EXPLANATORY MEMORANDUM TO

ENERGY

SMART METERS

MODIFICATIONS TO THE SMART METER COMMUNICATION LICENCES AND THE SMART ENERGY CODE (SMART METERS NO. 1 OF 2025)

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Energy Security & Net Zero and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Miatta Fahnbulleh, Minister of State at the Department for Energy Security & Net Zero (the Department) confirms that this Explanatory Memorandum meets the required standard.

2.2 Daron Walker, Senior Responsible Owner for the Smart Metering Implementation Programme at the Department for Energy Security & Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Abidemi Olowogbemi at the Department for Energy Security & Net Zero can be contacted with any queries regarding the instrument by telephone on 02072153172 or email: Abidemi.Olowogbemi@energysecurity.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes amendments to the Smart Meter Communication Licences and the Smart Energy Code (SEC)[1] to provide an option for the administrative body under that code (SECCo) to establish a subsidiary to participate in the process for the award of the successor Smart Meter Communication Licences that is being conducted by the Authority[2].

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is Great Britain.

4.3 The territorial application of this instrument is Great Britain.

5. Policy Context

What is being done and why?

The Successor Smart Meter Communications Licences

[1] https://smartenergycodecompany.co.uk/about-the-smart-energy-code/

[2] The term "Authority" is used to refer to the Gas and Electricity Markets Authority (GEMA). GEMA is supported in its day-to-day activities by the Office of Gas and Electricity Markets (Ofgem).

5.1 The Smart Meter Communications Licences are licences granted under the Gas Act 1986 and the Electricity Act 1989. The current licences are held by Smart DCC Limited and require the licence holder to provide a service of communicating with smart meters to energy suppliers, distribution network companies and other third parties to the SEC. The term of the current licences is due to expire in September 2027. The Authority is running a process to identify the organisation to whom the successor licences will be granted.

5.2 The SEC is a regulated multi-party agreement that outlines the right and obligations of the Smart Meter Communication Licences Holder, energy suppliers, network operators and other relevant entities that are involved in communicating with smart metering devices in Great Britain. As part of the SEC arrangements, a company has been established (SECCo) whose role is to procure and provide the services required for the maintenance of the Smart Energy Code.

5.3 The instrument makes a number of changes to the conditions of the existing Smart Meter Communication Licences and to the SEC to provide an option for SECCo to establish a subsidiary company that could participate in the arrangements being run by the Authority to identify the successor holder of the Smart Meter Communication Licences. SECCo is owned by the parties to the SEC, and so any SECCo subsidiary would also be ultimately owned by these parties. Any proposal by SECCo to establish such a subsidiary would only be permitted to be progressed if the Secretary of State does not object to the proposal.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 88 of the Energy Act 2008 enables the Secretary of State to modify energy licences and industry codes, such as the SEC, for specific purposes related to the provision, installation and operation of smart meters in Great Britain. The Department for Energy Security & Net Zero (and its predecessor Departments) has made a number of modifications to the SEC to develop the smart metering regulatory framework. The changes in this instrument further develop that framework. This instrument will only amend conditions of the smart meter communications licences and the main body of the SEC and will not change primary or secondary legislation.

Why was this approach taken to change the law?

6.2 Following consultation with industry and Ofgem, we wish to give an organisation that is ultimately owned by industry the opportunity to participate in the Authority run process for awarding the successor Smart Meter Communication Licences. Changes to the Smart Meter Communication Licences (which sets out the scope of the SEC) and to the SEC itself are needed in order to facilitate this.

6.3 The exercise of powers under section 88 of the Energy Act 2008 is the only currently available approach by which Government can make amendments to licence conditions and the SEC for smart metering related purposes.

7. Consultation

Summary of consultation outcome and methodology

7.1 In accordance with section 89(1) of the Energy Act 2008 the Department consulted smart metering industry stakeholders and the Authority on the changes to the Smart

Meter Communication Licences and the SEC, which this instrument sets out, between 3 December 2024 and 13 January 2025[3]. The consultation was published on the SEC website. The Department received a total of 9 consultation responses. Five respondents explicitly supported the proposed changes and of the other four, only one expressed views that implied that they did not agree with the proposals. A number made comments about the process the Authority is following to identify the successor licence holder, and others suggested some wider reforms. Both of these matters are outside the scope of the changes which we are seeking to progress with this instrument. Having considered the comments from all the respondents, the Department made minor changes to the consulted upon legal text to introduce more proportionate changes to the way in which the existing licensee participates in the decision-making process under the SEC when it comes to matters concerning the successor licence/licensee. The conclusions document will be published on the SEC website alongside the laying of this Explanatory Memorandum.

8. Applicable Guidance

8.1 The Government does not intend to publish any guidance related to these changes. The Smart Energy Code administrator has duties to provide advice and support to SEC Parties on the SEC.

<u>Part Two: Impact and the Better Regulation Framework</u>

9. Impact Assessment (Not required)

9.1 Because the changes provide an option for SECCo to establish a subsidiary to seek to become the successor smart meter communication licensee, the provision has no initial direct cost to business. If the option to establish a subsidiary to SECCo is taken, Ofgem has indicated that the process for awarding the successor licence will not be onerous on those involved in the process, primarily because Ofgem has indicated that the successor licensee will be a not-for-profit organisation and therefore recognises that access to funds will be limited. It is estimated that the maximum costs associated with establishing a subsidiary to SECCo will be in the region of £2.0m covering both the costs to decide to participate in the process, and (if relevant) the actual costs of doing so. As the costs are below the threshold of £10m, an impact assessment is not required.

Impact on businesses, charities and voluntary bodies

9.2 The costs incurred by SECCo in deciding whether or not to establish the subsidiary will be recovered under the existing arrangements for SECCo to recover its costs under the Smart Energy Code. In practice this means charging the costs to the existing Smart Meter Communication Licensee, and for these to be recovered from parties to the Smart Energy Code (in this case, gas and electricity suppliers and electricity distribution companies). Any costs incurred by the subsidiary (if established) in participating in the licence award process would be funded by SECCo and recovered by them in the same way. There is no impact on charities and voluntary bodies.

9.3 The legislation does not impact small or micro businesses (other than to the extent they are energy suppliers as explained above).

[3] https://smartenergycodecompany.co.uk/department-for-energy-security-net-zero-desnz-consultation-on-modifications-to-the-dcc-licence-and-the-sec-to-provide-for-a-secco-subsidiary-that-could-seek-to-become-the-successor-dcc-l/

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring of this legislation is such that, the Government's monitoring, and evaluation Strategy for the Smart Metering Implementation Programme (SMIP) will ensure that the SMIP is subject to an ongoing review and evaluation process, which will include process and impact evaluation activities. The Authority continues to be responsible for monitoring and taking licence enforcement action, where necessary, in line with its guidelines.

10.2 This instrument does not include a statutory review clause as it is not a statutory instrument. In addition, the business impact is less than £10M.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None. The instrument modifies the conditions of the Smart Meter Communication Licences and the Smart Energy Code (SEC) that was established under conditions of those licences, which were granted under the Gas Act 1986 and the Electricity Act 1989. The instrument is not a statutory instrument.

12. European Convention on Human Rights

12.1 The instrument is subject to negative resolution procedure and does not amend primary legislation, and so no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does not relate to the withdrawal of the United Kingdom from the European Union.