

EXPLANATORY MEMORANDUM TO
THE SMART METER COMMUNICATION LICENSEE ADMINISTRATION
(ENGLAND AND WALES) RULES 2020

2020 No. 629

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This statutory instrument implements the detailed rules and procedures of the Smart Meter Communication Licensee Special Administration Regime (SMCL SAR) that would protect consumers in the unlikely event of the Smart Meter Communication Licensee (SMCL) becoming insolvent. The SMCL provides core data and communication services that underpin the national operation of smart metering.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Department considered stand-alone rules were appropriate because the special administration regime is different to “regular” administration. This is also the approach frequently used for other special administration regimes.
- 3.2 This instrument is based in part on the SAR rules for licensed gas and electricity suppliers (the Energy Supply Company Administration Rules 2013, S.I. 2013/1046), but departs from them, in particular, to accommodate the specific characteristics of the SMCL and to take into account some of the modernisation to insolvency proceedings contained in the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024).
- 3.3 The territorial application of this instrument is limited to England and Wales. The Department intends to make SMCL SAR rules for Scotland before 2025 (the earliest possible expiry point of the current SMCL) so that provisions are in place should the SMCL come to be registered outside of England & Wales in the future. Such rules have not been put in place at this stage because the current SMCL is a company registered in England & Wales.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws):

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent and application of this instrument is England and Wales only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Smart Meters Act 2018 (“the 2018 Act”) makes available a special administration regime for the smart meter communication licensee. Under section 3 of the 2018 Act, the objective of the SMCL SAR is to ensure that the SMCL’s functions under its licences are performed efficiently and economically and to bring the SMCL SAR to an end through a rescue or a transfer as a going concern. The SMCL is the company which holds the licences under section 7AB of the Gas Act 1986 and under section 6 of the Electricity Act 1989 to provide a smart meter communication service. The current holder of these licences is Smart DCC Ltd (“DCC”).

6.2 Sections 4 and 5 of the 2018 Act apply and amend section 159(3) of the Energy Act 2004 in order to extend the power to make company insolvency rules conferred by section 411 of the Insolvency Act 1986 for the purposes of giving effect to the SMCL SAR. As a result, section 411 of the Insolvency Act 1986 empowers the Lord Chancellor, with the concurrence of the Secretary of State and the Lord Chief Justice, to make rules for the conduct of the SMCL SAR.

7. Policy background

What is being done and why?

7.1 Smart meters offer a range of intelligent functions, provide consumers with near real-time information on their energy use, and bring an end to estimated billing so that consumers can manage their energy consumption proactively. The smart meter rollout is a government priority and a critical enabler for achieving a smarter and more flexible energy system and the cost-effective delivery of net zero greenhouse gas emissions by 2050.

7.2 In September 2013, DCC was awarded the smart meter communication licences to provide the core data and communication services that underpin the national operation of smart metering in Great Britain. Gas and electricity suppliers are required to use the SMCL’s services to communicate with smart meters that have been enrolled into the SMCL’s data and communications network. The SMCL enables consumers to switch energy supplier and keep their smart services and permits third parties to collect energy data remotely and securely, subject to the provisions of the smart metering Data Access and Privacy Framework. This framework is designed to safeguard consumers’ interests and determines the levels of access to energy consumption data that consumers, energy suppliers, energy networks and third parties have and the choices that consumers have in relation to managing this access. The SMCL’s continued operation is fundamental to providing uninterrupted smart metering services, protecting consumers and securing benefits for consumers and society.

7.3 A SAR is required to avoid significant national disruption to consumers and industry by maintaining the smart meter services of the SMCL in the unlikely event that the

incumbent were to become insolvent. The 2018 Act introduced a new special administration regime (“SAR”) for the SMCL. A special administration regime is a modified insolvency regime that provides an administrator with special objectives, such as the continuity of critical services, that take priority over the objectives in a normal administration. This instrument implements the detailed rules and procedures of the SAR that would achieve this.

7.4 In the event of DCC insolvency, without a SAR in place, there could be a loss of smart services (such as accurate energy bills). Disruption to billing and settlement would also impose significant costs on industry.

7.5 The SAR relates solely to the smart metering communications licensee (currently DCC) and would not apply in relation to the insolvency of any of the current licensee’s Ultimate Controllers¹ (currently Capita). The SMCL service depends on contracts with large subcontractors to provide data and communications services. Equally, the SAR does not extend to these subcontractors as they are diversified businesses serving many clients rather than a special purpose vehicle.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This is not applicable as this is a standalone statutory instrument.

10. Consultation outcome

10.1 The process for developing this instrument has included informal consultation with the Insolvency Service, Ministry of Justice and Companies House. Statutory consultation was carried out with the Insolvency Rules Committee. Amendments were made as a result, in particular, to reflect elements of the Insolvency (England and Wales) Rules 2016, in order to improve clarity and to modernise some of the procedures for the SAR process. A public consultation was not carried out because these Rules apply in the case of insolvency of the SMCL and are not of any wider application.

11. Guidance

11.1 No guidance is required. If used, the Rules would be followed by licensed insolvency practitioners, who are well versed in insolvency proceedings.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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

12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on the private, voluntary or public sector. An updated Cost Benefit Analysis for smart metering was published in September 2019. It estimated the costs and benefits associated with the GB roll-out of smart meters and identified a

¹ As defined in Condition 1.4 of the Smart Meter Communication Licence

substantial net benefit of £6 billion for the period to 2034. This instrument will assist in ensuring that these net benefits are secured.

- 12.4 The updated Cost Benefit Analysis for smart metering published in September 2019, which also sets out the effect that the smart meter roll-out will have on the costs of business, is available at:

<https://www.gov.uk/government/publications/smart-meter-roll-out-cost-benefit-analysis-2019>

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 A statutory review clause is included in the instrument. The Government is required to review the Rules within 5 years after they come into force.

15. Contact

- 15.1 Charles Millman at the Department for Business, Energy and Industrial Strategy, telephone: 020 7215 5403 or email: Charles.millman@Beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Duncan Stone at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Lords Parliamentary Under Secretary of State (Minister for Climate Change and Corporate Responsibility) at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.