

EXPLANATORY MEMORANDUM TO

THE MODIFICATIONS TO THE STANDARD CONDITIONS OF ELECTRICITY AND GAS SUPPLY LICENCES, THE CONDITIONS OF GAS AND ELECTRICITY SMART METER COMMUNICATION LICENCES AND THE SMART ENERGY CODE (SMART METERS No 2. of 2017)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These modifications further develop the regulatory framework to support the roll-out of smart meters in Great Britain, in line with the Government's policy aim for every home and smaller business in Great Britain to be equipped with a smart meter by the end of 2020. They relate to a range of topics within the Smart Energy Code (the "Code"), the standard conditions of electricity and gas supply (the "Supply Licence Conditions") and the conditions of the Data and Communications Company Licences (the "DCC Licences").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Not applicable: these are energy industry code and licence modifications and not a Statutory Instrument.

Other matters of interest to the House of Commons

- 3.2 Not applicable: these are energy industry code and licence modifications and not a Statutory Instrument.

4. Legislative Context

- 4.1 This instrument modifies the Code. This is an energy industry code created and maintained under the conditions of the DCC Licences which were granted to Smart DCC Ltd¹ (also known as the DCC) by the Secretary of State for Energy and Climate Change on 23 September 2013 following a competitive process. The initial content of the Code was designated on the same date. The DCC, energy suppliers and energy network operators are, amongst others, parties to the Code. This instrument also modifies the Supply Licence Conditions and the DCC Licence Conditions. Since 2013, BEIS (formerly the Department of Energy and Climate Change) has made a number of other sets of modifications to develop the regulatory framework for the roll-out and operation of smart meters. This instrument further adds to that framework. BEIS expects to make further modifications to the regulatory framework in due course.

¹ Company number 08641679

5. Extent and Territorial Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to a negative resolution procedure, and is not a statutory instrument so does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Government has introduced obligations in the licences held by energy suppliers to roll out smart gas and electricity meters to every home and smaller business in Great Britain. The roll-out of smart meters will give people far better information about, and control over, their energy consumption and deliver other significant benefits to consumers. This will play an important role in Great Britain's transition to a low-carbon economy, and help us meet some of the long-term challenges we face in ensuring an affordable, secure and sustainable and clean energy supply. Net economic benefits are estimated at £5.7 billion for the period to 2030 (see Section 10 below).

Modifications to the Smart Energy Code and licence changes

7.2 The Code sets out many of the operational arrangements for smart metering and the rights and obligations between the DCC and the users of its system. The Supply Licence Conditions and conditions of the DCC Licences provide the high level obligations under which energy suppliers and the DCC operate. This instrument introduces a number of items to the Code and the Supply and DCC Licence Conditions that are required to support the Smart Metering Implementation Programme (SMIP) in paving the way for energy suppliers to begin installing and enrolling smart meters. Changes introduced in this instrument include:

7.3 Install & Leave (I&L): Amendments to the supply licences to clarify the actions suppliers must take when they I&L smart metering equipment in premises in the absence of a Wide Area Network (WAN) and other consequential changes. There are two scenarios covered by the policy:

7.3.1 Where WAN is expected on the basis of the DCC WAN coverage checker but during the installation visit it becomes clear that there is no WAN (reactive I&L).

7.3.2 For new connections and meter replacements where meters are no longer working and WAN has not been rolled out but is forecast to be available before the end of 2020 (proactive I&L).

7.4 These amendments include extending a derogation from a requirement in the supply licences regarding provision of relevant data so that it covers I&L scenarios.

7.5 Maintenance of Smart Metering Systems: Technical specifications for the constituent parts of a Smart Metering System will be updated from time to time. The changes we are making to supply licences, the DCC Licences and the Code provide for "installation validity periods" and "maintenance validity periods" to be capable of being set for these specifications, during which they are valid for newly installed

smart metering equipment or for maintenance of existing smart metering equipment respectively. The changes also place obligations on suppliers and DCC that deal with ensuring continued compatibility of various devices in the home and preventing “backwards steps” i.e. downgrading smart metering installations to earlier versions.

7.6 Simplification of change of supplier information flows: Amendment to the Supply Licence Conditions to remove unnecessary duplication from the process by which information surrounding a change of supplier is exchanged. This is done by removing the requirement for the old supplier to provide relevant information to the new supplier if that information is already available to the new supplier via an alternative data transfer that is in accordance with a relevant industry code.

7.7 Testing required to implement changes to the Code:

7.7.1 Testing to support Secretary of State Code variations: Amendments to the Code to provide for systems testing required as a consequence of future changes to the Code that are made by the Secretary of State using Section 88 Energy Act 2008 or Code Section X powers. Amendments include a requirement on DCC, where directed by the Secretary of State, to identify appropriate testing requirements for each Secretary of State-led variation, including testing that would need to be provided by the DCC, in a variation-specific “SEC Variation Testing Approach Document” (SVTAD). Amendments also include powers for the Secretary of State to direct DCC on the development of an SVTAD. There is also a requirement for relevant parties to comply with the SVTAD if designated by the Secretary of State to the extent they are required to, or choose to, participate in the testing. Finally amendments also include powers to direct DCC to analyse and report on matters relating to the proposed variation such as the extent of changes required to the DCC total system. These amendments will sit in Section X of the Code which deals with transitional matters under the Code, as the Secretary of State powers to amend the Code are not enduring.

7.7.2 Amendments to the Code, relating to testing, to support approved Modification Proposals: Amendments require that a Modification Proposal states whether testing will be required to implement the proposal and where testing is likely to be required, that the Modification Proposal is subject to the Refinement Process. The Refinement Process now includes consideration of whether testing is required and any required changes to DCC, User and/or Smart Metering Systems. Where this is so, the Modification Proposal provides the testing solution, or a process for developing one. Where a Modification Proposal was subject to the Refinement Process, the Modification Report shall specify whether and how DCC is required to undertake testing and/or provide testing services, identify system changes and any likely associated costs. Where an approved Modification Proposal requires DCC to provide testing services, such testing will be undertaken as a Testing Service, pursuant to Section H14.34. These amendments will sit in Section D and H of the Code.

- 7.8 New Registration Data Provider (RDP) Entry Process Testing: This change will require the DCC to provide RDP Entry Process Tests as a Testing Service, which will provide new RDPs with the ability to test their interface with the DCC. RDP Entry Process Tests are to be completed before data is exchanged between the DCC and the RDP for the first time, unless that RDP has already taken part in Systems Integration Testing (SIT). New Electricity Distribution or new Gas Transporter Licence Holders who intend to use an existing RDP will have the right to test their interface with the DCC. The DCC determines if the RDP Entry Process Tests have been successfully completed, if the determination is that the RDP is unsuccessful, the RDP may refer the matter first to the SEC Panel and then the Authority. DCC will be required to develop a revised draft version of the Enduring Test Approach Document (ETAD) which includes RDP Entry Process Tests and submit the draft ETAD to the Secretary of State for review.
- 7.9 Changes relating to the Enduring Testing Approach Document (ETAD): The Code is being amended to permit DCC to require a Testing Participant to remove its devices from a DCC test lab in accordance with the requirements set out in the Enduring Testing Approach Document where the DCC considers that the Testing Participant has breached any SEC obligations relating to the use of a Testing Service. This is being done in order to align that section of the Code with the content of the ETAD. We are also introducing a dispute resolution procedure so that any disputes regarding the removal of such devices may be referred to the SEC Panel.
- 7.10 Provision of variant Communication Hubs for testing: The Code is also being amended to clarify the requirement that DCC provide a reasonable number of Test Communications Hubs of every HAN and WAN variant for use by Testing Participants at the DCC's physical test laboratories. DCC is also required to make every HAN and WAN variant available for use by others remotely in their own test laboratories. However provision is being made for the DCC to set out the case for not providing a particular variant for remote use where to do so is not cost effective. Where a Supplier disagrees with the DCC view, it can be referred to the SEC Panel, and subsequently the Authority, for a determination.
- 7.11 Amendment to Ofgem Significant Code Review powers: An amendment is being made to Ofgem's powers to make modifications to the Code, giving it the ability to more closely manage the Significant Code Review process, in order to align them with a recent consultation decision² and other energy codes.
- 7.12 Privacy Requirements: The Code imposes requirements on Users to obtain the Energy Consumer's consent before accessing smart metering consumption data. These conditions apply without prejudice to any obligations the User may have under the Data Protection Act. Situations may arise where the individual considered to be the Energy Consumer (i.e. the bill-payer) does not occupy the premises where the smart meter is located and therefore may not be the 'data subject' for the purposes of the Data Protection Act. This may include tenanted properties, where the contract to supply energy is arranged with the landlord rather than the tenant. To ensure clarity on this issue the Code is being amended to make clear reference to Users' wider obligations under the Data Protection Act in respect of data protection and access to data and to widen the scope of the User Entry Process guide so that Other Users'

² <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-initial-proposals>

attention is drawn to any relevant privacy guidance issued by the Secretary of State and/or the Authority in respect of matters relating to processing of personal data.

- 7.13 Making Transitional Variations Enduring: A number of transitional variations to the Code are to be converted into enduring variations in the Code. The following changes have been made;
- the provisions that deal with security on IKI Cryptographic Credentials Tokens have been extended to also cover DCCKI Smart Card Tokens;
 - the supplier obligations in L13 for DCCKI Personnel Authorisation Certificates have been clarified. Additional definitions have been added to Section A to support these changes;
 - the definition of User Systems has been modified to remove from it the explicit inclusion of those systems that communicate with the SMKI Repository and those systems that communicate with the SMKI Issuing Authorities in relation to Devices that do not have an SMI Status of “commissioned” or “installed not commissioned”;
 - Parties who are about to become users will be required to submit information regarding their intended usage of DCC systems in advance.
- 7.14 Definition of Registration Data Provider (RDP) Systems: The definition of RDP Systems is to be amended to align it with the definition of User Systems which was originally subject to transitional variations which are now being converted to enduring variations as per paragraph 7.12 above.
- 7.15 Changes to the Code, Supply Licence Conditions and DCC Licences to accommodate multiple versions of technical specifications and multiple versions of DCC User Interface Specifications: These changes are linked to the changes related to maintenance of smart metering systems that are described in Section 7.4 above. The scope of the changes includes those to Supply Licence Conditions, the DCC Licences and the Code. Over time multiple versions of technical specifications for smart metering devices will exist. Within the Code, we have created a framework for the management of these technical specifications into the future, including setting out the interactions between them and other technical documents, and requiring information on these interactions to be clearly set out and kept up to date. In supply licences and the DCC Licences we have clarified which specifications may be used when installing or maintaining a device. We have also made changes to the Code to deal with the management of multiple versions of the main technical interface between DCC and its Users (the DCC User Interface) and the associated software and documentation. Again we have set out requirements for the publication and maintenance of information explaining these interactions.
- 7.16 Miscellaneous Changes: A number of minor amendments are being made to the Code for the purposes of either correcting minor errors or adding further clarity; including; some of the definitions in Section A of the Code that contain minor errors, a number of minor corrections, and other minor cross-referencing errors. The end date for the transitional variation regarding User IDs was defined and section H3.27 of the Code is being removed as it has been determined that it is no longer necessary.

Consolidation

- 7.17 The Government does not intend to consolidate the Code, the Supply Licence Conditions or the DCC Licences. A consolidated version of the Code will be available on the website of the Code Administrator³ and a consolidated version of the Supply Licence Conditions and the DCC Licences will be available on Ofgem's website⁴ once these modifications come into legal effect.

8. Consultation outcome

- 8.1 Government has consulted⁵ on the legal text of these changes to the Code and energy licences in a consultation between 22 September 2016 and 17 October 2016 ("the September 2016 consultation").
- 8.2 A total of 19 responses to the September 2016 consultation were received with the majority of respondents being Parties to the Code. The majority of respondents were supportive of the proposed approaches and the legal drafting provided. Some responses raised points of detail which have been addressed in the Government response and in redrafting of the legal text where appropriate.

9. Guidance

- 9.1 The Government does not intend to publish any guidance related to these modifications.

10. Impact

- 10.1 An updated Cost Benefit Analysis for smart metering was published in November 2016. It estimated the costs and benefits associated with the GB roll-out of smart meters and identified a substantial net benefit of £5.7 billion for the period to 2030 from the programme⁶, yielding £1.5 of savings for every £1 spent. The estimated overall direct impact on businesses of the roll-out of smart meters is an equivalent annual net cost of £36 million.
- 10.2 The impact on the public sector is nil.
- 10.3 The assessment published in November 2016 of the effect that the smart meter roll-out will have on the costs of business and the voluntary sector is available at: <https://www.gov.uk/government/publications/smart-meter-roll-out-gb-cost-benefit-analysis>

11. Regulating small business

- 11.1 The instrument applies to activities that are undertaken by small business.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken by the Government is to consistently take steps to ensure the regulatory burden is minimised and that the proportionality of changes is reviewed, on a regular basis.

³ <https://www.smartenergycodecompany.co.uk/>

⁴ <https://www.ofgem.gov.uk/licences-codes-and-standards>

⁵ <https://www.gov.uk/government/consultations/consultation-on-smart-energy-code-and-licence-amendments-september-2016>

⁶ Central projections, 2011 prices, discounted to 2016

11.3 In designing smart metering regulations the Government has engaged in extensive consultation with all affected parties, including small businesses, to ensure that a broad range of stakeholders' views is considered and to facilitate proportionality.

12. Monitoring & review

12.1 The Government's Monitoring and Evaluation Strategy will ensure that the SMIP is subject to a comprehensive and integrated review and evaluation process, both during the initial stage and towards the end of the main installation stage. Ofgem will be responsible for monitoring and taking licence enforcement action where necessary in line with its guidelines.

13. Contact

13.1 Please contact Alexander Wallis at the Department for Business, Energy and Industrial Strategy (tel: 0300 068 5325 or email: alexander.wallis@beis.gov.uk) concerning any queries regarding the instrument.