condition requiring the supply licensee to accede to the SEC. If a supply licensee did not accede, the Authority would be able to enforce against them. However, there are in fact a number of dormant licensees who hold a current licence from the Authority but have no current business. It is therefore preferable to avoid any uncertainty or risk and to ensure that to undertake the licensable activity, a person need only have an agreement with each supplier who has an active business at any one time.

### **Conclusion**

57. The Government has concluded that it would be sensible to include a definition of domestic supplier in the prohibition so that it applies only to suppliers who are both permitted in accordance with their licence conditions to supply to domestic premises, and who actively supply electricity to such premises. The draft Order therefore now includes reference to contracting only with all active licensed domestic suppliers, avoiding requiring dormant licence holders to have a contract with the DCC in order for the regime to work.

### **F. Definition of a Smart Meter**

58. The proposed licensable activity is structured around providing a smart meter communications service. It is therefore necessary to define in the drafting what is meant by a smart meter.

59. In order to future proof the definition used in the licensable activity, and to avoid needing to amend the Order in the future, it is best to focus on identifying the key minimum functionalities of a smart meter. This allows maximum scope for potential addition, alteration or removal of functionalities in the future. Further work is being done to set out the technical details of the smart metering system, based on the minimum functionalities the Government has concluded the system should be required to deliver (often referred to as the A-H list), which is set out in various publications<sup>8</sup>.

60. The essential characteristic of a smart meter for the purposes of the definition is considered to be the ability of the metering equipment to communicate remotely via an external electronic communications network, in order that data such as meter readings can be sent to a supplier. Accordingly, the proposed definition of smart meter for the purposes of the licensable activity in the Electricity Act and the Gas Act encompasses a meter and related equipment which together are capable of communicating using an external electronic communications network.

61. It is recognised that this approach risks capturing advanced meters that are installed at domestic premises. However, this risk is reduced since in order for the activity of contracting to provide remote communications services to advanced domestic meters to require a licence, the party offering such a service must also be contracting with all other licensed active domestic suppliers to provide such a service.

### **Conclusion**

62. It is proposed that the definition of smart meter for the purposes of the licensable activity in the Electricity Act and the Gas Act encompasses a meter that enables information to be communicated to or from it using an external electronic communications network. Should the

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<sup>8</sup> For example see page 8 of <http://www.decc.gov.uk/assets/decc/Consultations/smart-meter-imp-prospectus/1478-design-requirements.pdf>

situation arise where other service providers, engaged in early deployment of advanced domestic meters, are caught by the prohibition then the Government intends to rely on the option to grant an exemption from the requirement to have a licence on either a transitional or an enduring basis.

63. The draft Order therefore now includes a definition of a smart meter which captures the key characteristic of a smart as opposed to traditional non-smart electricity or gas meter. **The Government invites views on the definition set out in the draft Order.**

### Other points raised in responses to September consultation

64. The responses to the September consultation also raised a number of points of a more general nature related to the licensable activity, but not captured in the discussion above. These are briefly reviewed below:

- need to clarify that licensable activity includes communications to/from the DCC and suppliers (i.e. the data portal) to avoid the risk that suppliers consider this to be part of their licensed activity or that DCC requires a supply licence or exemption to do this.

**Conclusion:** The wording of the draft licensable activity makes it clear that the DCC is providing a service for a supplier of communicating relevant information to and from domestic smart meters. This would include any necessary activities to communicate information between suppliers and the DCC, as well as to/from the smart meter. The scope of the activities that the DCC is required to undertake will be set down in its licence conditions and in the Smart Energy Code, which will be consulted on at a later date. This will provide the necessary clarity on the role of the DCC.

- exclusion of non-domestic meters from the prohibition might exacerbate the lack of choice over communication services in the business market which may impact interoperability. The DCC should have an obligation to communicate with non-domestic meters.

**Conclusion:** In deciding that access to the DCC in the smart non-domestic market should be elective, the Government recognised that interoperability would not be as easy to achieve for meters opted out of the DCC. It has made clear that, if the opt-out policy creates serious difficulties, it can be reviewed, although it would expect the great majority of smart meters to be opted in to the DCC.

- the exclusion of SMEs without half hourly metering was questioned.

**Conclusion:** Nothing in the Order or the wider rules governing smart metering prevents enrolment of non-domestic smart meters in the DCC. However, in line with the policy of allowing data and communications services for non-domestic smart meters to be provided by organisations other than the DCC, the Order does not prohibit such activity in the non-domestic market.

- The DCC will need clarity on its role to ensure it can effectively manage its service providers. There is a balance to be struck between being restrictive enough to ensure that DCC keeps focussed on its key role of delivering services to enable smart rollout without limiting its flexibility to meet unforeseen operational circumstances.

**Conclusion:** The scope of the activities that DCC is required to undertake will be set down in its licence conditions and in the Smart Energy Code, which will be consulted on in Spring this year. This will provide the necessary clarity on the role of DCC.

- the need for innovation to be able to be continually enabled and challenged.

**Conclusion:** It is recognised that the smart meter communications sector will be a rapidly changing and innovative technological and commercial environment. The approach adopted does not necessarily restrict any future developments. Basing the licensable activity on the act of contracting with each domestic supplier to remotely communicate information related to supply to and from the smart meter maintains the desired flexibility, in that it is largely restricted to those services required to ensure interoperability.

In particular, the proposed wording of the licensable activity should avoid impeding the future development of smart grid type services. Whilst the nature of such services is yet to develop it is important that the regime is sufficiently flexible. Should services develop with network operators contracting with suppliers to send signals to the smart meter (with the supplier contracting with consumers), these would not require a licence under the activity as currently drafted, as they would not be providing a service for suppliers.

Future developments relating to smart grids and the potential use of the DCC for such services could, if required, be delivered through the introduction of licence conditions in the future and/ or amendments to the Smart Energy Code. Ultimately if, for some unforeseen reason, network operators are captured by the prohibition in respect of arrangements it has in place for smart grids, it is accepted that some form of exemption from the Prohibition Order may be required

- basing the licensable activity on suppliers means that other parties will not be precluded from directly accessing smart meters outside DCC, although the respondent recognised that it is highly unlikely that this will be possible.

**Conclusion:** The licensable activity does not prevent parties, including suppliers, from accessing smart meters without using the DCC. This will be achieved to the extent necessary through other elements of the regulatory regime for example by placing licence conditions on suppliers to sign up to the SEC and enrol meters in the DCC (and to not communicate with meters themselves).

- licensable activity should be based on overseeing the communications system relating to all UK compliant smart meters and managing the transmission of data resulting from this.

**Conclusion:** the licensable activity will be based on activities associated with domestic smart meters only, rather than all compliant smart meters, as there is no requirement for non-domestic smart meters to be communicated with by the DCC. In terms of the activity itself alternative approaches to the licensable activity were considered as discussed above. Also, the licensable activity is only one aspect of the regulatory framework for the DCC. Its licence conditions and the SEC will provide further detail on the management of data that is transmitted from smart meters.

- Prohibition Order should take account of shippers, as they will be involved when meter registration is taken on by the DCC.

**Conclusion:** it is not considered that shippers need to be recognised in the wording of the licensable activity. It is not the purpose of the licensable activity to identify all of the licensees (or others) the DCC may contract with in the future, including in relation to a meter registration service. As discussed earlier, the intention is to define an activity that the DCC, and only the DCC, will undertake on an enduring basis. For that same reason,

reference to distributors and gas transportation licensees is omitted from the licensable activity.

### Conclusions on the form and drafting of the Licensable Activity

65. The Government has concluded that a narrow definition of the types of communication undertaken by the DCC, coupled with provision of a service provision to all **active** licensed domestic suppliers, achieves the aim of ensuring the DCC is licensed and reduces the risk of inadvertently capturing third parties. In the light of responses to the September consultation, and further analysis, the proposed definition of licensable activity is set out in the box below:

Making arrangements with each domestic supplier to provide a service, for such suppliers, of communicating relevant information to and from smart meters installed in domestic premises.

Where the following terms have the following definitions:

“domestic supplier” means an electricity supplier—

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

“external electronic communications network” means a network which—

- (a) is an electronic communications network, as that term is defined in section 32 of the Communications Act 2003; and
- (b) does not form part of a smart meter;

“relevant information” means information relating to the supply of electricity; and

“smart meter” means an electricity meter and any devices—

- (a) which are associated with or ancillary to that meter; and
- (b) which enable information to be communicated to or from the meter using an external electronic communications network

66. Please refer to Annex 2 for the draft Prohibition Order, the drafting relating to the licensable activity can be found in article 4.

### Consultation Questions

- |           |   |
|-----------|---|
| <b>1.</b> | <p><b>Do you think any party other than DCC would be captured by the Prohibition Order as set out?</b></p> <p><b>If you consider other parties would be captured please identify them and indicate whether you consider this a short term or long term issue.</b></p> |
|-----------|---|

2	<b>Do you have any views on the definition of a smart meter set out in the draft Order?</b>
3.	<b>Do you have any further comments on the approach being adopted to structuring the licensable activity?</b>
4.	<b>Do you have any comments on the draft licensable activity as set out in article 4 of the draft Order (Annex 2)?</b>

### 3.2 Consequential amendments to legislation and licences

67. As a consequence of introducing the new licensable activity for the DCC, it will be necessary to make a number of changes to existing legislation and licences. These are amendments that arise directly from creating a new licensable activity relating to the DCC.

68. The September consultation identified a number of such potential changes. The scope of legislation reviewed was Gas Act 1986, Electricity Act 1989, Utilities Act 2000, Enterprise Act 2002, Energy Acts 2004, 2008 & 2010; and Consumers, Estate Agents and Redress Act 2007. There were three related questions in the September consultation (Questions 4, 7 and 8).

69. A further review of the relevant areas has also been undertaken. A number of amendments have been considered, including to the Civil Contingencies Act 2004, Insolvency Act 1986 and Social Security Administration Act 1992. In addition a further review of secondary legislation and licences has been completed.

70. The amendments, or potential amendments, have been grouped into the following categories, which are discussed below and in Annex 3:

A. Consequential amendments included in the draft Order:

- Electricity Act
- Gas Act
- Other primary legislation
- Secondary legislation.

B. Amendments to electricity and gas licences for inclusion in the Order.

C. Potential consequential amendments for consultation.

D. Amendments assessed as unnecessary.

#### A. Consequential amendments included in the draft Order

71. A number of potential amendments were set out in the September consultation and some new potential amendments have been identified as a result of further work, some of which give rise to wider considerations about the way that the DCC should operate and how it should be incorporated into the wider framework of energy and other legislation/ regulation. Taking into account the consultation responses and further analysis undertaken, it is the Government's view

that amendments should be made in the areas listed below. The legal drafting of the Order includes these amendments and further information (as well as a more extensive list of the amendments) is contained in Part 1 of Annex 3.

***In primary legislation:***

- **Granting and transferring DCC licences:** It is intended to make amendments to the Electricity and Gas Acts to allow the first DCC licence to be granted by the Secretary of State and then to allow *either* the Secretary of State or the Authority to award subsequent DCC licences until 1 November 2018. It is also proposed that the existing licence transfer process should be supplemented giving the Secretary of State an oversight role on the transfer of a DCC licence during this period. These changes reflect the role of the Secretary of State and DECC in overseeing the rollout of smart meters and the powers that exist during this period.
- **Procedural aspects of licence applications:** The Electricity and Gas Acts set out procedures that apply to any application for a licence. Licence Application Regulations specific to the DCC will be made under the smart metering provisions of the Acts and these will set out the process for competitive applications for the DCC licence. Amendments to the Acts are proposed that would remove the DCC licence application from the standard provisions where the application regulations apply.
- **Duties:** ensuring that the duties of the Authority and the Secretary of State take into account the DCC activity and any related effects on safety or the environment.
- **Licence conditions:** ensuring that the DCC licence is able to contain provisions which might be necessary in the run-up to a re-competition of the licence, and in the transitions between one licensee and another (including where necessary making directions about property rights and interests in agreements).
- **Statistical information:** Extending powers under the Electricity Act so that the Secretary of State can obtain statistical information from the DCC related to its activities would enable information about the operation of the DCC to be gathered as necessary and would assist in assessing the performance of the DCC. This would not allow for the collection of data personal to consumers, which would not in any case be held by the DCC.
- **General powers to amend licensable activities:** the general powers given to the Authority and the Secretary of State to remove or add licensable activities are extended to the DCC.
- **Preservation of security of buildings:** an amendment is proposed to give direction-making powers to the Secretary of State under which he will be able to direct DCC to preserve the security of building or installations connected with its activities under the Electricity Act. This brings DCC into line with other relevant licence-holders.
- **General market monitoring:** an amendment is proposed which includes DCC activities within the description of those activities that the Authority undertakes general market monitoring of, ensuring that there is appropriate coverage of DCC.
- **Assessing the impact on the DCC of new activities imposed by the Authority:** This places a duty on the Authority through the Utilities Act to carry out an impact assessment before it undertakes a new activity that may significantly affect the DCC. These provisions

already exist in respect of other electricity and gas licence holders, and as decisions made by the Authority could have a material impact on the DCC or its operations they should be required to be properly assessed. The Government has therefore concluded that the provision should be extended to include the DCC.

- **Amending the Secretary of State’s powers to modify licences and codes in relation to the rollout of smart meters:** This amendment extends existing Energy Act 2008 powers so that they could be used to make consequential amendments to the DCC licences/ the SEC as a result of changes to other licences and codes, or to make changes directly to them for purposes connected with the introduction of smart metering. The Government has concluded that it is appropriate to amend this power so that the DCC licences and the SEC can be modified for the same purposes as the other licences and codes, and for the same timescale<sup>9</sup>.

***In secondary legislation:***

- A change to the **Public Interest Disclosure Order** in relation to employee protections about making disclosures about a crime or failure to follow legal obligations. This change will ensure that employees who make disclosures to the Authority about the DCC are protected, as is the situation with disclosures relating to all other licensed parties.
- A change to the **Electricity Safety, Quality and Continuity Regulations** requiring the DCC to share information and co-operate with other licence holders to ensure compliance with the regulations.

72. In addition a number of technical consequential amendments are included in the draft Order, such as adding the DCC licensable activity to the list of prohibited activities in the Gas and Electricity Acts, cross-referencing to the existence of the DCC in other relevant legislation, legal definitions and similar changes.

73. The draft Order includes these amendments and Part 1 of Annex 3 sets out the full extent of the changes in detail as they appear in the draft Order. **The Government seeks views on the proposed consequential amendments set out above.**

**B. Amendments to electricity and gas licences**

74. The changes identified for electricity and gas licences are all of a technical nature and have the purpose of ensuring that the DCC is appropriately referenced in gas and electricity supply licences, electricity distribution licences, gas shipper licences and gas transporter licences. Responses to the September consultation were in broad agreement with the proposed amendments set out. The Government therefore intends to make the amendments detailed in Part 2 of Annex 3 to the relevant licences. The annex describes the amendments to licence conditions that were considered, including those assessed as unnecessary (Part 2a) and then shows the relevant licence provisions as they will appear once amended (Part 2b). At this stage the relevant drafting is not included in the draft Order. **The Government seeks views on the proposed amendments to licences set out in Annex 3.**

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<sup>9</sup> Reference should be made to paragraph 3.203 of the September consultation

### C. Potential consequential amendments for consultation

75. Following consideration of the consultation responses and further analysis the Government has identified two specific areas for potential consequential amendments on which it seeks views:

#### ***DCC and consumers***

76. A number of potential amendments to legislation have been considered which relate to the consumer relationship with the DCC and whether the DCC should be included in some of the existing frameworks for consumer redress.

77. The September consultation identified possible amendments to the Consumers, Estate Agents and Redress Act (2007) (CEAR) extending the regimes for the handling of consumer complaints to the DCC. The majority of responses to the consultation on this issue were of the view that the DCC should not be included in these regimes. They agreed that the DCC's position in respect to consumers was different from that of a supplier or network operator. The DCC would not be "customer-facing" as it would provide services to suppliers, and should be essentially "invisible" to consumers. One respondent argued that the DCC should be included because a customer's experience of, for example, an interruption of supply would not change according to who was at fault, whether supplier, the DCC, or other licence holder.

78. On a related point, under the Electricity and Gas Acts<sup>10</sup> enabling powers exist allowing the Authority, with the consent of the Secretary of State, to make regulations prescribing standards of performance for some licensed parties<sup>11</sup>. Under these regulations compensation can be paid to consumers for failure to meet the standards of performance, for example not restoring supply within a certain period of time. Views are sought on the possibility of extending these powers to allow for regulations prescribing standards of performance to be made for the DCC.

79. The Government agrees with some of the arguments made against including the DCC in the CEAR arrangements. The DCC will be a service provider to its direct service users such as suppliers (not end consumers) and will only be providing the means for its users to interact with smart meters. The DCC will also not hold information about consumers. It is considered that suppliers and network operators should therefore remain responsible for, and accountable to, their customers.

80. However the actions of the DCC have the potential to directly affect consumers, and appropriate arrangements (for example for compensation) could be achieved in a number of ways if necessary. The SEC will govern the relationship between the DCC and its users. Mechanisms could be put in place in the SEC to address circumstances where the DCC falls short of expected service levels to incentivise a high level of service to suppliers and therefore to consumers. The DCC licence will also place a range of controls on the behaviour of the DCC. Under such arrangements it is envisaged that consumers could be compensated by suppliers and not directly by the DCC. As the DCC is envisaged as being the service provider to the supplier, it may in the future also be appropriate to consider an extension of the standards of performance of the supplier to include DCC activities (although this would be a matter for the Authority to consider).

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<sup>10</sup> Electricity Act sections 39, 39A, 40 and 40A and Gas Act sections 33A, 33AA, 33B and 33BA

<sup>11</sup> Electricity suppliers and distributors and gas suppliers and transporters

81. It may also be appropriate to include DCC in the statutory arrangements mentioned above to allow the Authority the discretion to create standards of performance directly in the future. Further consideration of the wider issue is required and **the Government seeks views on the potential for including the DCC in the standards of performance framework, and any further general views on the regulation of the DCC's relationship with consumers.**

### ***Statutory undertakers***

82. The review of legislation has identified a general issue of relevance to the operation of the DCC (or its service providers), which may require a further set of consequential amendments.

83. A wide variety of legislation includes special protections, rights, responsibilities or exemptions for certain existing licensed parties in the energy sector (including suppliers, electricity network operators and gas transporters). The protections provided include exemptions from certain planning laws, entitlements to advance notice before works are carried out on land, and so on. The licensed parties afforded these protections are generally described as “statutory undertakers” or in similar terms in the legislation. The list of relevant primary legislation includes:

- British Waterways Act 1995
- Coal Mine Subsistence Act 1991
- Countryside and Rights of Way Act 2000
- Crossrail Act 2008
- Land Drainage Act 1991
- Planning (Hazardous Substances) Act 1990
- Planning (Listed Building and Conservation Areas Act) 1990
- Road Traffic (Driver Licensing and Information Systems) Act 1989
- Town and Country Planning Act 1990
- Water Resources Act 1991

84. This list is intended to provide an indication of the potential extent of this issue to assist consultees' understanding of it. It is not exhaustive. There are also a large number of other statutory provisions which similarly make allowance for electricity and gas licensees as statutory undertakers, by general reference to interpretation provisions set out in Schedule 16 of the Electricity Act 1989 and for gas licensees in Schedule 4 of the Gas Act 1995. Those Schedules should be referred to for a full list of the relevant primary legislation. In some cases it is considered likely that DCC would be captured by virtue of its Electricity Act licence (or potentially by virtue of its communications functions), but not in respect of its Gas Act licence.

85. Within the Gas Act there are also provisions for gas transporters only to acquire land and do work in the streets, whilst the electricity equivalent is capable of applying to all electricity licensees (in some cases depending on the conditions of those licences).

86. The legislation is wide ranging and it is not immediately clear, given the proposed nature of the DCC (that is, a procurement and contract management body that contracts out the management of its communication and data services), that it should be captured as a “statutory undertaker” in any or all of the listed legislation. There is also the related question of whether potential service providers to the DCC would already be covered or should be afforded any of

the protections in relation to their DCC activities that may be provided by extending the provisions.

87. The Government's initial view is that the nature of the DCC itself is such that these additional protections do not need to be extended to it, and that DCC service providers should work within the existing frameworks and should not be accorded special rights or protections merely as a consequence of being a DCC service provider. However, stakeholder views are sought on the applicability and necessity of extending these provisions to the DCC and/or its service providers (to the extent that possible service providers are not already afforded this status). **Is it necessary for the DCC (or its service providers) to be considered a "statutory undertaker" for the purposes of the legislation listed?**

#### **D. Amendments assessed as unnecessary**

88. Following consideration of the consultation responses and further analysis the Government has concluded that amendments should not be made in the following areas:

- **Civil contingencies:** Consideration has been given to the inclusion of the DCC as a "responder" under the Civil Contingencies Act (2004) (CCA), which lists certain organisations as responders to emergencies. Responders have certain responsibilities to plan for emergencies and engage with other frontline emergency responders. Security and business continuity are important to DCC, but these will be best delivered through the obligations placed on the DCC through its licence and in the SEC rather than under the CCA. Classing DCC as a "responder" would provide little added protection for either DCC or the general public and would place an unnecessary burden on DCC.
- **Levies** – The Gas and Electricity Acts provide for some licences to contain conditions requiring the holders to increase their charges in order to raise money and pay it to certain parties. Consideration has been given to licence conditions allowing DCC to raise money from its users and pay it to another licensee. The Government has concluded that such a requirement is unnecessary because similar powers exist allowing the customers of electricity transmitters and distributors to be levied with the funds paid to any electricity licensee, and gas transporters to be levied with the funds paid to gas suppliers and shippers (as well as the DCC, after amendment in the Order). Further, it is considered undesirable to levy the DCC in this way because such a condition could catch unlicensed parties that use and pay for DCC services, which is not considered advantageous.
- **Funding research:** The Electricity Act provides that existing powers under the Science and Technology Act are used to direct funding into new techniques related to the generation, transmission or supply of electricity. Consideration has been given to extending this to include techniques relating to DCC. The Government does not consider that this is necessary and considers that existing powers under the Science and Technology Act would be sufficient if any such research were deemed necessary or desirable.
- **Information sharing:** Consideration was also given to whether DCC should be included in legislation that would require the sharing of information or to adjust charging schemes in respect of disadvantaged customers. The Government has concluded that these amendments are not necessary, because the DCC will not hold relevant information or make charges to consumers.

89. In addition to those set out above Part 3 of Annex 3 also lists a number of further additional amendments that have been reviewed and considered unnecessary. The sift also

identified some possible amendments that should be considered, but which are not strictly and directly consequent on the definition of the prohibited, licensable activity of the DCC. Such consequential changes will be considered separately. Additionally, in a number of other areas where amendments have been considered it has been concluded that the most appropriate way to deliver the overall objectives of the DCC is through changes to licences rather than to legislation.

90. In this category a general point has arisen in consideration of various sections of the Electricity and Gas Acts, where the concept of “commercial activities connected with the supply of electricity/ gas” is used (for example section 43 of the Electricity Act). The Government considers that the activities of DCC would be included within “commercial activities connected with the supply of electricity/ gas” and that it is therefore unnecessary to make specific amendments to those sections of the Act that use this phrase in order to refer to the DCC activity.

### Conclusions on consequential amendments

91. The Government has concluded that the consequential amendments to legislation and licences should be made as set out above. These amendments are required as a direct consequence of the creation of the DCC licensable activity and ensure that this aspect of the regulatory framework meets the overall objectives of the framework. The draft Order (Annex 2) includes these amendments and further information (as well as a more extensive list of the amendments considered) is contained in Annex 3.. **The Government seeks views on the conclusions set out in sections A-D above and on the consequential amendments as set out in the draft Order.**

Consultation Questions	
5	Do you have any comments on the conclusions set out in respect of the proposed consequential amendments, or on those assessed as unnecessary?
6	Do you have any comments on the consequential amendments as set out in the draft Order?
7	Do you think that the DCC should be included in the standards of performance framework? Do you have any general views on the regulation of DCC’s relationship with consumers?
8	Do you consider it necessary for the DCC (or its service providers) to be considered a “statutory undertaker”? Please explain the reason for your answer.

# Annex 1: Digest of consultation questions

Consultation Question	
1.	Do you think any party other than DCC would be captured by the Prohibition Order as set out? If you consider other parties would be captured please identify them and indicate whether you consider this a short term or long term issue.
2.	Do you have any views on the definition of a smart meter set out in the draft Order?
3.	Do you have any further comments on the approach being adopted to structuring the licensable activity?
4.	Do you have any comments on the draft licensable activity as set out in article 4 of the draft Order (Annex 2)?
5.	Do you have any comments on the conclusions set out in respect of the proposed consequential amendments or on those assessed as unnecessary?
6.	Do you have any comments on the consequential amendments as set out in the draft Order?
7.	Do you think that the DCC should be included in the standards of performance framework? Do you have any general views on the regulation of DCC's relationship with consumers?
8.	Do you consider it necessary for the DCC (or its service providers) to be considered a "statutory undertaker"? Please explain the reason for your answer.



# Annex 2: Draft Statutory Instrument

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

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DRAFT STATUTORY INSTRUMENTS

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**2012 No. XXX**

**ELECTRICITY**

**GAS**

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

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

This Order is made in exercise of the powers conferred by sections 56FA(1), (5) and (6) and section 60 of the Electricity Act 1989<sup>(a)</sup> and sections 41HA(1), (5) and (6) and section 47 of the Gas Act 1986<sup>(b)</sup>.

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

- (a) the Gas and Electricity Markets Authority; and
- (b) such other persons as the Secretary of State thinks appropriate.

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

Accordingly, the Secretary of State makes the following Order.

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<sup>(a)</sup>  
<sup>(b)</sup>

## PART 1

### General

#### Citation and commencement

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

## PART 2

### Amendments to the Electricity Act 1989

#### Amendments to the Electricity Act 1989

2. The Electricity Act 1989 is amended in accordance with articles 3 to 15.

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

3. In section 3A(5)—

(a) in paragraph (a)—

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

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

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

#### Amendment to section 4 (prohibition on unlicensed supply etc)

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

(2) In subsection (1)—

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

(b) after paragraph (d), insert “; or

(e) provides a smart meter communication service.”.

(3) After subsection (3F), insert—

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

(4) After subsection (5), insert—

“(6) In this section—

“domestic supplier” means an electricity supplier—

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

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

“external electronic communications network” means a network which—

(a) is an electronic communications network, within the meaning of section 32 of the Communications Act 2003<sup>(4)</sup>; and

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<sup>(4)</sup> 2003 c 21, as amended by SI 2011/1210.

- (b) does not form part of a smart meter;
- “relevant information” means information relating to the supply of electricity; and
- “smart meter” means an electricity meter and any devices—
  - (a) which are associated with or ancillary to that meter; and
  - (b) which enable information to be communicated to or from the meter using an external electronic communications network.”.

**Amendment to section 5 (exemptions from prohibition)**

5. In section 5(1), for “(c) or (d)”, substitute “(c), (d) or (e)”.

**Amendment to section 6 (licences authorising supply, etc)**

- 6.—(1) Section 6 is amended in accordance with paragraphs (2) to (4).
- (2) In subsection (1)—
- (a) omit the word “or” after paragraph (d); and
  - (b) after paragraph (e), insert “; or
    - (f) subject to subsection (1C), a licence authorising a person to provide a smart meter communication service (“a smart meter communication licence”).”.
- (3) After subsection (1), insert—
- “(1A) Subject to subsection (1B), the Secretary of State may grant a smart meter communication licence.
- (1B) The Secretary of State may not grant a smart meter communication licence after 1 November 2018.
- (1C) The first smart meter communication licence may only be granted by the Secretary of State.”.
- (4) After subsection (2A), insert—
- “(2B) A person may not be granted a smart meter communication licence unless the same person is granted a licence under section 7AB of the Gas Act 1986.”.
- (5) A reference in any enactment to a licence under section 6(1) of the Electricity Act or a licence under section 6(1)(f) of that Act, shall be deemed to include any licence under section 6(1A) of that Act.

**Amendment to section 6A (procedure for licence applications)**

7. In section 6A(1)(a), after “licence”, insert “(other than a smart meter communication licence for which an application is made pursuant to regulations made under section 56FC of this Act)”.

**Amendment to section 7 (conditions of licences: general)**

- 8.—(1) Section 7 is amended as follows.
- (2) In subsection (1)(a), for “Authority”, substitute “grantor”; and
- (3) After subsection (3A), insert—
- “(3B) Subsection (3C) applies to conditions included in a smart meter communication licence by virtue of subsection (1)(a) in respect of circumstances where a person holds such a licence (the “licence holder”), and another person has applied or is considering whether to apply for a smart meter communication licence (“the applicant”).
- (3C) A smart meter communication licence may include conditions which require the licence holder to comply with a direction given by the Secretary of State or the Authority requiring the licence holder to provide to the applicant—
- (a) information in relation to the activities authorised by the licence; or

- (b) such other assistance as may be reasonably required by the applicant, including access to any facilities or equipment being used in connection with the activities authorised by the licence, in order that the applicant can—
  - (i) determine whether to apply for a licence; or
  - (ii) take part in a competition for a licence.

(3D) Subsection (3E) applies to conditions included in a smart meter communication licence by virtue of subsection (1)(a) in respect of circumstances where such a licence held by a person (the “first licensee”) will cease to have effect, and another such licence is to be granted or has been granted to a different person (the “second licensee”).

(3E) Subject to subsection (3F), a smart meter communication licence may include conditions which require compliance with a direction given by the Secretary of State or the Authority requiring—

- (a) the transfer of property, rights or liabilities from the first licensee to the second licensee;
- (b) the creation of rights in relation to property, rights or liabilities in favour of the second licensee;
- (c) the creation of other rights and liabilities as between the first and second licensee;
- (d) the first or second licensee to enter into a written agreement with each other, or the first licensee to execute an instrument of another kind in favour of the second licensee;
- (e) the first or second licensee to pay compensation to the other, or to any third party who is affected by any of the matters referred to in paragraphs (a) to (d).

(3F) Conditions included in a licence by virtue of subsection (3E) must provide that where the Secretary of State or Authority is considering giving a direction referred to in that subsection, that—

- (a) any person who would potentially be affected by that direction is given written notice by the Secretary of State or the Authority (as appropriate) detailing the proposed contents of the direction and inviting that person to submit written representations, giving a minimum period of 21 days in which those representations can be made;
- (b) the Secretary of State or the Authority (as appropriate) considers those representations when determining whether to give the direction; and
- (c) the direction may only be given where any arrangements in that direction of a type referred to in paragraphs (a) to (d) of that subsection are necessary or expedient for the operational purposes of the second licensee.

(3G) For the purposes of subsection (3F), the operational purposes of the second licensee are the purposes of performing any functions which the second licensee has, or may in future have—

- (a) under or by virtue of the smart meter communication licence which has been, or is to be, granted; or
- (b) under or by virtue of any enactment, in the second licensee’s capacity as holder of the licence.”.

**Amendment to section 7A (transfer of licences)**

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

(2) after subsection (10), insert—

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

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

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

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

(10D) Subsections (10A) and (10B) do not apply after 1 November 2018.”.

(3) After subsection (11), insert—

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

#### **Amendment to section 47 (general functions)**

**10.** In section 47(1) after “by such heat” insert “, and to the provision of smart meter communication services”.

#### **Amendment to section 56A (power to alter activities requiring licence)**

**11.** In section 56A(4), for “.”, substitute “, or (notwithstanding section 56FA) with providing a smart meter communication service”.

#### **Amendment to section 58 (directions restricting the use of certain information)**

**12.** In section 58(2), after “electricity interconnectors”, insert “or to provide a smart meter communication service”.

#### **Amendment to section 64 (interpretation etc of Part 1)**

**13.** In section 64(1), insert in the relevant position—

““providing a smart meter communication service” has the meaning given in section 4(3G) above, and cognate expressions shall be construed accordingly;”.

#### **Amendment to section 96 (directions for preserving security)**

**14.** In section 96(1)(a), after “supply of electricity”, insert “or the provision of a smart meter communication service”.

#### **Amendment to section 98 (provision of statistical information)**

**15.** In section 98(1)—

- (a) after “the use of electricity interconnectors”, insert “or the provision of a smart meter communication service”; and
- (b) after “operation of electricity interconnectors”, insert “or to provide a smart meter communication service”.

## PART 3

### Amendments to the Gas Act 1986

#### Amendments to the Gas Act 1986

16. The Gas Act 1986 is amended in accordance with articles 17 to 27.

#### Amendment to 4AA (the principal objective and general duties of the Secretary of State and the Authority)

17.—(1) Section 4AA is amended as follows.

(2) In subsection (5)—

- (a) in paragraph (b), after “conveyed through pipes”, insert “or the provision of a smart meter communication service”; and
- (b) in the last line, after “gas through pipes”, insert “or the provision of a smart meter communication service”.

(3) In subsection (8), for “7, 7ZA or 7A”, insert “7, 7ZA, 7A or 7AB”.

#### Amendment to section 5 (prohibition on unlicensed activities)

18.—(1) Section 5 (prohibition on unlicensed activities) is amended as follows.

(2) In subsection (1)—

- (a) omit the word “or” after paragraph (b); and
- (b) after paragraph (c), insert “; or  
(d) provides a smart meter communication service.”.

(3) After subsection (10), insert—

“(11) A reference in this Part to providing a smart meter communication service is a reference to making arrangements with each domestic supplier to provide a service, for such suppliers, of communicating relevant information to and from smart meters installed in domestic premises.”.

(12) In this section—

“domestic supplier” means a gas supplier—

- (a) who is authorised, in accordance with the conditions of a licence, to supply gas to domestic premises; and
- (b) who supplies gas to domestic premises in accordance with that licence;

“external electronic communications network” means a network which—

- (a) is an electronic communications network, within the meaning of section 32 of the Communications Act 2003<sup>(4)</sup>; and
- (b) does not form part of a smart meter;

“relevant information” means information relating to the supply of gas; and

“smart meter” means a gas meter and any devices—

- (a) which are associated with or ancillary to that meter; and
- (b) which enable information to be communicated to or from the meter using an external electronic communications network.”.

#### Amendment to section 6A (exemptions from prohibition)

19. In section 6A(1), for “(b) or (c)”, substitute “(b), (c) or (d)”.

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<sup>(4)</sup> 2003 c 21, as amended by SI 2011/1210.

**Insertion of section 7AB (licensing of a person providing a smart meter communication service)**

20. After section 7A, insert—

**“7AB Licensing of a person providing a smart meter communication service**

**7AB.**—(1) Subject to subsections (4) and (5), the Authority may grant a licence authorising a person to provide a smart meter communication service (“a smart meter communication licence”).

(2) Subject to subsection (3), the Secretary of State may grant a smart meter communication licence.

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

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

(5) A person may not be granted a smart meter communication licence unless the same person is granted a licence under section 6(1)(f) of the Electricity Act 1989.”.

**Amendment to section 7B (licences: general)**

21.—(1) Section 7B is amended as follows.

(2) In subsection (1), after “of a licence”, insert “(other than an application for the granting of a smart meter communication licence which is made pursuant to regulations made under section 41FC of this Act)”.

(3) In subsection (2), after “of a licence”, insert “(other than an application for the granting of a smart meter communication licence which is made pursuant to regulations made under section 41FC of this Act)”.

(4) In subsection (4)(b)(a), for “Authority”, insert “grantor”.

(5) In subsection (5)(b)(ii), after “7A”, insert “or 7AB”.

(6) After subsection (5), insert—

“(5A) Subsection (5B) applies to conditions included in a smart meter communication licence by virtue of subsection (4)(a) in respect of circumstances where a person holds such a licence (the “licence holder”), and another person has applied or is considering whether to apply for a smart meter communication licence (“the applicant”).

(5B) A smart meter communication licence may include conditions which require the licence holder to comply with a direction given the Secretary of State or the Authority requiring the licence holder to provide to the applicant—

- (a) information in relation to the activities authorised by the licence; or
- (b) such other assistance as may be reasonably required by the applicant, including access to any facilities or equipment being used in connection with the activities authorised by the licence, in order that the applicant can—
  - (i) determine whether to apply for a licence; or
  - (ii) take part in a competition for a licence.

(5C) Subsection (5D) applies to conditions included in a smart meter communication licence by virtue of subsection (4)(a) in respect of circumstances where such a licence held by a person (the “first licensee”) will cease to have effect, and another such licence is to be granted to a different person (the “second licensee”).

(5D) A smart meter communication licence may include conditions which require compliance with a direction given by the Secretary of State or the Authority requiring—

- (a) the transfer of property, rights or liabilities from the first licensee to the second licensee;

- (b) the creation of rights in relation to property, rights or liabilities in favour of the second licensee;
- (c) the creation of other rights and liabilities as between the first and second licensee;
- (d) the first or second licensee to enter into a written agreement with each other, or the first licensee to execute an instrument of another kind in favour of the second licensee;
- (e) the first or second licensee to pay compensation to the other, or to any third party who is affected by any of the matters referred to in paragraphs (a) to (d).

(5F) Conditions included in a licence by virtue of subsection (5E) must provide that where the Secretary of State or Authority is considering giving a direction referred to in that subsection, that—

- (a) any person who would potentially be affected by that direction is given written notice by the Secretary of State or the Authority (as appropriate) detailing the proposed contents of the direction and inviting that person to submit written representations, giving a minimum period of 21 days in which those representations can be made;
- (b) the Secretary of State or the Authority (as appropriate) considers those representations when determining whether to give the direction; and
- (c) the direction may only be given where any arrangements in that direction of a type referred to in paragraphs (a) to (d) of that subsection are necessary or expedient for the operational purposes of the second licensee.

(5G) For the purposes of subsection (5F), the operational purposes of the second licensee are the purposes of performing any functions which the second licensee has, or may in future have—

- (a) under or by virtue of the smart meter communication licence which has been, or is to be, granted; or
- (b) under or by virtue of any enactment, in the second licensee’s capacity as holder of the licence.”.

**Amendment to section 8AA (transfer of licences)**

**22.**—(1) Section 8AA is amended as follows.

(2) after subsection (10), insert—

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

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

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

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

(10D) Subsections (10A) and (10B) do not apply after 1 November 2018.”.

(3) After paragraph (11), insert—

“(11A) A smart meter communication licence may not be transferred to a person unless a licence granted under section 6(1)(f) of the Electricity Act 1989 is also transferred to the same person.”.

**Amendment to section 23B (appeal to the Competition Commission)**

23. In section 23B(2)(b) for “or 7A(1) or (2)”, insert “, 7A(1) or (2) or 7AB”.

**Amendment to section 36 (keeping of register)**

24. In section 36(1) and (2)(d), for “7, 7ZA or 7A”, insert “7, 7ZA, 7A or 7AB”.

**Amendment to section 41C (power to alter activities requiring licence)**

25. In section 41C(4)—

- (a) omit the word “or” after paragraph (b); and
- (b) after paragraph (c), insert “; or
  - (d) (notwithstanding section 41HA) the provision of a smart meter communication service.”.

**Amendment to section 48 (interpretation of Part 1 and savings)**

26. In section 48(1)—

- (a) in the definition of “licence”, for “7, 7ZA or 7A”, insert “7, 7ZA, 7A or 7AB”; and
- (b) insert in the relevant position—
  - ““providing a smart meter communication service” has the meaning given in section 5(11) above, and cognate expressions shall be construed accordingly;”;
  - ““smart meter communication licence” has the meaning given to that term in section 7AB(1);”.

**Amendment to Schedule 4B (provisions imposing obligations enforceable as relevant requirements)**

27.—(1) Schedule 4B is amended as follows.

(2) In paragraph 1, after “all licence holders”, insert “(except the holder of a smart meter communication licence)”.

(3) After paragraph 9, insert—

**“Smart meter communication licence holders**

**9A**

The following are relevant provisions in relation to the holder of a smart meter communication licence”—

- (a) section 33F; and
- (b) section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (directions to comply with requirements under section 24 of that Act).”

## PART 4

## Amendments to other primary legislation

**Amendment to the Insolvency Act 1986**

**28.** In paragraph 10(1)(b) of Schedule 2A of the Insolvency Act 1986<sup>(a)</sup> (interpretation of regulated business for the purposes of section 72D of that Act), for “7 or 7A”, insert “7, 7A or 7B”.

**Amendments to the Utilities Act 2000**

**29.**—(1) The Utilities Act 2000<sup>(b)</sup> is amended as follows.

(2) In section 5A(2)(b) (duty of authority to carry out impact assessment), after “supply of electricity”, insert “or the provision of smart meter communication services (in respect of electricity meters or gas meters)”.

(3) In section 106(1) (interpretation), in the definition of “gas licence”, for “ or 7A”, insert “, 7A or 7AB”.

**Amendments to the Enterprise Act 2002**

**30.** In section 168 of the Enterprise Act 2002<sup>(c)</sup> (regulated markets), in subsections (3)(c), (4)(c) and (6), for “7 or 7A”, insert “7, 7A or 7AB”.

**Amendment to the Consumers, Estate Agents and Redress Act 2007**

**31.** In section 25 of the Consumers, Estate Agents and Redress Act 2007<sup>(d)</sup> (enforcement by a regulator of notices under section 24 of that Act), in the first line of the table at the end of subsection 3, for “7ZA or 7A”, insert “7ZA, 7A or 7AB”.

**Amendment to the Energy Act 2008**

**32.**—(1) Section 88 of the Energy Act 2008<sup>(e)</sup> (power to amend licence conditions etc: smart meters) is amended as follows.

(2) In subsection (1)—

(a) after paragraph (d), insert—

“(da) a condition of a particular licence under section 6(1)(f) of the Electricity Act 1989, or under section 7AB of the Gas Act 1986 (smart meter communication licences);”;

(b) in paragraph (e), for “7 or 7A”, insert “7, 7A or 7AB”.

(3) In subsection (6)—

(a) in paragraph (b), for “7 or 7A”, insert “7, 7A or 7AB”;

(b) in paragraph (c), for “(c) or (d)”, insert “(c), (d) or (f)”.

## PART 5

### Amendments to secondary legislation

#### **Amendment to the Public Interest Disclosure (Prescribed Persons) Order 1999**

**33.** In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 1999 <sup>(a)</sup>, in the second column in the entries relating to the Gas and Electricity Markets Authority—

- (a) after “(as defined in section 4(3E) of the Electricity Act 1989)”, insert “or providing a smart meter communication service (as defined in section 4(3G) of that Act)”; and
- (b) after “(as defined in section 5(8) of the Gas Act 1986)”, insert “or providing a smart meter communication service (as defined in section 5(11) of that Act)”.

#### **Amendment to the Electricity Safety, Quality and Continuity Regulations 2002**

**34.**—(1) The Electricity Safety, Quality and Continuity Regulations 2002<sup>(b)</sup> are amended as follows.

- (2) In regulation 2(5) (interpretation), insert into the relevant place—

““smart meter communication provider” means a person who holds a licence under section 6(1)(f) of the Electricity Act 1989;”.

- (3) In regulation 4 (duty of co-operation) for “and meter operators”, insert “, meter operators and smart meter communication providers”.

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<sup>(a)</sup> SI 1999/1549; amended by SI 2003/1993

<sup>(b)</sup>

# Annex 3: Consequential amendments to legislation and licences

As a consequence of introducing the new licensable activity for the DCC, it will be necessary to make a number of changes to existing legislation and licences. An extensive review of the relevant areas has been undertaken and a number of amendments have been considered.

This annex sets out the provisions considered, describes the relevance to the DCC and sets out the conclusions reached. The argumentation for the conclusions reached is set out in the main body of this consultation document. This annex provides a general overview.

- Part 1** Consequential amendments included in the draft Order:
- Part 2** Amendments to electricity and gas licences
- Part 3** Amendments assessed as unnecessary.

## Part 1: Consequential amendments included in the draft Order

### Amendments to Electricity Act 1989

Article <sup>23</sup>	Provision	Purpose	Conclusion
3	3A(5)	Places a duty on Secretary of State and the Authority to have regard to the effect on the environment of activities connected with the generation, transmission, distribution or supply of electricity when carrying out their functions.	Make amendment so that coverage of section includes the new licensable activity.
3	3A(5)(a)	Places a duty on Secretary of State and the Authority to “promote efficiency and economy on the part of persons authorised ... to transmit, distribute or supply electricity and the efficient use of electricity”.	Make amendment so that coverage of section is comprehensive and Secretary of State and Authority are required to promote the efficiency and economy of persons undertaking the new licensable activity when undertaking their functions.
3	3A(5)(b)	Places a duty on Secretary of State and the Authority to “protect the public from dangers arising from the generation, transmission, distribution or supply of electricity”.	Make amendment so that coverage of section is comprehensive and Secretary of State and the Authority are required to consider any dangers that might arise from the new licensable activity when undertaking their functions.
4	4	Sets out the prohibition for generation, distribution, transmission, supply and interconnection.	Make amendment so that DCC licensable activity is included

<sup>23</sup> As it appears in the draft Order in Annex 2

Article <sup>23</sup>	Provision	Purpose	Conclusion
5	5(1)	Provides for exemptions to be granted from relevant categories of licence (by referring back to the relevant sub-sections of section 4).	Make amendment to cross-reference changes made to s4 of the Electricity Act so that exemptions can be granted.
6	6(1)	Provides for the Authority to grant any of the existing categories of licence.	Make amendment so that Secretary of State or the Authority can grant DCC licences until 1 November 2018, after which the Authority grants licences. (It is currently intended that the licence application regulations will determine who runs the applications process during the period to 2018). We have also introduced an explicit requirement that a person granted the DCC licence under the Electricity Act must also be the same person who is being granted the DCC licence under the Gas Act. No restriction is proposed elsewhere in <u>legislation</u> about whether other licence holders can be the DCC, or whether a person licensed to undertake the DCC activity can be granted e.g. a supply licence.
7	6A(1)(a)	Outlines procedural aspects of licence application processes that apply to any application for a licence.	Make amendment to carve out DCC licence from these provisions where an application is made under the specific licence application regulations which will be made for DCC under specific smart meter provisions (section 56FC of Electricity Act).
8	7(1)(a)	Provides that a licence may include such conditions as appear to the Authority to be requisite/expedient.	Make amendment to reflect that Secretary of State may also grant the DCC licence until 2018.
8	7(3)	Gives powers to the grantor of the DCC licence to include certain types of conditions in licences.	Make amendment to enable licence conditions in the new type of licence which enable the Authority or the Secretary of State to make directions to the DCC which are intended to provide for the transition between DCC licences. These would enable arrangements in relation to property and e.g. rights in contracts to be made between the old and new licensee (Government currently envisages that both might simultaneously hold a licence during the transition period), in limited circumstances where the two parties have not commercially agreed a solution. A further amendment allows for licence conditions which are intended to facilitate the running of a competitive licence process where there is an incumbent DCC. That DCC could be obliged to share information with (or otherwise provide reasonable

Article <sup>23</sup>	Provision	Purpose	Conclusion
			assistance to) a person who is considering applying for the next licence.
9	7A	Provides for a licence to be capable of transfer with the consent of the Authority.	Make amendment to bring the licence transfer process into line with that for the granting of DCC licences prior to 1 November 2018, whereby the Secretary of State is given a power to veto the transfer of a licence to a person in that period.
10	47	Places a duty on the Authority to undertake general market monitoring activities, and specifically to keep under review and collect information about 'activities connected with generation, transmission and supply of electricity'. In turn, Secretary of State can direct the Authority to consider particular issues.	Make amendment to ensure appropriate coverage of DCC activities.
11	56A	Gives power to Secretary of State to specify certain activities as licensable activities or to specify that licensable activities cease to be licensable.	Make amendment so that DCC activities are covered by the existing general regime with respect to the alteration of licensable activities.
12	58	Gives Secretary of State direction-making powers to restrict the use of certain information, ensuring that it cannot be used by a transmitter to gain unfair commercial advantage where by virtue of their being a transmitter they have gained information about particular other licence holders	Make amendment so that Secretary of State can give directions concerning the use of information concerning DCC or its associates as may be necessary. It is not clear at this stage whether a transmitter or associate is likely to gain such information, but it is considered prudent to extend the power at this stage.
13	64	Contains definitions	Make amendment to allow terms to be defined if required because of amendments made by the Prohibition Order.
14	96(1)(a)	Gives Secretary of State direction-making powers to require persons to preserve the security of buildings or installations used for, or for purposes connected with, the generation, transmission or supply of electricity.	Make amendment so that Secretary of State can give direction to DCC as considered necessary concerning installations used for undertaking its activities.
15	98	Provides for Secretary of State to require licence holders to provide statistical information about their business in relation to generation, transmission or supply.	Make amendment to include DCC activities, so statistical information relating to the operation of DCC can be gathered.

### Amendments to Gas Act 1986

<b>Article</b>	<b>Provision</b>	<b>Purpose</b>	<b>Conclusion</b>
17	4AA(5)	Places duty on Secretary of State and the Authority to protect the public from dangers and to have regard to the effect on the environment of activities connected with the activities connected with the conveyance of gas through pipes when carrying out their functions..	Make amendment so that coverage of section includes the new licensable activity.
17	4AA(8)	General definitions of gas licence	Make amendment so that coverage of section includes DCC licence
18	5	Sets out the prohibition for generation, distribution, transmission, supply and interconnection.	Make amendment so that DCC licensable activity is included
19	6A(1)	Provides for exemptions to be granted from relevant categories of licence (by referring back to the relevant sub-sections of section 5).	Make amendment to cross-reference changes made to s5 of the Gas Act
20	7, 7ZA and 7A	These sections provide for the Authority to grant any of the existing categories of licence.	<p>Insert a new section to enable the new type of licence to be granted. As with the Electricity Act, this enables Secretary of State or the Authority to grant DCC licences until 1 November 2018, after which the Authority grants licences.</p> <p>We have also introduced an explicit requirement that a person granted the DCC licence under the Gas Act must also be the same person who is being granted the DCC licence under the Electricity Act.</p> <p>No restriction is proposed elsewhere in legislation about whether other licence holders can be the DCC, or preventing the DCC from being granted e.g. a supply licence.</p>
21	7B(4)(a)	Provides for the Authority to determine licence conditions.	Make amendment to reflect that Secretary of State has power to grant first DCC licence, and that Secretary of State or the Authority can grant subsequent DCC licences until 1 November 2018, after which the Authority grants licences.
21	7B(5)	Gives powers to include certain types of conditions in licences.	Make amendment to enable licence conditions in the new type of licence which enable the Authority or the Secretary of State to make directions to the DCC which are intended to provide for the transition between DCC licences. These would enable arrangements in relation to property and e.g. rights in contracts to be made between the old and new licensee (Government currently envisages that both might simultaneously hold a licence during

Article	Provision	Purpose	Conclusion
			the transition period), in limited circumstances where the two parties have not commercially agreed a solution. A further amendment allows for licence conditions which are intended to facilitate the running of a competitive licence process where there is an incumbent DCC. That DCC could be obliged to share information with (or otherwise provide reasonable assistance to) a person who is considering applying for the next licence.
21	7B(1) – (2)	Outlines procedural aspects of licence application processes that apply to any application for a licence.	Make amendment to carve out DCC licence from these provisions where an application is made under the specific licence application regulations which will be made for DCC under specific smart meter provisions (section 41HC of Gas Act).
22	8AA	Provides for a licence to be capable of transfer with the consent of the Authority.	Make amendment to bring the licence transfer process into line with that for the granting of DCC licences prior to 1 November 2018, whereby the Secretary of State is given a power to veto the transfer of a licence to a person in that period.
23	23B	Allows licence holders to appeal to the Competition Commission where the Authority modifies conditions in its licences.	Make amendment to ensure the DCC is covered in the same way as are other licence holders.
24	36	Requires the Authority to keep a register of licences.	Make amendment to include the DCC.
25	41C	Gives power to Secretary of State to specify certain activities as licensable activities or to specify that licensable activities cease to be licensable.	Make amendment so that DCC activities are covered by the existing general regime with respect to the alteration of licensable activities.
26	48	Contains definitions	Make amendment to allow terms to be defined if required because of amendments made by the Prohibition Order.
27	Schedule 4B	Provisions imposing obligations enforceable by the Authority as relevant requirements.	The generally applicable relevant requirements will not all apply to the DCC, so a separate section has been created detailing those that will.

### Amendments to other primary legislation

Article	Provision	Purpose	Conclusion
28	Insolvency Act 1986 Schedule 2A (s72A)	Allows for an administrative receiver to be appointed where a project relating to the utility is project financed and the financier has step-in rights.	Make amendment to include “DCC licence” in the list in the Schedule. This is a purely “consequential” amendment, for cross-referencing purposes only.

Article	Provision	Purpose	Conclusion
29	Utilities Act 2000 5A(2)(b)	Places a duty on the Authority to carry out an impact assessment before it undertakes a new activity that may significantly affect persons in the electricity or gas industries.	Make amendment to include DCC because it has the potential to be affected by Authority decisions and should therefore be included to ensure the likely impacts on it of new activities are properly assessed.
30	Enterprise Act 2002 s168	Requires that when the Competition Commission (or Secretary of State of BIS) is considering taking actions to amend licence conditions to remedy a competition law problem, Electricity or Gas act duties are taken into account.	Make amendment to include "DCC licence" in a list of amendments mentioned in the Act
31	Consumers , Estate Agents and Redress Act 2007 s25	Allows the Consumer Council to refer to the Authority for investigation cases where the holder of a gas or electricity licence has failed to comply with a notice under section 24 of the Act requiring it to give information to the Council.	Make amendment to ensure that the list of regulated persons in relation to which Authority can investigate includes the holder of a DCC licence.
32	Energy Act 2008 (s.88)	Section 88 gives Secretary of State a power to amend particular energy licences and codes for particular purposes connected with the rollout of smart meters.	Make an amendment to allow the DCC licence and code maintained under it to be amended for the existing purposes until 1 November 2018. This will act as a safeguard in the event that interventions are necessary in the future relating to the general roll out programme.

### Amendments to secondary legislation

Article	Provision	Purpose	Conclusion
33	Public Interest Disclosure (Prescribed Persons) Order 1999	Protects an employee making disclosures about a licensed body, for example about a crime or a failure to follow legal obligations (such as licence conditions).	Make amendment to ensure appropriate coverage of the regime to DCC.
34	Electricity Safety, Quality and Continuity Regulations 2002	Relates to safety and equipment being generally fit for purpose and sharing of information and co-operation between licence holders. Applies to meter operators and suppliers (as well as other parties).	Make amendments to regulation 4, requiring the DCC to share information and co-operate with other licence holders to ensure compliance with the regulations. This will ensure that any role the DCC plays in safety matters (at a minimum this may be the delivery of instructions to meters) is captured.

## Part 2: Amendments to electricity and gas licences

### Part 2a: Amendments to electricity and gas licence conditions considered

Condition	Issue	Conclusion
Electricity Supply Licence Condition 1: Definitions	The definition of 'Authorised Electricity Operator' provides that it includes any person authorised (i.e. by licence or exemption) to generate, participate in the transmission of, distribute or supply electricity or participate in the operation of an Interconnector.	<b>Amend</b> definition of "Authorised Electricity Operator" to include DCC.
Electricity Supply Licence Condition 1: Definitions	Given the suggested consequential amendment to condition 2.5, a new definition of 'DCC Licence' should also be added.	<b>Amend</b> to include a new definition of 'DCC Licence'.
Electricity Supply Licence Condition 2.5	This provides that any reference in the conditions of the licence to any provision of any condition of a Distribution Licence, a Generation Licence, a Transmission Licence or an Interconnector Licence shall be read, if the condition of the licence being referred is subsequently modified, as a reference (so far as the context permits) to the corresponding provision of the relevant condition. For example, if a condition refers to "3.1", which then becomes 3.2 because of an amendment, the reference will be read as "3.2".	<b>Amend condition 2.5</b> to include any condition of the DCC Licence. This will ensure that any reference in supply licences to a subsequently modified condition of the DCC licence will be interpreted correctly.
Electricity Supply Licence Condition 26.7	This requires the supply licensee to provide information to the relevant distributor about customers who require advance notice of interruptions to supply because of illness or disability.	<b>No amendment required.</b> DCC will only act on instructions from suppliers to interrupt the supply of electricity to the premises, so placing the obligation to provide information on the supplier is sufficient. DCC will not have a unilateral right to interrupt supply to the premises. Additionally, DCC will have no knowledge of customers who require advance notice of interruptions to supply – this will remain with the supplier.
Electricity Distribution Licence Condition 1: Definitions	The definition of 'Authorised Electricity Operator' provides that it includes any person authorised (i.e. by licence or exemption) to generate, participate in the transmission of, distribute or supply electricity or participate in the operation of an Interconnector.	<b>Amend.</b> As for definitions in electricity supply licence, amend definition of "Authorised Electricity Operator" to include the DCC activity.
Electricity Distribution Licence Condition 1: Definitions	Given the suggested consequential amendment to condition 2.5, a new definition of 'DCC Licence' should also be added.	<b>Amend</b> to include a new definition of 'DCC Licence'.

Condition	Issue	Conclusion
Electricity Distribution Licence Condition 2.5	This provides that any reference in the conditions of the licence to any provision of any condition of a Supply Licence, a Generation Licence, a Transmission Licence or a Interconnector Licence shall be read, if the condition of the licence being referred is subsequently modified, as a reference (so far as the context permits) to the corresponding provision of the relevant condition.	<b>Amend</b> condition 2.5 to include any condition of the DCC Licence. This will ensure that any reference in supply licences to a subsequently modified condition of the DCC licence will be interpreted correctly.
Electricity Distribution Licence Condition 10.6	This requires the distribution licensee to inform the relevant supplier where a customer has asked to be on the licensee’s priority services register.	<b>No amendment required.</b> DCC will only act on the instructions of the supplier to interrupt supply; it is the supplier that needs to know this information rather than DCC, so there is no need to require licensees to provide this information to DCC.
Electricity Distribution Licence Condition 37.4(b) &	Condition 37.4(b) provides that one of the purposes of the Data Transfer Service is “ <u>to communicate Electricity Meter reading data and Electricity Meter standing data</u> ”. Policy consideration may be required on whether a purpose of the Data Transfer Service has the potential to overlap or duplicate the purpose of the DCC (and its activities).	<b>No amendment required.</b> It is expected, at least in the short term, that the Data Transfer Service will need to communicate meter reading data. Therefore, the change should not be made. If the position changes in the future, this change could be introduced at a later date.
Gas Supply Licence Condition 1: Definitions	Given the suggested consequential amendment to condition 2.5, a new definition of ‘DCC Licence’ should also be added.	<b>Amend</b> to include a new definition of ‘DCC Licence’.
Gas Supply Licence Condition 2.5	This provides that any reference in the conditions of the licence to any provision of any condition of a Distribution Licence, a Generation Licence, a Transmission Licence or an Interconnector Licence shall be read, if the condition of the licence being referred is subsequently modified, as a reference (so far as the context permits) to the corresponding provision of the relevant condition. For example, if a condition refers to “3.1”, which then becomes 3.2 because of an amendment, the reference will be read as “3.2”.	<b>Amend condition 2.5</b> to include any condition of the DCC Licence. This will ensure that any reference in supply licences to a subsequently modified condition of the DCC licence will be interpreted correctly.
Gas Supply Licence Condition 26.7	This requires the supply licensee to provide information to the relevant gas transporter about customers who require advance notice of interruptions to supply because of their sickness/disability.	<b>No amendment required.</b> DCC will only act on the instructions of the supplier to interrupt supply, it is the supplier that needs to provide this information to the gas transporter rather than DCC.

Condition	Issue	Conclusion
Gas Shipper Licence Condition 11.4	This requires the shipper to request or provide certain information about meter connections/disconnections to and from suppliers and transporters. In particular Condition 11.4(f) requires the shipper to transmit to the relevant transporter information it has received from the supplier about the arrangements the customer has made for the ordinary reading of the meter.	<b>No amendment required.</b> Should the DCC require this information, an obligation will be placed on the supplier under the SEC to pass on such information to DCC.

## Part 2b: Licence provisions as they will appear once amended (changes in bold)

### Electricity Supply Licence

#### Amendments to Condition 1

#### Authorised Electricity Operator

means any person (other than the licensee) who is Authorised to generate, participate in the transmission of, distribute or supply electricity, to participate in the operation of an Interconnector or **to provide a smart meter communication service** and includes any person who has made an application to be so Authorised which has not been refused and any person transferring electricity to or from or across an Interconnector or who has made an application for use of an Interconnector which has not been refused;

#### Smart Meter Communication Licence

**means a smart meter communication licence granted or treated as granted under section 6(1)(f) of the Act or section 7AB of the Gas Act 1986;**

#### Amendments to Condition 2

2.5 Any reference in the conditions of this licence to any of the following:

- (a) a provision of the conditions of this licence;
- (b) a provision of the conditions of the Distribution Licence;
- (c) a provision of the conditions of the Generation Licence;
- (d) a provision of the conditions of the Transmission Licence;
- (e) a provision of the conditions of the Interconnector Licence; or
- (f) **a provision of the conditions of the Smart Meter Communication Licence,**

is to be read, if the conditions of this licence or of any of the other licences are subsequently modified, as a reference (so far as the context permits) to the corresponding provision of the relevant conditions.

## Electricity Distribution Licence

### Amendments to Condition 1

**Authorised Electricity Operator** means any person (other than the licensee) who is Authorised to generate, participate in the transmission of, distribute, or supply electricity, to participate in the operation of an Interconnector or **to provide a smart meter communication service**, and includes any person who has made an application to be so Authorised which has not been refused and any person who transfers electricity to or from or across an Interconnector or has made an application for use of an Interconnector that has not been refused.

**Smart Meter Communication Licence** means a smart meter communication licence granted or treated as granted under section 6(1)(f) of the Act or section 7AB of the Gas Act 1986;

2.5 Any reference in the Conditions of this licence to any of the following:

- (a) a provision of the Conditions of this licence;
- (b) a provision of the Conditions of the Supply Licence;
- (c) a provision of the Conditions of the Generation Licence;
- (d) a provision of the Conditions of the Transmission Licence;
- (e) a provision of the Conditions of the Interconnector Licence, or
- (f) **a provision of the conditions of the Smart Meter Communication Licence,**

is to be read, if the Conditions of this licence or of any of the other licences are subsequently modified, as a reference (so far as the context permits) to the corresponding provision of the other relevant Conditions.

## Gas Supply Licence

### Amendments to Condition 1

**Authorised Electricity Operator** means any person (other than the licensee) who is Authorised to generate, participate in the transmission of, distribute, or supply electricity, to participate in the operation of an Interconnector or **to provide a smart meter communication service**, and includes any person who has made an application to be so Authorised which has not been refused and any person who transfers electricity to or from or across an Interconnector or has made an application for use of an Interconnector that has not been refused.

**Smart Meter Communication Licence** means a smart meter communication licence granted or treated as granted under section 7AB of the Act or section 6(1)(f) of the Electricity Act 1989;

### Amendment to Condition 2

2.5 Any reference in the Conditions of this licence to any of the following:

- (a) a provision of the Conditions of this licence;
- (b) a provision of the Conditions of the Supply Licence;

- (c) a provision of the Conditions of the Generation Licence;
- (d) a provision of the Conditions of the Transmission Licence;
- (e) a provision of the Conditions of the Interconnector Licence, or
- (f) **a provision of the conditions of the Smart Meter Communication Licence,**

is to be read, if the Conditions of this licence or of any of the other licences are subsequently modified, as a reference (so far as the context permits) to the corresponding provision of the other relevant Conditions.

### Part 3: Amendments assessed as unnecessary

The amendments to the provisions detailed in the table below have been considered and the Government's view is that amendments are unnecessary:

Provision	Issue	Conclusion
Social Security Administration Act 1992	This allows for information about some consumers to be provided by distributors and suppliers to adjudication officers in the assessment of benefit claims.	<b>Do not make amendment because</b> DCC will not hold such information and should not be required to extract information. This is information that should continue to be provided by suppliers or distributors.
Energy Act 2010 s29	Allows Secretary of State to adjust the charging scheme if he considers that disadvantaged customers are being treated less favourably than other customers.	<b>Do not make amendment because</b> DCC is not directly charging consumer and not holding data on whether consumers are at risk.
Child Support Information Regulations 2010	Electricity/ gas suppliers, distributors required to give information required by the commission to determine child maintenance applications.	<b>Do not make amendment</b> because DCC will not hold such information and should not be required to extract information that suppliers or distributors cannot provide
Civil Contingencies Act 2004	The schedule lists entities which are defined as category 2 responders. At present this includes electricity networks but not suppliers. Their inclusion relates to a power to make regulations requiring emergency responders to make plans to deal with emergencies etc, and also compelling category 2 responders to co-operate in that planning.	<b>Do not make amendment.</b> Overall this Act the issue is the sharing of information and business continuity plans and dealing with emergencies. Whilst it is important that DCC adheres to requirements about security and business continuity, this can be delivered through the DCC licence.
Electricity Act 7(3A) and Gas Act 7B(5)(b)	<b>Electricity Act 7(3A) and Gas Act 7B(5)(b)</b> already provide for electricity transmission and distribution licences and for gas transportation licences to include conditions requiring the holders to increase their charges in order to raise amounts as determined under the condition(s) and to pay such amounts to certain electricity suppliers or gas suppliers or shippers (i.e. raise a levy).	<b>Do not make amendment as</b> allowing/requiring DCC to raise a levy would duplicate the regimes that exist at the moment and could catch unlicensed ESCOs, which is not desirable.
Electricity Act s99	Directs Secretary of State to use an existing power under s5 of the Science and Technology Act 1965 for the purpose of funding research into new techniques relating to the generation, transmission or supply of electricity.	<b>Do not make amendment</b> as the Science and Technology Act already contains sufficient powers to fund such research as may be required.

Provision	Issue	Conclusion
Electricity Act 9(1)(a) & 9(2)(a)	These sections impose maintenance and development obligations on distribution and transmission licensees respectively, in relation to their systems.	It is proposed to deal with this in licences rather than in legislation because (i) existing duties are slightly different in gas and electricity; (ii) duties for DCC should be the same in both Acts; and (iii) including in the legislation would mean DCC duties would have to be different from each other or different from the existing obligations in one of the two Acts. This may cause unintended interpretational issues.
Gas Act 9(1)(a)	Imposes a maintenance and development duty on licensed gas transporters, in relation to their systems.	It is proposed to deal with this in licences rather than in legislation because (i) existing duties are slightly different in gas and electricity; (ii) duties for DCC should be the same in both Acts; and (iii) including in the legislation would mean DCC duties would have to be different from each other or different from the existing obligations in one of the two Acts. This may cause unintended interpretational issues.
Electricity Act 9(1)(b) & 9(2)(b)	Impose duty on distribution and transmission licensees to facilitate competition in supply and generation.	As for Gas Act 9(1)(a) above
Gas Act 9(1A)	Impose duty on licensed transporters to facilitate competition in gas supply.	As for Gas Act 9(1)(a) above
Gas Act 9(2)	Imposes a duty on gas transporters to avoid undue preference or discrimination in relation to system connections and to terms of use imposed on users of those systems.	As for Gas Act 9(1)(a) above
Gas Act 1986 7, 7ZA and 7A	These provide for the Authority to grant the relevant licences (as referred to in the relevant section). They also provide that only supply and shipper licence can be held by the same person, so DCC cannot also be supplier or shipper.	No amendment required as supplier or shipper cannot also be DCC under proposed constraints in the DCC licence
Electricity Act s43	Defines the scope of powers which are granted to the OFT under the Enterprise Act 2002 and the Competition Act 1998 which the Authority is entitled to exercise concurrently with the OFT. Includes "commercial activities connected with the generation, transmission or supply of electricity or the use of electricity interconnectors".	No amendment required because the statutory construction "commercial activity connected with supply of electricity" considered to include DCC activities. This construction also appears in other places in the Act and has not been amended.
Electricity and Gas Appeals (Designation and Exclusion) Order 2009	Provides for competition commission appeal process with respect to code related decisions by the Authority.	When the SEC is introduced, we expect that a new order will be made which will designate the SEC.
See also the narrative above, in part 3.2 of this consultation, on the consumer relationship with the DCC which relates to sections 39 to 40b and 42 of the Electricity Act and sections 33A to 33BAA and 33C of the Gas Act and to section 13 and Part 2 of the Consumers, Estate Agents and Redress Act 2007.		

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