



## BRIEFING PAPER

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# Smart Meters Act 2018

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### Contents:

1. The Smart Meter Roll Out
2. Legislative background for smart meters
3. The Smart Meters Bill 2017-19
4. Comment on the Bill
5. Second reading
6. Committee Stage (Commons)
7. Report and Third Reading (Commons)
8. Lords consideration of the Bill



# Contents

<b>Summary</b>	<b>3</b>
<b>1. The Smart Meter Roll Out</b>	<b>4</b>
1.1 Consumer benefits and concerns	4
1.2 Stages of the Smart Meter Roll Out	5
Data Communications Company (DCC) Ltd	5
<b>2. Legislative background for smart meters</b>	<b>7</b>
<b>3. The Smart Meters Bill 2017-19</b>	<b>8</b>
3.1 Pre-legislative scrutiny	8
3.2 Secretary of State's powers to roll out smart meters extended from 2018 to 2023	9
3.3 Special administration regime for communication and data service	10
Aim of clauses 2-9	11
How would the new SAR work?	12
3.4 Further details	15
<b>4. Comment on the Bill</b>	<b>16</b>
4.1 Scrutiny of Smart Meter programme in Parliament and future legislation	16
4.2 Industry comment	19
<b>5. Second reading</b>	<b>21</b>
<b>6. Committee Stage (Commons)</b>	<b>23</b>
6.1 Clause 1: Extension of time for exercise of powers	23
Reviews of the smart meter programme	28
6.2 Clause 2-10: Smart meter communication licensee administration orders	30
Clause 2: smart meter communication licensee administration orders	30
Clause 3: objective of a smcl administration	31
Clause 4: Application of certain provisions of the Energy Act 2004	33
Clause 6: modifications of particular or standard conditions	33
Clauses 8 and 9	35
6.3 Government new clauses 8-10: Half-hourly settlement of electricity imbalances	36
New clauses 8-10	36
Aim of the new clauses	36
Debate on the new clauses	37
<b>7. Report and Third Reading (Commons)</b>	<b>38</b>
<b>8. Lords consideration of the Bill</b>	<b>40</b>
8.1 Second reading	40
The 2020 target	40
Ownership of DCC	41
Half hourly metering	41
8.2 Committee Stage	42
8.3 Report Stage	43
8.4 Third Reading and Royal Assent	44

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## Summary

Energy smart meters cover gas and electricity usage. By 2020, the Government wants every home and small business in Great Britain to have been offered an energy smart meter. Government data shows that as of June 2017, nearly 7.7 million smart meters have been installed in homes and businesses. More details on Smart Meters is available in the [Library Briefing paper on Energy Smart Meters](#).

**Potential benefits of energy smart meters** are that they make energy visible to customers, enabling reduced customer consumption; helping demand management, and ensuring security of supply. Consumers also benefit from more accurate billing, and potential for new tariffs. Suppliers benefit from avoided site visits, reduced enquiries and customer service overheads from estimated billing, and networks benefit from outage detection and management and more informed decisions on network capacity.

**Customer concerns regarding energy smart meters** include data protection and privacy, connectivity issues with some meters, installation visits and doorstep selling, health concerns, disconnection of prepayment meters, and the ability to switch supplier and keep the 'smart functionality'. There have also been concerns raised about the cost of the rollout, which is paid by suppliers and recovered over time through all energy bills. Concern has also been raised about the timescale of the roll out, and whether it will be completed by 2020.

**Legislation for Smart Meters** is included in the *Energy Act 2008*, *Electricity Act 1989* and the *Gas Act 1986*. These Acts include existing powers for the Secretary of State for activities relating to smart meter licensing, modifying licence conditions and industry codes. The powers were originally due to end in the 2013 but the *Energy Act 2011* extended them until 2018.

**The management of the communication with smart meters** is central to the smart meter roll out. The Government granted Smart DCC Ltd (also known as the Data Communications Company or the DCC) a licence in September 2013 to establish and manage the data and communications network to connect smart meters to the business systems of energy suppliers (and other intermediaries and authorised users). The DCC system went live in November 2016. The Government consulted in 2011 on whether a special administration regime should be created to provide protection against financial failure of the DCC, recognising that additional legislation would be needed to put this in place. In January 2016, the Government published [draft legislation](#) including provisions to:

- extend the powers of the Secretary of State to implement and direct the rollout of smart gas and electricity meters from 2018 to 2023; and
- to create a 'special administration regime' for the national smart meter communication and data service provider.

**The Smart Meters Act 2018** (referred to in this paper as 'The Bill') has two main purposes. First, it extends the powers relating to smart meter licensing granted to the Secretary of State in the *Energy Act 2008* again, from 2018 to 2023. Second, it introduces a special administration regime for the DCC in the "unlikely" event of its insolvency.

This Briefing Paper contains background information on smart meters and the roll out, discussion on the clauses of the Bill, and comment on the Bill.

**The Bill received Royal Assent on 23 May 2018 without amendment.**

# 1. The Smart Meter Roll Out

Energy smart meters are advanced meters that cover gas and electricity usage and offer a range of smart functions. By 2020, the Government wants every home in Great Britain to have a new energy 'smart meter'.

The Smart Metering Programme is being implemented by way of a smart metering rollout obligation, which requires energy suppliers to take all reasonable steps to *offer* – but not necessarily provide – the installation of an energy smart meter to all domestic customers and small non-domestic customers (i.e. small businesses) by the end of 2020.<sup>1</sup> The policy is led by the Department for Business, Energy and Industrial Strategy<sup>2</sup> (BEIS) and does not apply to large non-domestic customers. Government data shows that as of March 2017, 11 million smart meters are operating in homes and businesses.<sup>3</sup> More details on smart meters is available in the [Library Briefing paper on Energy Smart Meters](#) (CBP 8119).

## 1.1 Consumer benefits and concerns

Energy smart meters can bring a number of benefits, including:

- For **consumers**: more accurate billing, avoiding meter reading visits, and potential for new products and services such as smart appliances which could turn on in response to energy tariff price information. In a competitive market, a proportion of savings experienced by suppliers may also be expected to pass on to consumers.
- For **suppliers**: avoided site visits, reduced enquiries and customer service overheads resulting from estimated billing, reduced cost to serve customers with pre-payment meters, improved debt-management and remote switching between credit/prepayment, supplier switching savings, reduced energy theft, and no need to visit properties to undertake disconnection.
- For **networks**: outage detection and management, more informed decisions on network enforcement, and generation and network capacity savings from load shifting.<sup>4</sup>

However, there are also a number of customer concerns regarding energy smart meters. These include concerns over data protection and privacy, connectivity in areas with low or no mobile coverage (prior to the Data Communications Company (DCC) rollout), installation visits and doorstep selling, health concerns, disconnection (particularly of prepayment meters), and the ability to switch supplier and keep the 'smart functionality'. There have also been concerns raised about the cost of the rollout, which is paid by suppliers and recouped overtime through all energy bills. Concern has also been raised about the

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<sup>1</sup> BEIS, [Smart meters. Quarterly report to end March 2018. Great Britain](#), 31 May 2018

<sup>2</sup> Formerly, the Department for Energy and Climate Change ('DECC').

<sup>3</sup> BEIS, [Smart Meters Quarterly Report to end June 2017](#), 31 August 2017

<sup>4</sup> Summarised from DECC [Domestic Sector IA](#) April 2012

timescale of the roll out, and whether it will be completed by 2020.<sup>5</sup> You can read more about these concerns in the [Library Briefing paper on Energy Smart Meters](#) (CBP 8119).

BEIS published a cost-benefit analysis in which the total estimated cost of the policy by 2030 was £11 billion and it was expected to deliver benefits of £16.7 billion and therefore net benefits of £5.8 billion by 2030.<sup>6</sup> The cost-benefit analysis also shows that the Government expects the rollout of energy smart meters to reduce the average household's combined electricity and gas bill by £11 in 2020 and £47 in 2030.<sup>7</sup> This is mainly comprised of customer savings from reduced energy consumption but there are also savings from avoided costs of microgeneration metering, suppliers avoiding site visits, reduced inquiries and customer overheads, and network benefits.

## 1.2 Stages of the Smart Meter Roll Out

There are two types of technical specifications of smart meter, and two main stages of the Smart Meter Roll Out:

- **SMETS 1 meters:** are the first generation of energy smart meters and are compliant with the first version of the Government's Smart Meter Equipment Technical Specification ('SMETS').<sup>8</sup>

It was planned that SMETS1 meters would be rolled out as part of the Foundation Stage (2011-2016) only. However, they are currently still being rolled out as part of the Main Rollout Stage because of delays in laying out the required infrastructure for SMETS 2 meters (see Data Communications Company section below). The Government recently stated that, from 13 July 2018, these meters will no longer count towards the 2020 target.<sup>9</sup>

- **SMETS 2 meters:** are the second generation of energy smart meters and are compliant with the second and latest version of the SMETS.<sup>10</sup> SMETS 2 meters have been designed to address some of the issues with earlier specifications of smart meters and customer switching.

It was planned that SMETS 2 meters would be rolled out as soon as the Main Rollout Stage was launched in November 2016. On 5 September 2017, the Government stated that testing was of SMETS 2 was ongoing.<sup>11</sup>

## Data Communications Company (DCC) Ltd

Central to the smart meter roll out is the management of the communication infrastructure and network for smart meters. The Government granted Smart DCC Ltd<sup>12</sup> (also known as the Data

<sup>5</sup> House of Commons Library, [Energy Smart Meters](#), October 2017

<sup>6</sup> BEIS, [Smart meter roll-out cost-benefit analysis – Part I](#), August 2016

<sup>7</sup> BEIS, [Smart meter roll-out cost-benefit analysis – Part I](#), August 2016

<sup>8</sup> DECC, [Smart metering implementation programme: smart metering equipment technical specifications](#), 31 March 2014

<sup>9</sup> BEIS, [Decision on R1.3-related obligations](#), 11 August 2017

<sup>10</sup> DECC, [Smart metering equipment technical specifications: second version](#), 28 November 2014

<sup>11</sup> [PQ 616Z](#), 5 September 2017

<sup>12</sup> Smart DCC Ltd is a subsidiary of Capital plc

Communications Company or the DCC) a licence in September 2013 to establish and manage the data and communications network to connect smart meters to the business systems of energy suppliers (and other intermediaries and authorised users).<sup>13</sup> The DCC is a licensed entity regulated by the Gas and Electricity Markets Authority (Ofgem) and holds smart meter communication licences awarded under the *Electricity Act 1989* and the *Gas Act 1986*.

The DCC's 2016 business plan explains its role in the smart meter roll out as follows:

In line with our commitment to our Licence Objectives, our primary role is to implement and operate the smart meter communication service and to deliver our services in a way that encourages competition and innovation, while ensuring value for money and reducing DCC charges. DCC is just one of many participants in the Smart Metering Implementation Programme. It is crucial that we coordinate and collaborate with energy suppliers, network operators, meter manufacturers, Registration Data Providers, and others to enable a successful rollout.<sup>14</sup>

DCC's system has had a number of delays, but mostly went live in November 2016, enabling energy suppliers to install and operate an updated version of smart meters (SMETS2) on its systems.<sup>15</sup>

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<sup>13</sup> Gov.uk, [Award of Smart Meters DCC License](#), 23 September 2013

<sup>14</sup> [DCC Business Plan: Delivering your smart future, 2016/17 – 2019/20](#), DCC, January 2016

<sup>15</sup> Utility Week, [Most of smart meter network goes live](#), 10 November 2016

## 2. Legislative background for smart meters

Sections 88-91 of the [Energy Act 2008](#) gave the Secretary of State broad powers to implement and direct the rollout of smart gas and electricity meters. These were due to expire in November 2013 but were extended by the Coalition Government until 2018 in the [Energy Act 2011](#). There are also aspects of the [Electricity Act 1989](#) and the [Gas Act 1986](#), as amended by the [Energy Act 2008](#), that relate to smart meters.

According to the explanatory notes of the Smart Meters Bill 2017-19 the [Electricity Act 1989](#), and the [Gas Act 1986](#), as amended by the [Energy Act 2008](#) gave the Secretary of State a number of powers in relation to smart meters including to:

- a. make activities relating to smart metering licensable;
- b. modify licence conditions and industry codes; and
- c. veto any proposal by the Authority to consent to the transfer of the DCC Licence.

The Government has used the first of these powers to make the provision of the smart meter communication service licensable, and the second to develop the regulatory framework. The regulatory framework continues to develop to facilitate the realisation of a full DCC service to cover all premises and smart meter types. The third power has not yet been used but is provided in order to maintain regulatory stability and government oversight of smart metering.<sup>16</sup>

The [Smart Energy Code](#) (“a multi-party agreement, which requires energy suppliers, network operators and other relevant stakeholders to become a party to the SEC and to comply with its provisions in order to use DCC services”<sup>17</sup>) incorporates some of the supplier licence obligations into a wider body of rights and obligations placed on suppliers and DCC. In addition, the [Smart Metering Installation Code of Practice](#) (SMICOP) regulates the behaviour that energy suppliers must adopt when visiting customers’ home to do an energy smart meter installation.

Chapter 3 of the [Energy Act 2004](#) (EA 2004) provides that a court may make an energy administration order appointing an energy administrator in relation to a protected energy company i.e. a company which holds a gas transportation licence or an electricity transmission or distribution licence. Special Administration Regimes (SARs) are already used in other sectors, such as postal services. The position is also different for water, railways, the transportation or supply of gas and the transmission, distribution and supply of electricity.

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<sup>16</sup> [Smart Meter Bill: Explanatory Notes](#), DBEIS, 18 October 2017

<sup>17</sup> [Smart Energy Code \(SEC\)](#), DCC, [accessed: 20 October 2017]

## 3. The Smart Meters Bill 2017-19

In the [2017 Queen's Speech](#), the Government announced plans for a Smart Meter Bill for the 2017-19 Parliamentary session.<sup>18</sup> The [background notes to the Queen's Speech](#) explained that the Bill would not contain any major changes to the status quo, and that its primary purpose would be to extend the Government's ability to make changes to smart meter regulations by five years in order to deliver the rollout.<sup>19</sup>

The Smart Meter Bill 2017-19 had its first reading on 18 October 2017. Second reading is scheduled for 24 October 2017.

The Bill has two primary purposes. First, the Bill would extend the powers of the Secretary of State to implement and direct the rollout of smart gas and electricity meters from 2018 to 2023. Second, the Bill would legislate for a 'special administration regime' for the national smart meter communication and data service provider (DCC) to ensure the service continues to be provide even in the unlikely case of its insolvency.<sup>20</sup>

The Bill contains 11 Clauses. Clause 1 covers extension of the Secretary of State's powers from 2018 to 2023, Clauses 2 to 9 cover the 'special administration regime', Clause 10 covers Interpretation and Clause 11 covers the commencement and territorial extent of the Bill. The Bill applies to England, Wales and Scotland.

### 3.1 Pre-legislative scrutiny

In January 2016, the [Department of Energy and Climate Change \(DECC\) published draft legislation](#) and other documents related to "increasing competition in the energy market and reducing energy costs for consumers" including draft provisions to:

- extend the powers of the Secretary of State to implement and direct the rollout of smart gas and electricity meters from 2018 to 2023; and
- to create a 'special administration regime' for the national smart meter communication and data service provider.<sup>21</sup>

On the same day the draft legislation was published, [the House of Commons Energy and Climate Change \(ECC\) Committee announced](#) that it would conduct pre-legislative scrutiny of the Bills.<sup>22</sup> As part of its scrutiny of the draft legislation, the committee held two oral evidence sessions and received 26 written evidence submissions from industry trade bodies, the Government, regulators and energy suppliers.

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<sup>18</sup> [2017 Queen's Speech](#), 21 June 2017

<sup>19</sup> Cabinet Office, [Queen's Speech 2017: background briefing notes](#), 21 June 2017, p.32

<sup>20</sup> [Smart Meter Bill: Explanatory Notes](#), DBEIS, 18 October 2017

<sup>21</sup> [Draft Legislation on Energy](#), DECC, 21 January 2016

<sup>22</sup> [Pre-legislative scrutiny of the Government's draft legislation on energy](#), ECCC, 21 January 2016

In its evidence to the committee, DECC set out their rationale for the smart meters legislation, explaining that:

2. The measures on smart metering will enable Government to continue to drive timely completion of the roll-out and delivery of the benefits that smart meters will bring. Consumers will benefit by being able to reduce their energy consumption and bring down their energy bills. They will also be able to shop around for the best supplier deals on offer, by making switching energy suppliers easier and faster, which will improve competition in the energy market. Smart meters will result in an end to estimated billing, and enable energy suppliers to realise a number of operational cost savings, for example by removing the need to send meter readers to their customers' homes. In addition, smart meters have the potential to transform the experience of being a prepayment customer – topping up a smart meter in prepay mode should become as easy as topping up a mobile phone and they are likely to herald greater and cheaper tariff choices for these customers.

3. These measures will also provide important protections for consumers and the energy industry by ensuring the smart metering communication service continues to operate effectively, which is necessary for the benefits of smart metering to be realised.<sup>23</sup>

The [Committee published their findings](#) on 4 May 2016 (some of the key concerns and the recommendations are detailed below).<sup>24</sup>

### 3.2 Secretary of State's powers to roll out smart meters extended from 2018 to 2023

**Clause 1** amends the *Energy Act 2008* (see description in Section 2 above) to extend the Secretary of State's power to amend license conditions in relation to smart meters from 2018 to 2023. The same amendment is applied to the relevant sections of the *Electricity Act 1989* and the *Gas Act 1986*. A similar extension, from 2013 to 2018, was made in the *Energy Act 2011*. As such Clause 1 would also omit the relevant subsections of the *Energy Act 2011*.

The Government states in the explanatory notes to the Bill that this extension of powers is "so he (the Secretary of State) has the ability to intervene where required to drive the timely completion of the rollout of smart meters by end 2020".<sup>25</sup> In its pre-legislative scrutiny of the smart meters draft Bill in 2016, the ECC Committee noted that this clause had prompted some industry concerns that the programme of smart meter roll-out would not meet the Government's 2020 deadline. On this proposed clause the [Committee specifically said](#):

The extension beyond 2020 of the Secretary of State's powers on smart metering has raised legitimate questions about whether the

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<sup>23</sup> [Written evidence submitted by the Department of Energy and Climate Change \(DEB0009\)](#), 23 February 2016

<sup>24</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government's draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, para. 12

<sup>25</sup> [Smart Meter Bill: Explanatory Notes](#), DBEIS, 18 October 2017, p. 2

smart meter roll-out programme is on track to meet its 2020 target. We accept, however, that extending them until 2023 will enable the Secretary of State to address the outcomes of the programme in order to ensure its maximum benefits. We therefore support the extension of these powers, with the caveat that the Government must state whether the 2020 target is realistic and ensure that all those involved in the roll-out programme are committed to, and capable, of meeting it. We recommend that parliamentarians press the Government, during the passage of the Bill through Parliament, on what progress is being made towards achieving the 2020 roll-out target.<sup>26</sup>

Similarly, following the Queen’s Speech, there was speculation that the deadline for the smart meter roll out would be extended. On 5 July 2017, an [article in \*Utility Week\*](#) discussed the 2020 deadline:

Ryan Thomson, a partner at energy consultancy Baringa, believes the bill certainly offers “wobble room”, while Dan Lewis, energy policy adviser for the Institute of Directors, is confident it represents a watering down of the 2020 deadline. The government has acknowledged “there was no way they were going to make the 2020 target”, says Lewis, and he looks forward to some “healthy debate” around the practicalities of smart metering when the bill comes through.<sup>27</sup>

The Committee also raised concerns about the intended use of these powers, specifically that the Secretary of State could intervene directly, over the top of existing industry-led governance processes.<sup>28</sup> In response to the concerns, the then Parliamentary Under-Secretary of State for Energy and Climate Change, Lord Bourne of Aberystwyth told the Committee that delivery of the programme would be completed in 2020. He went on to explain that the extension of the Secretary of State’s powers had been included to enable him to “undertake to review the whole programme to see how it is affected” as well as to enable the Department to deal with any issues that may arise after 2020.<sup>29</sup>

### 3.3 Special administration regime for communication and data service

The continued, uninterrupted operation of the smart meter communication licensee (currently the DCC) is crucial. Through the DCC, energy companies (alongside networks and other third parties), can collect energy usage data remotely to deliver the benefits of smart metering, including faster switching and accurate billing.

In 2011, prior to the granting of the licence to the DCC, the [Government consulted](#) on the policy design of the regulatory

<sup>26</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government’s draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, para. 12

<sup>27</sup> Jane Gray, [Is the smart meter deadline the culprit for programme woes?](#) 5 July 2017

<sup>28</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government’s draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, para. 10

<sup>29</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government’s draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, para. 11

framework for the DCC. In this consultation they asked for views on (among other things) whether a special administration regime should be created to provide protection against financial failure of the DCC, recognising that additional legislation would be needed to put this in place. In response to this consultation, the Government said:

After further consideration of this issue and assessment of the responses received, the Government proposed in the April 2012 consultation that a special administration regime (SAR) delivered through primary legislation, or an intervention regime (as provided for in the draft DCC Licence) to address failings in an incumbent DCC would offer advantages in comparison to a fast-track application process.<sup>30</sup>

Although the Government considers there is only a very small risk of insolvency of the smart meter communication licensee, it is concerned that the impact on consumers would be great, potentially resulting in a loss of energy billing services. In particular, vulnerable consumers might be badly affected if prepayment services were disrupted. This explains the Government's decision to create a new Special Administration Regime (abbreviated to "SAR") for an insolvent "smart meter communication licensee".

On 16 July 2017, an [article in the \*Financial Times\*](#) reported that the costs involved with building the DCC communications infrastructure had risen to a now estimated "£3.13bn over 18 years, up from an earlier estimate of £2.47bn."<sup>31</sup>

In its pre-legislative scrutiny of the draft Bill, the ECC Committee said that the "creation of a special administration regime for the Data and Communications Company was considered good practice, and those who submitted evidence did not raise concerns about it."<sup>32</sup>

## Aim of clauses 2-9

**Clauses 2-9** of the Bill provide for the introduction of a SAR for an insolvent smart meter communication licensee. The overriding objective of the SAR is to ensure the continuity of the smart meter communication service. The continued operation of this service being crucial to:

- providing uninterrupted services,
- protecting consumers, and
- securing benefits for both consumers and industry.

Only the Secretary of State or the authority<sup>33</sup> (with agreement of the Secretary of State) would be allowed to apply to the court for a smart meter communication administration order (hereafter abbreviated to

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<sup>30</sup> [Smart Metering Implementation Programme: Government response to the Consultation on the draft DCC Licence Application Regulations](#), DECC, 28 September 2012

<sup>31</sup> Natalie Thomas, [Energy companies raise alarm over £11bn smart meter roll out](#), 16 July 2017

<sup>32</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government's draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, para. 7

<sup>33</sup> the Gas and Electricity Markets Authority, Ofgem's Governing body

“smcl administration order”). If the court application is successful, ordinary insolvency procedures would not be available in respect of an insolvent smart meter communication licensee.

SARs are already used in other sectors, such as postal services and some insolvent further education colleges. The position is also different for water, railways, the transportation or supply of gas and the transmission, distribution and supply of electricity. It is important to note that many of the clauses in this Bill that relate to the new SAR mirror those that already apply to other energy licensees as set out in the [Energy Act 2004](#).

### How would the new SAR work?

The clauses of the Bill are highly technical. The starting position is to note that sections 156 to 167 the [Energy Act 2004](#) (EA 2004) provides for the existing special administration regime for energy licensees, while sections 171 and 196 deal with interpretation.

**Clause 4** of the Bill modifies the provisions in sections 156 to 167 of, and Schedules 20 and 21 to, the EA 2004 and sections 171 and 196 so they apply in relation to a smcl administration order.

As set out in **Clause 2** of the Bill, only the Secretary of State (or the Authority with agreement of the Secretary of State) would be able to apply to the court for a smcl administration order.<sup>34</sup> Pursuant to **Clause 4**, the court would be empowered to make such an order if:

- it is satisfied that the company is insolvent, facing insolvency, or
- that on a petition from the Secretary of State (under section 124A of the [Insolvency Act 1986](#)) it would be “just and equitable” (aside from the overriding objective of a smart meter communication licensee administration order) to wind up the company in the public interest.<sup>35</sup>

Assuming such an order is granted, the court would appoint a “smcl administrator” (presumably, a licensed insolvency practitioner). For as long as the smcl administration order remains in force, the affairs, business and property of the smart meter communication licensee would be managed by this administrator.<sup>36</sup> Crucially, the smcl administrator must exercise management functions for the purpose of achieving the overriding objective of the SAR as quickly and efficiently as possible. This overriding objective is set out in **Clause 3** of the Bill, namely:

- to ensure that the functions that a smart meter communication licensee performs under its licences are provided efficiently and economically, and
- to render the continuation of the smart meter communication licensee administration unnecessary for this purpose by rescuing the company or making a transfer.

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<sup>34</sup> Section 156, [Energy Act 2004](#)

<sup>35</sup> Section 157, [Energy Act 2004](#)

<sup>36</sup> Section 158, [Energy Act 2004](#)

In other words, the administrator's objective is to ensure that the smart meter communication licensee continues to perform its functions until it is either rescued as a going concern, or transferred to another company (or companies) as a going concern (such a transfer would require approval by the secretary of State).<sup>37</sup> However, it is important to note that under the new SAR, rescue is to be preferred to transfer in achieving the objective of the smcl administration. Indeed, **Clause 3(5)** provides that transfers are only to be effected:

- when rescue is not reasonably practicable without a transfer;
- where the objective of the smart meter communication licensee administration cannot be achieved through rescue without a transfer; or
- where such a transfer would produce a better result for the creditors or members of the company.

This is a crucial point. The SMCL administrator must perform his duties in the manner which (in so far as it is consistent with the smcl administration) best protects the interests of the creditors of the company as a whole and (subject to those interests), the interests of the members as a whole.

According to the Bill's Explanatory Notes, this new SAR may engage Article 1 Protocol 1 (Protection of property) of the [Human Rights Act 1998](#), as regards potential interference with the rights of creditors and third parties.<sup>38</sup> However, the Government considers that there are sufficient safeguards to ensure that the SAR's provisions can be operated in a way that is compliant with property rights and that any interference with such is justified:

"We therefore consider that clauses 2 to 5 strike a fair balance between the general public interest, namely maintaining the continuation of their services that the smart meter communication licensee is required to provide under its licence(s), and the rights of creditors and third parties, and are proportionate to the aims to be achieved." <sup>39</sup>

The smcl administrator does not have complete discretion in striving to achieve the SAR's overriding objective. Under **Clauses 3(6)** and **(7)** of the Bill, the Secretary of State is able to specify in regulations those activities carried out by the company that the administrator must give priority to, and how this should be done. Such regulations to be made by statutory instrument subject to a negative resolution procedure.

Importantly, **Clause 4** of the Bill includes provision that authorises the Secretary of State to:

- Make grants and loans.<sup>40</sup>

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<sup>37</sup> Section 159 and Schedule 20 of the [Energy Act 2004](#), which apply the rule making power in section 411 of the [Insolvency Act 1986](#). Schedule 21 also applies to the Bill in relation to a smcl administration order

<sup>38</sup> Para. 56, [Bill 113 – EN](#)

<sup>39</sup> Ibid

<sup>40</sup> Section 165, [Energy Act 2004](#)

- Give guarantees.<sup>41</sup>
- Indemnify persons in respect of liabilities incurred and loss or damage sustained in connection with the exercise of the smcl administrator's powers and duties.<sup>42</sup> This expenditure to fall on the Consolidated Fund.

The Secretary of State is able to set the terms of a grant or loan, including the requirement that all or part of a grant should be repaid. Indeed, **Clause 6** of the Bill, gives the Government the power to introduce a mechanism for recovering sums paid out through the application of those sections of the [Energy Act 2004](#). In respect of any Government guarantee or indemnity agreement, the Secretary of State is required to lay a statement before Parliament as soon as practicable. The expectation is that any indemnity expenditure would be a short term cash flow injection.

The Explanatory Notes are at pains to point out that while the Government would be able to provide financial support should it be required to prevent insolvency of the smart meter communication licensee, any support would be at the discretion and with the approval of HM Treasury.<sup>43</sup> It follows that this does not create a contingent liability because there is no requirement on the Treasury to provide the support.

Finally, in consideration how the SAR would work in practice, it should be noted that provisions of the Bill would prevent a smcl administration being frustrated by either:

- prior orders of various types being granted before the Secretary of State (or the Authority) has been given an opportunity to apply to the court for an order; or
- other steps being taken when a smcl administration order has been made or an application is outstanding.<sup>44</sup>

Clauses 5, 8 and 9 are highly technical. **Clause 5** would give the Secretary of State the power to make rules under section 411 of the [Insolvency Act 1986](#) in order to give effect to these clauses relating to the SAR. **Clause 8** provides that the power to modify or apply enactments conferred on the Secretary of State by sections 248, 277 and 254 of the [Enterprise Act 2002](#), would include a power to make consequential modifications to these clauses relating to the SAR, and to Chapter 3 of Part 3 of the [Energy Act 2004](#) as applied by clause 4, where the Secretary of State considers this appropriate. Finally, **Clause 9** grants the Secretary of State a power to provide for insolvency legislation to apply and to make further modifications of insolvency legislation if deemed necessary.

**Clause 7** does not apply to insolvency but instead specifies the modifications the Secretary of State can make under Clause 6 to secure funding of smcl administration. This allows the cost of the smcl

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<sup>41</sup> Section 167, [Energy Act 2004](#)

<sup>42</sup> Section 166, [Energy Act 2004](#)

<sup>43</sup> [Smart Meter Bill: Explanatory Notes](#), DBEIS, 18 October 2017

<sup>44</sup> Sections 160 to 164, [Energy Act 2004](#)

administration to be recouped from energy customers via the license mechanism from the industry.

### 3.4 Further details

**Clause 10** defines the terms used in clauses 2 to 9.

**Clause 11** sets out the Bill's short title, commencement and extent.

Commencement depends on the section of the Bill. Section 1 and 11 is intended to enter into force on the day in which the Bill receives royal assent. All other Sections come into force two months after the day on which the Bill receives royal assent.

The extent of the Bill covers England, Wales and Scotland. Northern Ireland is not part of the Smart Meter rollout and operates separately to the GB market.

## 4. Comment on the Bill

### 4.1 Scrutiny of Smart Meter programme in Parliament and future legislation

In 2016, the Commons ECC committee carried out [pre-legislative scrutiny of the Government's draft legislation on energy](#) including an examination of the draft Smart Meter Bill. The committee refer to a previous report from May 2015 which raised concerns over the progress of the Smart Meter Rollout:

In March 2015 our predecessor Committee issued a progress report on the programme. The Committee concluded that these problems were “symptomatic of a national programme that the Government has left largely to suppliers and failed to drive forward effectively.” It added, “Consequently, we do not believe that near-universal smart meter roll-out will be achieved by 2020.”<sup>45</sup>

The Committee assessed the extension of the Secretary of States powers to 2023 which caused some concern among industry bodies:

The inclusion of this provision prompted concerns among many who submitted written evidence. First, there was the serious worry that extending the duration of these powers was a tacit acknowledgement that the smart meter roll-out programme would not be completed by the Government's 2020 deadline, and that this would lead to increased costs for consumers. EDF Energy told us that “no justification” had been provided for the extension, “some three years beyond the smart meter roll-out deadline”. It stated:

“Effectively extending the duration of the original powers granted by Parliament to the Secretary of State by ten years brings in to question, not only the rationale for introducing a ‘sunset clause’ in the first instance, but the general use of such clauses and the protections they provide to licence holders in legislation [...] if these powers are to be extended a clearer rationale should be provided for the need, and length, of any extension.”

[...]

Witnesses pointed to a perceived risk that the Secretary of State, rather than using their influence to resolve issues, would intervene directly, over the top of existing industry led governance processes. But despite their concerns, witnesses could not provide us with an example of any Secretary of State having previously used the powers inappropriately.<sup>46</sup>

The Committee put these concerns to the then Parliamentary Under-Secretary of State for Energy and Climate Change, Lord Bourne of Aberystwyth, who explained the timeline:

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<sup>45</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government's draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, para. 6

<sup>46</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government's draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, paras. 9-10

We now have more than 2 million smart meters in store and that will ramp up during the course of this year and particularly next year, so we do think it is on course. Obviously with any project of this size it does not come without risks. That is clearly the case with a national programme like this but we are alive to that and we do everything we can to address those risks as and when they arrive.

[...]

Delivery will be completed in 2020 but a year after that we undertake to review the whole programme to see how it is affected. There will be an issue like people who have refused smart meters, and we accept there will be some of those who may have changed their minds, who may want to revisit that [...] There will be things that will help us progress to smart grid, like peak load shifting and so on. These are issues that will arise after 2020 so we will need to continue to have the power of the Secretary of State to keep driving the programme to make sure we get maximum benefits. Our best estimate of how long that should go on is towards the end of 2023.<sup>47</sup>

The Committee's recommendation supported the extension of the Secretary of State's powers, but with the caveat that the Government states whether the 2020 target is realistic:

The extension beyond 2020 of the Secretary of State's powers on smart metering has raised legitimate questions about whether the smart meter roll-out programme is on track to meet its 2020 target. We accept, however, that extending them until 2023 will enable the Secretary of State to address the outcomes of the programme in order to ensure its maximum benefits. We therefore support the extension of these powers, with the caveat that the Government must state whether the 2020 target is realistic and ensure that all those involved in the roll-out programme are committed to, and capable, of meeting it. We recommend that parliamentarians press the Government, during the passage of the Bill through Parliament, on what progress is being made towards achieving the 2020 roll-out target.<sup>48</sup>

The Committee also collected evidence on the special administration regime for the DCC but this was not a contentious issue:

The creation of a special administration regime for the Data and Communications Company was considered good practice, and those who submitted evidence did not raise concerns about it.<sup>49</sup>

The [Government response](#) to the Committee was published on 18 July 2016.<sup>50</sup> In their response, the Government welcomed the committee's

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<sup>47</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government's draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, para. 11

<sup>48</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government's draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, para. 12

<sup>49</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government's draft legislation on energy](#), Sixth Report of Session 2015–16, **HC 776**, 2016, para. 7

<sup>50</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government's draft legislation on energy: Government Response to the Committee's Sixth Report of Session 2015–16](#), Fourth Special Report of Session 2016–17, **HC 581**, 19 July 2016

support for smart metering measures and reiterated its commitment to competing the rollout by 2020. On achieving the timescale they said:

Energy suppliers have had long term visibility of the need to take all reasonable steps to install smart meters in their domestic and smaller non-domestic customers' premises by the end of 2020. The Government assess most large energy suppliers as being adequately or well prepared to start using the Data Communications Company services and to begin the main installation phase later this year.<sup>51</sup>

A number of other reports have been produced on the smart meter roll out.

- The [National Audit Office report in 2011](#) looked at preparations for the rollout and concluded that there was limited evidence that smart meters change behaviour and warned costs could escalate.<sup>52</sup>
- The [Public Accounts Committee report in 2012](#) welcomed the rollout but like the NAO concluded there were uncertainties over the estimated costs and benefits.<sup>53</sup>
- The [Public Accounts Committee reported again in 2014](#) and recommended the Government keep the design of the programme under review in case costs increase.<sup>54</sup>
- The [Energy and Climate Change Select Committee](#) first reported on the rollout in 2013 where they welcomed the programme, but said the benefits had to be clearly explained to customers.<sup>55</sup>
- The [Energy and Climate Change Select Committee reported again in 2015](#) and warned that as the Government had not resolved problems with the rollout, it risked smart meters being a costly failure.<sup>56</sup>
- The [Science and Technology Select Committee report in 2016](#) raised concerns about customer engagement and interoperability. The Government responded saying the Smart Energy GB's national customer engagement campaign would remedy engagement issues.<sup>57</sup>

On 12 October 2017, the Government announced their draft Energy Price Cap Bill. The following debate on retail energy included discussion

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<sup>51</sup> House of Commons Energy and Climate Change Committee, [Pre-legislative scrutiny of the Government's draft legislation on energy: Government Response to the Committee's Sixth Report of Session 2015–16](#), Fourth Special Report of Session 2016–17, **HC 581**, 19 July 2016, para. 6

<sup>52</sup> National Audit Office, [Preparations for the smart meter roll-out of smart meters](#), 30 June 2011

<sup>53</sup> Public Accounts Committee, [Preparations for the roll-out of smart meters](#), **HC 1617**, Sixty Third Report 2010-2011, 17 January 2012

<sup>54</sup> Public Accounts Committee, [Update on preparations for the roll-out of smart meters](#), Twelfth Report 2014-2015, **HC 103**, 10 September 2014

<sup>55</sup> ECC Committee, [Smart meter roll-out](#), Fourth report 2013-14, **HC 161**, 16 July 2013

<sup>56</sup> ECC Committee, [Smart meters: progress or delay?](#), Ninth Report 2014-2015, **HC 665**, 7 March 2015.

<sup>57</sup> Science and Technology Committee, [Evidence Check: Smart metering of electricity and gas](#), **HC 161**, Sixth Report 2016-2017, 24 September 2016, p.5

of the smart meter roll out. Jonathon Grogan MP raised the timetable of the rollout:

The Secretary of State has placed some emphasis on the roll-out of smart meters by 2020. How does he react to the figures published in *The Daily Telegraph* over the summer revealing that in the case of some companies, fewer than one in five consumers were accepting the offer of a smart meter?<sup>58</sup>

The Minister Greg Clark responded:

I do not recognise that figure. It is a fact that smart meters are being offered to every household in the country, and I think it is important that as they are rolled out, their benefits—not least the ability to secure lower prices—are made very clear to people.<sup>59</sup>

The Government have regularly been questioned on their progress towards meeting its smart meter roll-out timetable. In response, the Government have consistently stated that it is “committed to ensuring that every home and small business in the country is offered a smart meter the end of 2020.”<sup>60</sup> In [response to a PQ in March 2017](#), the then Minister Jesse Norman also added:

Energy suppliers’ license conditions require them to take ‘all reasonable steps’ to roll-out smart meters to all their domestic and non-domestic customers by 31 December 2020. Ofgem is responsible for regulating energy suppliers against that obligation.<sup>61</sup>

Announcing the Bill’s introduction to Parliament, [BEIS published a Press release](#) on 18 October 2017, in which Energy Minister Richard Harrington stated:

The roll-out of smart meters continues at pace with almost 7.7 million already operating in Great Britain and nearly 350,000 being installed every month, bringing an end to estimated bills and helping people to save energy and money.

Every home and small business will be offered a smart meter by the end of 2020. The Bill published today will ensure consumers continue to get the most from their smart meters once installed, during and beyond the roll-out.<sup>62</sup>

## 4.2 Industry comment

Energy UK, an industry trade body, are yet to comment on the first reading of the Bill. However on 21 June 2017, following the Queen’s Speech, they made [a statement](#) in support of Smart Meters. Their Chief Executive, Lawrence Slade, stated:

Smart meters show consumers exactly what they’re spending in pounds and pence, in near real time. They mean an end to estimated billing, enable easier switching and give customers a greater understanding of their energy use, helping them save energy and money.

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<sup>58</sup> HC Deb 12 October 2017 v629 [c482](#)

<sup>59</sup> HC Deb 12 October 2017 v629 [c482](#)

<sup>60</sup> PQ [3134](#) [smart meters] 5 July 2017

<sup>61</sup> PQ [69051](#) [smart meters] 24 March 2017

<sup>62</sup> Gov.uk, [Smart Meters Bill introduced to Parliament](#), 18 October 2017

The industry has already installed nearly 7 million smart meters in the UK. Suppliers remain committed to ensuring all households and businesses are offered a smart meter by 2020 and that the rollout is carried out efficiently and delivers a positive experience for consumers.<sup>63</sup>

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<sup>63</sup> Energy UK, [Energy UK comments on Smart Meter Bill announcement](#), 21 June 2017

## 5. Second reading

The Bill passed its [second reading on 24 October 2017](#).<sup>64</sup> Introducing the Bill, the Secretary of State, Greg Clark, stated:

The Bill, which passed its pre-legislative scrutiny in 2016, is narrow in scope and technical in nature, but it is an important Bill that supports the delivery of the smart metering implementation programme to modernise an outdated part of our energy infrastructure.<sup>65</sup>

However, during the debate a number of concerns were raised. First, that Clause 1, extending the period of the Secretary of State's powers from 2018 to 2023, introduced a possibility that the 2020 deadline would be missed. For example Steve McCabe said:

The Minister will be aware that the Energy and Climate Change Committee raised questions about the 2020 target, and he will know that both the Institute of Directors and some in the industry have suggested that the purpose of the extension might be to give the Government wriggle room.<sup>66</sup>

Caroline Flint also raised this point:

We have heard that the 2020 target is unlikely to be met, which is probably why clause 1 of the Bill extends the power to amend licensing conditions from 1 November 2018 to 1 November 2023.<sup>67</sup>

Second, Members also raised concerns that customers already paying for the roll out could also end up liable for bankruptcy of the Data Communications Company due to the provisions in clause 7. Rebecca Long Bailey said:

Given the centrality of the DCC to the successful working of the smart meter system, it is clear that we need a plan in the event of its insolvency. I am therefore concerned by clause 7. As the explanatory notes summarise, the clause includes provision

*"requiring the holder of the licence to raise the charges imposed on its customers or users so as to raise such amounts as may be determined by the Secretary of State and to pay the amounts raised to specified persons for the purpose of making good a shortfall in the property of a smart meter communication licensee available to meet the expenses of smart meter communication licensee administration."*

They go on to state:

*"This will allow the costs of smart meter communication licensee administration to be recouped via the licence mechanism from the industry."*

The DCC is a wholly owned subsidiary of Capita plc, to which the task of providing all the communications and infrastructure for the operation of smart meters has been outsourced. However, it is not clear from the Bill or the explanatory notes why, in the event

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<sup>64</sup> HC Deb 24 October 2017 Vol630 [c236-269](#)

<sup>65</sup> HC Deb 24 October 2017 Vol630 [c236](#)

<sup>66</sup> HC Deb 24 October 2017 Vol630 [c255](#)

<sup>67</sup> HC Deb 24 October 2017 Vol630 [c252](#)

of this wholly owned subsidiary of Capita going into administration, customers and users, per se, should foot the bill, especially when they have already suffered the cost of the smart meter roll-out in their energy bills.<sup>68</sup>

At the end of the debate, The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy, Richard Harrington, stated:

Earlier this year when I decided I was going to switch my supplier, I found myself on my hands and knees with a torch and a duster, clearing cobwebs away. That is no way to go on. The purpose of this Bill is to give us all a way of changing supplier and put us in control of our destiny when it comes to our power.

I thank hon. Members from both sides of the House for their contributions, none of which I take lightly. I look forward to the Bill Committee, and I will be delighted when we have agreed with the Opposition the time needed to go through the Bill in great detail. I will not go into as much detail in this speech as I will do in the Committee, because I am delighted that everything has been agreed. I remind Members on both sides of the House that the Bill is not about money saving, modernisation for the sake of it or replacing old kit; it is the platform for a new smart and flexible energy system that gives control to all customers—vulnerable customers and others alike. That is absolutely necessary, which is why we are doing it.

[...]

The smart meter programme is the foundation of this whole system of freedom. It is one of the most significant engineering projects that has been undertaken in our country, and I am delighted to report that about 370,000 smart meters are being installed each month. I have met the suppliers, and they have all made arrangements to double or triple that in the next few months. I thank hon. Members on both sides of the House for their contributions today, and I look forward to the agreed scrutiny of this Bill. I commend it to the House.<sup>69</sup>

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<sup>68</sup> HC Deb 24 October 2017 Vol630 [c243](#)

<sup>69</sup> HC Deb 24 October 2017 Vol630 [c264](#)

## 6. Committee Stage (Commons)

Committee Stage scrutiny of the Bill commenced on 21 November 2017, and concluded on 28 November after six sittings. The Government tabled three new clauses (and consequential amendments to enable the new clauses and to the short and long title of the Bill) which were added to the Bill. The Government's new clauses amended the Bill to give Ofgem the power to modify licence codes to enable half-hourly billing to be calculated using information obtained from smart meters, and the procedures by which Ofgem can use these powers.

The Opposition tabled a number of probing amendments, and new clauses calling for the Government to carry out reviews of the smart meter roll-out. All Opposition amendments and new clauses were either withdrawn after debate, or rejected following a division.

Before the debate on amendments and new clauses the committee held two evidence sessions in which they heard from representatives from Energy UK, Ofgem, the Smart DCC Ltd, smart meter manufacturers, academics and Citizens Advice. The witnesses were questioned on (amongst other things) the cost and progress of the smart meter rollout, the Government's 2020 deadline, and interoperability of smart meters.

### 6.1 Clause 1: Extension of time for exercise of powers

Clause 1 of the Bill amends the *Energy Act 2008* to extend the Secretary of State's power to amend license conditions in relation to smart meters from 2018 to 2023. The same amendment is applied to the relevant sections of the *Electricity Act 1989* and the *Gas Act 1986*. The opposition tabled a number of probing amendments to clause 1 of the Bill relating to:

- concerns that the 2020 target for completion of the smart meter programme would be missed (amendments 1-5);
- issues around interoperability between SMETS 1 and SMETS 2 meters (amendment 12); and
- the need to license meter asset providers i.e. the owners of smart meters rented out to energy suppliers (amendments 6 and 7).

In addition, the Opposition tabled a number of new clauses which would require the Government to review the smart meter programme before exercising these powers.

#### Rollout targets (amendments 1-5)

Steve McCabe moved amendments 1-5 to amend **clause 1** of the Bill to reduce the period for which the Secretary of State is granted the power to amend license conditions in relation to smart meters from 1 November 2023 to 31 December 2020 "to align them with the planned completion of the smart meter rollout."<sup>70</sup> He explained that the scale of what remains of the smart meter roll-out programme is "immense" and

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<sup>70</sup> PBC Deb 23 November 2017 (morning) [c60](#)

the purpose of the amendments were “to probe the Minister to explain what has happened so far and why he is so confident that in the future he will be able to stick to deadlines that have not been kept to so far.”<sup>71</sup> During earlier evidence sessions several witnesses told the Committee the smart meter rollout posed an enormous challenge simply because of the many smart meters that need to be installed. Audrey Gallacher, Director of Retail Energy at Energy UK (a trade body) told the Committee:

It would be a huge mistake to underestimate the size of the challenge here with the smart meter roll-out. It is a massive logistical infrastructure programme—53 million meters—so it will be tough.<sup>72</sup>

Members<sup>73</sup> and witnesses<sup>74</sup> before the Committee also raised the issue of a potential cost impact of any delay in the rollout programme which could mean customers would not see the forecast benefits.

Energy Minister Richard Harrington replied and said he opposed the amendments because it would remove the Department’s ability to conduct an effective post-implementation review:

The extension of the powers proposed in the Bill will enable us to drive progress to the 2020 deadline, act on evidence to remove any emerging barriers to the roll-out and then—this is the important thing for the 2023 extension—to respond to the findings of a post-roll-out review, to ensure that the benefits for consumers are fully realised over the long term. Industry and consumer groups have made it clear that they see a need for Government leadership on this, which we hope we are providing.<sup>75</sup>

The amendment was withdrawn, although Steve McCabe said that he did not find the Minister’s response “reassuring” and that a number of his questions had not been answered.<sup>76</sup>

### **Interoperability of SMETS 1 and SMETS 2 meters (amendment 12)**

Steve McCabe also moved amendment 12 which proposed excluding the rollout of SMETS 1 meters from the extended licence (see [section 1.2](#) for more information on SMETS 1 and SMETS 2 meters).<sup>77</sup> This probing amendment sought to “get to the bottom of the interoperability issue.”<sup>78</sup> During the foundational stage of the smart meters programme, SMETS 1 technical specification meters have been rolled out. In some instances, these meters have not been interoperable between energy suppliers; some customers who have switched energy supplier have lost the ‘smart’ functionality of their meter and the meter could only be operated in ‘dumb’ mode. Derek Lickorish, Director of

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<sup>71</sup> PBC Deb 23 November 2017 (morning) [c61](#)

<sup>72</sup> PBC Deb 21 November 2017 (morning) [c12](#)

<sup>73</sup> PBC Deb 23 November 2017 (morning) [c61](#)

<sup>74</sup> PBC Deb 21 November 2017 (morning) [c12](#)

<sup>75</sup> PBC Deb 23 November 2017 (morning) [c75](#)

<sup>76</sup> PBC Deb 23 November 2017 (morning) [c78](#)

<sup>77</sup> PBC Deb 23 November 2017 (afternoon) [c81](#)

<sup>78</sup> PBC Deb 23 November 2017 (afternoon) [c81](#)

Smart Meter Ltd, told the committee that as many as 20% of smart meters were operating in 'dumb' mode.<sup>79</sup>

The DCC has been working on ways to make SMETS1 smart meters interoperable between energy suppliers its system. Ahead of enrolment in to the DCC, a number of industry parties are exploring approaches to enable more consumers to retain their smart services upon switching.<sup>80</sup> In an earlier evidence Derek Lickorish explained that the industry-led approaches had solved the technical issues around interoperability for 95% of SMETS 1 meters.<sup>81</sup> However, issues around commercial interoperability remain (see section below on licensing meter asset providers).

Steve McCabe further explained the rationale of this amendment as follows:

The Government recently announced that as of 13 July 2018, SMETS 1 meters will no longer count towards the 2020 target, hence the amendment. If SMETS 1 meters will not count towards that target, why are they still being installed and why is an extension of powers relating to SMETS 1 required beyond the Government's 13 July 2018 date?

SMETS 2 meters are the second generation of energy smart meters, compliant with the second and latest version of SMETS. They were meant to be rolled out as soon as the main roll-out stage was launched in November 2016 and they were supposed to resolve some problems identified in SMETS 1. As a recent parliamentary question revealed and as I think we heard in evidence on Tuesday, we are still at the testing stage for SMETS 2. Only 250 of the meters have been installed so far, instead of the millions required before scaling up the roll-out.<sup>82</sup>

Shadow Energy Minister Dr Alan Whitehead also set out his concerns that the supply chains and expertise needed to install SMETS 2 meters may not be in place by July 2018, meaning there would be a hiatus in the rollout. He therefore, sought reassurances from the Minister:

...the roll-out of SMETS 1 meters is supposed to stop by July 2018. The ordering process, the supply chains and everything else that has gone into SMETS 1 meters will be effectively extinguished in July 2018. At that point, theoretically, SMETS 2 meters should take over. Those are manufactured by different people and have different supply chains. In theory, those new supply chains and new meters for installation should be in place by July 2018, for the transfer between SMETS 1 and SMETS 2.

[...]

The problem, as I mentioned this morning, is that if that is not the case, the programmes to install smart meters—already underway, and ramping up considerably—will grind to a halt, because there will be no meters in the vans to go out and install. Even though people want a smart meter, have asked for one and have an appointment for one to be installed, it will not be possible to

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<sup>79</sup> PBC Deb 21 November 2017 (afternoon) [c31](#)

<sup>80</sup> [PO 68879](#) [Energy: Meters] 29 March 2017

<sup>81</sup> Supplementary written evidence submitted by Mr Derek A Lickorish MBE, Secure Meters Ltd ([SMB06](#))

<sup>82</sup> PBC Deb 23 November 2017 (afternoon) [c84](#)

install that smart meter. The smart meter installation programme may well just pause because of that particular issue. Unless that issue is resolved, all the targets and milestones being put in place for supply companies could be completely overthrown; if the companies do not physically have the meters, they cannot meet the milestone requirements for a complete roll-out by 2020.<sup>83</sup>

The Minister replied by stating first, that the problem of dumb meters was not as large as outlined in the evidence session (4% not 20%). Second, he set out the benefits of moving to SMETS 2 meters and the DCC systems which he said had been “future-proofed”, unlike the industry solutions: “This is not one company providing a system that, with the best intentions, works but is not future-proofed in the same way as we expect the DCC to be.”<sup>84</sup> Third, the Minister said the amendment could undermine delivery of the project and would mean that any new consumer protections or other obligations on suppliers introduced after the current expiry date would not be applicable to SMETS 1 meters or consumers with those meters.<sup>85</sup>

Steve McCabe withdrew the amendment.

### **Licensing meter asset providers (amendments 6 and 7)**

Steve McCabe moved amendments 6 and 7 which proposed extending the scope of **clause 1** of the Bill such that the Secretary of State could license the supply and disposal of electric (amendment 6) and gas (amendment 7) meters, and the so-called Meter Asset Providers (MAPs).

MAPs typically own and operate meter assets—this applies to both newer smart meters and older conventional meters. These are then leased/rented to energy suppliers. Under the smart meter rollout programme this model has enabled energy suppliers to be able to meet their targets without taking on additional debt.<sup>86</sup> On the morning of this session, the Minister gave the Committee a memo which provides an [overview of MAPs and sector market insights](#), subsequently published as evidence on the Bill’s website.<sup>87</sup>

In the evidence sessions, the committee heard how some of the issues around interoperability were commercial, not technical. Because energy suppliers rent/lease meters from MAPs, it is not always in their interest to inherit rental cost of an existing supplier’s meter rents – deemed rentals – when they take over a new customers account. Steve McCabe summarised the issue of commercial interoperability this amendment sought to address as follows:

...when a customer switches supplier, it is not necessarily in the supplier’s interest to take on the potentially high rental cost of a SMETS 1 meter, particularly if they have been told that a mass roll-out of SMETS 2 meters is just around the corner. Commercially, it is better simply to turn the installed meter to dumb mode and install a new meter—perhaps an identical

<sup>83</sup> PBC Deb 23 November 2017 (afternoon) [c86-87](#)

<sup>84</sup> PBC Deb 23 November 2017 (afternoon) [c91](#)

<sup>85</sup> PBC Deb 23 November 2017 (afternoon) [c91](#)

<sup>86</sup> Written Evidence: Richard Harrington, Minister of State for Industry & Energy ([SMB09](#))

<sup>87</sup> Written Evidence: Richard Harrington, Minister of State for Industry & Energy ([SMB09](#))

meter—using a cheaper contract with a different MAP. That seems to be how we got into the situation that we have been discussing.

In that context, it is a vital message for the Committee that SMETS 1 meters are technically capable of interoperability using the mini DCC systems, but there is often a lack of commercial interoperability when people switch from big six companies to smaller energy suppliers, which is exactly what we are encouraging them to do and what BEIS is telling consumers they should do.

I suggest that that commercial problem is causing the biggest issues with the smart meter roll-out for both consumers and suppliers.<sup>88</sup>

In supplementary evidence to the Committee, Derek Lickorish cautioned that “the very high deemed rentals problem, unless it is resolved, may also subsequently manifest in the SMETS2 world as well.”<sup>89</sup> Clive Lewis suggested that it demonstrated a market failure.<sup>90</sup>

Alan Whitehead spoke to the issue of disposal of meters, and cautioned of waste “meter mountains”:

When we pursue a programme of removing old meters, whether they are dumb meters or previous generation smart meters, we have a problem that is precisely the reverse of the situation when the meters go in, namely that the meters being removed by suppliers—because they are the people putting the new meters in—do not actually belong to them. So as I understand it, we now have a situation where, in warehouses up and down the country, there is supposed to be a process of reverse meter logistics taking place. That consists, essentially, of triaging those old meters, deciding who the actual owner of a meter is, and then inviting the owner of that meter to come and collect it, in order to dispose of it. The suppliers themselves do not have the ability, in their own right, just to dispose of the meter, because it is not their meter to dispose of.

The consequence of that is, first, one is not entirely sure who the owner of the meter is in some circumstances, when a meter has been taken off a wall. Unless there has been careful archiving and, as it were, archaeological numbering of meters, to determine where they need to be taken, and unless there are absolutely first-class systems of triaging, inevitably the system of getting those old meters out becomes jumbled up.

We could have meter mountains across the UK. The meters are potentially valuable assets. They are worth having, with their rare earths, rare metals and all the rest of it; they can be recycled well. However, if there are warehouses full of meters whose provenance is not known and nobody is coming to claim them, and the meters cannot be processed, the only solution is to go and tip them into landfill. Then we will get a terrible outcome to what should be an entirely different process as far as meter re-provision is concerned.<sup>91</sup>

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<sup>88</sup> PBC Deb 23 November 2017 (afternoon) [c100](#)

<sup>89</sup> Supplementary written evidence submitted by Mr Derek A Lickorish MBE, Secure Meters Ltd ([SMB06](#))

<sup>90</sup> PBC Deb 23 November 2017 (afternoon) [c98](#)

<sup>91</sup> PBC Deb 23 November 2017 (afternoon) [c96](#)

The Minister rejected the suggestion that there was a market failure around asset providers and instead argued that “competition is working and providing good value to energy consumers.”<sup>92</sup> However, on the issue of disposal, the Minister conceded that it was much more complex than he first thought, and he committed to setting up a round-table with DEFRA the department responsible for waste policy), BEIS, Steve McCabe and the Shadow Minister to discuss the issue further.<sup>93</sup> Consequently, Steve McCabe withdrew his amendments saying he was happy with the Minister’s commitment to discuss the waste issue further, but unconvinced by the Minister’s assertion that there is no failure in the market and therefore asked that the Minister review the issue again with his officials.<sup>94</sup>

### Removing currently licensable activities (amendment 13)

To operate in the energy market—to carry out ‘licensable activities—a supplier must have been granted a licence by Ofgem. The Gas Act 1986 and the Electricity Act 1989 as amended by the Energy Act 2008 grants the Secretary of State powers to amend such licence conditions in relation to smart meters. Clause 1 of the Smart Meters Bill 2017-19 extends the time by which these powers may be granted.

Alan Whitehead moved amendment 13 to limit the extension of the powers under **clause 1** so that the Secretary of State could not remove currently licensable activities. Alan Whitehead said that although the [Government’s delegated powers memorandum](#) contains a statement about its intention not to use this power to remove existing licensable activities, the Bill as it stands does not limit those powers. He explained that this technical amendment would “clarify what the Secretary of State should not do, as well as what they can do”<sup>95</sup>

The Minister replied by highlighting the fundamental role the DCC has to play in driving the smart meter benefits, and went on to say “I do not currently consider that we would exercise the power to remove licensable activities, but I feel that it is necessary for the Secretary of State to keep that, given that principal objective.”<sup>96</sup> Moreover, the Minister explained that any changes the Secretary of State wished to make to licence codes would be subject to parliamentary approval through the affirmative procedure.<sup>97</sup>

Alan Whitehead pressed the amendment to a Division – it was defeated by 9 votes to 8.<sup>98</sup>

### Reviews of the smart meter programme

The Opposition tabled a number of new clauses which would require the Government to review different aspects of the smart meter programme:

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<sup>92</sup> PBC Deb 23 November 2017 (afternoon) [c99](#)

<sup>93</sup> PBC Deb 23 November 2017 (afternoon) [c99](#)

<sup>94</sup> PBC Deb 23 November 2017 (afternoon) [c100](#)

<sup>95</sup> PBC Deb 28 November 2017 (morning) [c104](#)

<sup>96</sup> PBC Deb 28 November 2017 (morning) [c105](#)

<sup>97</sup> PBC Deb 28 November 2017 (morning) [c107](#)

<sup>98</sup> PBC Deb 28 November 2017 (morning) [c108](#)

- **New clause 1** would require the Secretary of State to prepare and publish a review of the cost and progress towards meeting the 2020 completion target of rolling out smart meters within three months of this Act coming into force.<sup>99</sup>
- **New clause 2** would require an independent review of public awareness levels and satisfaction with the smart meter roll-out within 3 months of the Act coming into force.<sup>100</sup>
- **New clause 4** would require the Secretary of State to carry out a review of matters relating to the current status of the smart meter rollout before exercising his powers under section 1.<sup>101</sup>
- **New clause 5** would require the Secretary of State to commission and publish a review of how the extended use of powers provided for in section 1 will support the technical development of smart meters within 12 months of this Act coming into force.<sup>102</sup>
- **New clause 6** would require the Secretary of State to commission a review to consider how the extended use of powers provided for in section 1 will support the rollout of smart meters powers, with particular reference to providing for efficient removal and disposal of old meters and the exemptions for smaller suppliers.<sup>103</sup>
- **New clause 7** would require the Secretary of State to review installation rates of smart meters annually, detailing the total number of functioning smart meters and an explanation of any discrepancy between target and actual installation rates.<sup>104</sup>
- **New clause 11** would require the Secretary of State to lay before Parliament a report on the costs and benefits of the smart meter programme one year after this Act comes into force.<sup>105</sup>

In response to these new clauses, the Minister variously highlighted the Government's commitment to carry out reviews in the following areas:

- data access and privacy to ensure the regulatory framework remains fit for purpose (in 2018);
- benefits realised during the rollout to assess whether Government can do anything to encourage greater benefits (in 2019); and
- overall effectiveness of the policy framework post-implementation for future smart metering operations (in 2021).<sup>106</sup>

All the above new clauses (1, 2, 4-7 and 11) were withdrawn.

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<sup>99</sup> PBC Deb 28 November 2017(afternoon) [c158](#)

<sup>100</sup> PBC Deb 28 November 2017(afternoon) [c167](#)

<sup>101</sup> PBC Deb 28 November 2017 (morning) [c109](#)

<sup>102</sup> PBC Deb 28 November 2017(afternoon) [c175](#)

<sup>103</sup> PBC Deb 28 November 2017(afternoon) [c178](#)

<sup>104</sup> PBC Deb 28 November 2017(afternoon) [c158](#)

<sup>105</sup> PBC Deb 28 November 2017(afternoon) [c158](#)

<sup>106</sup> BEIS, [Government's delegated powers memorandum](#), 24 October 2017

## 6.2 Clause 2-10: Smart meter communication licensee administration orders

**Clauses 2 -9** of the Bill introduce a special administration regime (SAR) for the Data Communications Company (DCC) in the “unlikely” event of its insolvency.

The overriding objective of the SAR is to ensure the continuity of the smart meter communication service. In providing for continuity of services, the benefits of smart meter services are maintained and the costs – financial costs, but also the huge inconvenience that would come from any interruption to smart meter services – are avoided. Importantly, the roll-out of smart meters would not be interrupted.

A SAR for the DCC guards against a risk that the licensee might go into normal insolvency proceedings, which is a standard process within the [Companies Act 2006](#). Although expert evidence would suggest the risk is small given that income is more or less guaranteed, the Government thinks it is prudent to have safeguards in place. The measures outlined in the Bill all have precedents in other special administration regimes for energy networks and suppliers.

The insolvency provisions are highly technical. For more detail on each of the clauses please refer to [section 3.3 Special administration regime for communication and data service](#).

### Clause 2: smart meter communication licensee administration orders

Clause 2 of the Bill provides that the Secretary of State (or the Authority with agreement of the Secretary of State) would be able to apply to the court for a “smcl administration order”. In consideration of **clause 2**, Dr Whitehead asked why, given that the DCC is already in operation (the DCC mostly went live in November 2016), no protection was already in place:

One might ask, therefore, what was happening in the meantime. Were we operating over a period of time where there was no protection for the smart meter roll-out programme from the possible bankruptcy or administration of the organisation that was essential to the running of the whole operation? That seems to me to be a considerable omission on the Government’s part.<sup>107</sup>

Steve McCabe also questioned why there was no current protection in the event of the administration of the DCC given the level of investment in the organisation “all of it coming out of customers’ pockets”.<sup>108</sup>

The Minister, Richard Harrington, said that although stakeholders had been consulted in 2011, competition for Parliamentary time meant that this was the first opportunity the Government had to deal with it:

I personally think this should have been done before. It was probably less important than it is now and going forward, simply because of the scale of use and the containability of unlikeliness.

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<sup>107</sup> PBC Deb 28 November 2017 (morning) [c113](#)

<sup>108</sup> PBC Deb 28 November 2017 (morning) [c113](#)

This was the first opportunity I had to introduce the clause on what to do in the event of these unlikely circumstances, and it is important. It is to stop other interested parties putting in administrators.<sup>109</sup>

The Minister set out that there was an immediate need to put an SAR in place:

Given the millions of smart meters around, and given in particular the system whereby they are all electronically talking to each other – which we all want – it would have been negligent for the Government to leave this for another four or five years. It is quite reasonable for this to be the first legislative slot since it went live.<sup>110</sup>

Following a long debate on clause 2, it was ordered to stand part of the Bill.

### Clause 3: objective of a smcl administration

Clause 3 provides for the overall objective of a smcl administration, and gives the Secretary of State powers to make regulations to specify activities to be carried out by the administrator. Opposition Members tabled three amendments (8, 14 and 20) in respect of **Clause 3**, which sought to:

- Make it an objective of the smcl administration to be “transparent” (amendment 8).
- Require that any regulations that the Secretary of State lays down about prioritisation of DCC activities following administration would have to take into account the context of the full services offered by the DCC (amendment 14).
- Apply the affirmative procedure to regulations made by the Secretary of State to determine which of the DCC’s activities should be prioritised following administration (amendment 20).

Following lengthy debates on how the smcl administrator would carry out his/her general functions in practice, all three amendments were withdrawn.

### Transparency of smcl administration

Steve McCabe moved amendment 8 which sought to make it an objective of the smcl administration to be “transparent” and to operate in a way which would allow the general public to be aware of the administrator’s functions. Speaking to this amendment, Steve McCabe said that since the public were paying for the smart meter roll-out programme through their bills, it was right that any “administration should operate in a way that is transparent, open and obvious to Members in all parts of the House and, most importantly, obvious and transparent to members of the public”.<sup>111</sup> In support of the amendment, Dr Whitehead said that putting in the Bill a requirement

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<sup>109</sup> PBC Deb 28 November 2017 (morning) [c114](#)

<sup>110</sup> PBC Deb 28 November 2017 (morning) [c114](#)

<sup>111</sup> PBC Deb 28 November 2017 (morning) [c115](#)

for processes to be fully transparent would serve the consumer positively.<sup>112</sup>

The Minister argued that transparency would be achieved by the administrator having to meet a number of requirements. Under the *Insolvency Act* (as modified by this Bill), there would be an obligation for the name of the smcl administrator to be stated on the DCC website. The functions and powers of an smcl administrator are set out in the Bill.<sup>113</sup> In addition, the expectation is that under SAR rules, the administrator would be obliged to file various documents at [Companies House](#), including his/her proposals for achieving the objective of the administration. The administrator would also have to submit regular progress reports. Once filed at Companies House, those documents would be available to the public.<sup>114</sup> The amendment was withdrawn.

### **Regulations of DCC's activities following administration**

Dr Alan Whitehead moved amendment 14 which sought to require that any regulations that the Secretary of State lays down about prioritisation of DCC activities following administration would have to take into account the context of the full services offered by the DCC. Speaking to the amendment, Alan Whitehead said that it was necessary to put in the Bill a framework for what the Secretary of State may do under regulation.<sup>115</sup>

In response, the Minister said that the precise aim of regulations was to provide future flexibility to ensure the full range of activities carried out by the DCC at the point of administration could be taken into account. He argued that prioritisation would support the continuation of services in the overall interests of the public and, given the speed of administration processes, the Government must guide the administrator.<sup>116</sup> Agreement was reached that DCC activities should, in principle, be as close as possible to what they were prior to administration, and the amendment was withdrawn.

Dr Alan Whitehead moved amendment 20 which sought to apply the affirmative procedure to regulations made by the Secretary of State to determine which of the DCC's activities should be prioritised following administration. Speaking to the amendment, Dr Whitehead said that it was important that the House has proper sight of regulations and a proper opportunity to debate them.<sup>117</sup> The Minister argued that due to the speed with which the administrator has to make decisions and the technical nature of these regulations, it would be appropriate to use the negative procedure.<sup>118</sup> The amendment was withdrawn.

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<sup>112</sup> PBC Deb 28 November 2017 (morning) [c119](#)

<sup>113</sup> PBC Deb 28 November 2017 (morning) [c120](#)

<sup>114</sup> PBC Deb 28 November 2017 (morning) [c120](#)

<sup>115</sup> PBC Deb 28 November 2017 (morning) [c122](#)

<sup>116</sup> PBC Deb 28 November 2017 (morning) [c123](#)

<sup>117</sup> PBC Deb 28 November 2017 (morning) [c124](#)

<sup>118</sup> PBC Deb 28 November 2017 (morning) [c126](#)

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

Dr Alan Whitehead moved amendment 16 which sought to apply the affirmative procedure to the use of provisions of Schedule 20 of the [Energy Act 2004](#) under this Bill. Speaking to this amendment, Alan Whitehead expressed concern that as currently drafted, the Bill would allow non-urgent legislation on what would happen if the owner was a non-GB company to be undertaken using a Henry VIII power.<sup>119</sup> He argued that if there is to be a Henry VIII power, it should at least be passed by affirmative procedure.<sup>120</sup>

In response, the Minister explained that the current smart meter communications licence holder is a GB company and the SAR has largely been formulated with GB-registered companies in mind. However, there is a possibility that at some point in the future the licence holder could be a non-GB company (the earliest the licence is expected to be re-tendered is September 2025).<sup>121</sup> Although a number of adaptations to the SAR catering for non-GB companies have already been made by the [Energy Act 2004](#) applied by this Bill, the Government is concerned that further modifications may be needed to account for a non-British company becoming active in the provision of smart meter communications services.<sup>122</sup> Hence clause 4 extends the application of the existing power and procedure in the [Energy Act 2004](#) in relation to the network operator SAR to the Smart Meter Communication SAR.

The Minister argued that the negative resolution procedure would provide Parliament with appropriate oversight for introducing what would be very detailed modifications, narrowly focused on particular provisions of insolvency legislation, and their specific application to a non-British company.<sup>123</sup>

Alan Whitehead disagreed. On division the amendment was defeated by 8 votes to 9. Accordingly, clause 4 was ordered to stand part of the Bill.

## Clause 6: modifications of particular or standard conditions

Opposition Members tabled two probing amendments to **clause 6**. After lengthy debates both amendments were withdrawn.

### Consultation before modifying licence conditions (amendment 10)

Steve McCabe moved amendment 10 which would require the Secretary of State to consult the public before making a modification to particular or standard conditions of gas or electricity licences when these powers are being used in connection with the smcl administration provisions.

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<sup>119</sup> Henry VIII powers essentially allow primary legislation that is on the statute books to be amended by secondary means

<sup>120</sup> [PBC 28 November 2017 c132](#)

<sup>121</sup> PBC Deb 28 November 2017 (afternoon) [c133-134](#)

<sup>122</sup> PBC Deb 28 November 2017 (afternoon) [c133-134](#)

<sup>123</sup> PBC Deb 28 November 2017 (afternoon) [c133](#)

Speaking to this amendment, Steve McCabe said that a number of groups and organisations, including the [Public Accounts Committee](#), the [National Audit Office](#), the [Energy and Climate Change Committee](#) and [Centrica](#), had expressed anxiety about the escalating costs of the roll-out programme to the customer. He asked the Minister for his views, particularly as the 2016 cost-benefit analysis had been significantly revised downwards:

I would be grateful if the Minister could tell us whether he envisages any protections to ensure that were he to use his powers to fine the supplier for failing to comply with the roll-out deadline, that would simply not be, in effect, yet another charge imposed on the customer.

[...]

In the past, the Government have said that they would intervene to make sure the benefits of the roll-out were realised, if they believed the costs were being passed on to the customers to an unacceptable extent. In the context of the amendment, is the Minister happy that the current escalation in the costs is acceptable? At what point does he think his Department might be moved to intervene?"<sup>124</sup>

The Minister explained that fines were levied by Ofgem rather than the Secretary of State. He agreed that a fine could be passed on to consumers but thought that it would make the energy company so uncompetitive that consumers would move elsewhere.<sup>125</sup> The Minister made the point that a fine was not a tool for compliance; it was the ultimate response.<sup>126</sup> He asked the Committee to consider the net benefits of the smart meter roll out programme as well as the costs<sup>127</sup>

Returning to the specifics of the amendment, the Minister agreed that the Bill allows the Secretary of State to make such modifications to the licence conditions, where he considers it appropriate to do so, in connection with the SAR. He also agreed that the licence conditions try to allow the administration costs to be recouped from the industry insofar as there is a shortfall in the property available for meeting the costs. This might mean recouping the costs from the customer in the end.<sup>128</sup>

According to the Minister, the key point is that clause 6 requires the Secretary of State to consult affected licensees and such other persons as he considers appropriate prior to making modifications to licences. He confirmed that a version of the licence modifications envisaged under this power had already been made available to the [Delegated Powers and Regulatory Reform Committee](#).<sup>129</sup> The amendment was withdrawn after the Minister gave an undertaking that formal consultation on those modifications would be addressed to the public.<sup>130</sup>

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<sup>124</sup> PBC Deb 28 November 2017 (afternoon) [c136](#)

<sup>125</sup> PBC Deb 28 November 2017 (afternoon) [c137](#)

<sup>126</sup> PBC Deb 28 November 2017 (afternoon) [c137](#)

<sup>127</sup> PBC Deb 28 November 2017 (afternoon) [c138-139](#)

<sup>128</sup> PBC Deb 28 November 2017 (afternoon) [c138](#)

<sup>129</sup> PBC Deb 28 November 2017 (afternoon) [c138-139](#)

<sup>130</sup> PBC Deb 28 November 2017 (afternoon) [c139](#)

### **Review impact on consumer energy prices (amendment 11)**

Steve McCabe moved amendment 11 which sought to ensure that before considering modifications to ensure funding of smcl administration, the Secretary of State must seek independent evaluation of the impact such modifications would have on consumer energy prices. Steve McCabe explained that the amendment was designed to protect consumers.<sup>131</sup> Alan Whitehead moreover argued that it was essential to know the impact of administration on total bills to the public and the impact on the net benefit of the smart meter roll out programme as a whole.<sup>132</sup>

In his response, the Minister agreed that effort should be made to understand the costs involved. To put the issue in perspective, he said that the DCC had projected its annual costs to be £67 million in 2019-20. In the event of administration, there would be costs involved in keeping the business going pending a buyer being found. However, these would not be new costs; new costs would be accountants and lawyers fees to deal with the actual administration itself. He explained the position as follows:

Those new costs are not to do with the actual running of the business, and I believe them to be limited. On the issue of scale, I cannot see the administration costs being disproportionate to the annual costs or the huge amount of set-ups.<sup>133</sup>

The Minister confirmed that the Government would formally consult on the modifications and provide an assessment of the potential scale of the cost that might need to be recouped from the industry.<sup>134</sup> This assessment would take a variety of factors into account including the running costs of the licensee and an estimate of the special administration cost. He confirmed that the Government would take advice from [Ofgem](#) and other relevant parties.<sup>135</sup> Finally, the Minister undertook that, prior to the licence modifications being made, he would make available to both Houses of Parliament the Government's response to the consultation.<sup>136</sup> On the basis of these undertakings, the amendment was withdrawn and **clause 6** was ordered to stand part of the Bill.

### **Clauses 8 and 9**

In respect of **clauses 8** and **9**, there was a very short stand part debate. Alan Whitehead drew attention to the fact that both were substantial Henry VIII clauses, making regulations by the negative procedure, which he suggested should be looked at.<sup>137</sup> He registered his concern but did not take the matter further. Accordingly, clauses 8, 9 and 10 were all ordered to stand part of the Bill.

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<sup>131</sup> PBC Deb 28 November 2017 (afternoon) [c141](#)

<sup>132</sup> PBC Deb 28 November 2017 (afternoon) [c142](#)

<sup>133</sup> PBC Deb 28 November 2017 (afternoon) [c142-143](#)

<sup>134</sup> PBC Deb 28 November 2017 (afternoon) [c143](#)

<sup>135</sup> PBC Deb 28 November 2017 (afternoon) [c143](#)

<sup>136</sup> PBC Deb 28 November 2017 (afternoon) [c143](#)

<sup>137</sup> PBC Deb 28 November 2017 (afternoon) [c144](#)

## 6.3 Government new clauses 8-10: Half-hourly settlement of electricity imbalances

The Government has stated that it wants to “unlock” the domestic demand-side response market as just one part of its wider plan to upgrade the GB energy system as set out in its [smart systems and flexibility plan](#).<sup>138</sup> The Government says this begins with the smart meter rollout, and will continue with further actions including enabling half-hourly settlements, which would make it easier for suppliers to offer customers smart tariffs. Ofgem has consulted on the timetable for mandatory half-hourly settlement, and as part of its [Electricity Settlement Reform Significant Code Review](#) is in the process of setting out the timetable, linked to the roll-out of smart meters, for a decision on mandatory half-hourly settlement.<sup>139</sup>

### New clauses 8-10

Government new clauses 8-10 provide Ofgem with powers to change licence codes to enable half hourly billing. These new clauses were moved alongside amendment 17 enabling the Secretary of State to bring the new clauses by regulation and amendments 18 and 19 which changed the long title of the Bill.

- **New clause 8** introduces new powers to allow Ofgem to deliver market-wide half-hourly settlements without it having to rely on the industry code processes. These powers may only be used to deliver half-hourly settlements and they expire after five years from entering into effect.
- **New clause 9** provides the procedural framework by which Ofgem may exercise the powers proposed in new clause 8. They include consulting relevant parties on the proposed modifications.
- **New clause 10** provides a mechanism for Ofgem where it can demonstrate that it is justified to reduce the 56-day standstill period between confirming a change to industry licence conditions and the change taking effect.

### Aim of the new clauses

Richard Harrington said that smart meters provide a critical foundation for the development of a smart energy system, and that the new clauses would provide the platform for domestic premises and small businesses to use energy more flexibly.<sup>140</sup> He went on to say that enabling half-hourly settlements would “help deliver benefits to both consumers and the energy system, by providing commercial incentives on the suppliers

<sup>138</sup> HM Government/Ofgem, [Upgrading Our Energy System: Smart Systems and Flexibility Plan](#), July 2017, p. 14

<sup>139</sup> Ofgem, [Electricity Settlement Reform Significant Code Review: Launch Statement, revised timetable, and request for applications for membership of the Target Operating Model Design Working Group](#), 24 July 2017

<sup>140</sup> PBC Deb 28 November 2017 (afternoon) [c145](#)

to develop and offer time-of-use tariffs.”<sup>141</sup> Such tariffs, the Minister continued:

...enable customers to choose, when energy is cheaper, to reduce their bills and the costs of the future energy system. That will help make the energy system more resilient, because as we move towards an increasingly low-carbon generation mix, people will want to make more of those kinds of choices.<sup>142</sup>

### Debate on the new clauses

Opposition Members expressed their support for the principal of the new clauses, but noted their concern that what was in effect a new separate Bill was being introduced at committee stage, and not earlier. The Minister was therefore questioned on the extent to which he had consulted with industry and Ofgem on the new clauses. The Minister told the committee “there has been widespread consultation. The amendments are very well spoken about in the industry and they will not come as a surprise at all.”<sup>143</sup>

Shadow Minister Alan Whitehead also said he supported the aims of the new clauses, but expressed his concern with the procedure used to introduce the clauses:

I am in some difficulty here, inasmuch as what the Minister said about the content of the Government amendments is sound and clear. Indeed, they make an addition to the Bill and take us forward on getting ready for some of the benefits of smart meters, such as half-hourly settlements. However, as he indicated, this is effectively a separate Bill that has been lowered into the Smart Meters Bill and attached to it as Government amendments. He quite candidly stated that he took his chance—fair enough—to put it in the Bill, but it creates problems, some of which are at the very least technical, and some of which are possibly of a far wider nature.<sup>144</sup>

All three new clauses were brought up, read the First and Second time, and added to the Bill.

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<sup>141</sup> PBC Deb 28 November 2017 (afternoon) [c145](#)

<sup>142</sup> PBC Deb 28 November 2017 (afternoon) [c145](#)

<sup>143</sup> PBC Deb 28 November 2017 (afternoon) [c148](#)

<sup>144</sup> PBC Deb 28 November 2017 (afternoon) [c148](#)

## 7. Report and Third Reading (Commons)

The Bill passed Report and Third Reading without division on 5 February 2018.<sup>145</sup> Debate on all the new clauses was grouped together, and introduced by Shadow Energy Minister Dr Alan Whitehead. Alan Whitehead said that the new clauses tabled sought answers to “some real questions emerging from the roll-out process”, but were not intended to derail the roll-out process or to place obstacles in its path as the Opposition do not oppose the Bill.<sup>146</sup> He said that he had six major questions that have appeared as the roll-out has progressed covering:

- **The progress of the smart meter roll-out**, and whether the 2020 target is still achievable;
- **The cost-benefit ratio of the roll-out** and what assurances the Minister has that it would continue to benefit consumers;
- **Delays in beginning to install SMETS 2 meters** when SMETS 1 meters were only meant to provide a “small proving mode”;
- **Delays in getting the DCC** up and running, and what guarantees there are that a future body would have the security and integrity of the programme at its heart;
- **Coverage issues** for both remote areas and those in urban areas (owing to specific issues around coverage for people in blocks of flats); and
- **Waste management of old meters due to be replaced** and specifically whether they will they be recycled or reused in a suitable way.<sup>147</sup>

Moving the Bill for its Third Reading, Secretary of State Greg Clark summarised commitments his Department had made in response to debates on the Bill during its passage through the Commons and explained the purpose of the new clauses of half-hourly settlement introduced in Committee:

Debates on a number of amendments have resulted in commitments to publishing more substantive annual reports on the progress of the smart meter roll-out, undertaking a public consultation on the expected cost impact on consumers before laying the licence modifications enabling the special administration regime cost recovery mechanism to take effect, and working with the Under-Secretary of State for Environment, Food and Rural Affairs, my hon. Friend the Member for Suffolk Coastal (Dr Coffey), to promote best practice in the recycling and reuse of old meters.

The extended regulatory powers proposed in the Bill will enable the Government to continue to oversee and facilitate the smart meter roll-out. It will enable them to maintain appropriate consumer safeguards, and, in particular, to act on the findings of monitoring and a post-roll-out review. It will protect smart meter

<sup>145</sup> [HC Deb 5 Feb 2018 c1281-1309](#)

<sup>146</sup> [HC Deb 5 Feb 2018 c1283](#)

<sup>147</sup> [HC Deb 5 Feb 2018 c1284](#)

services for both consumers and businesses by providing the enabling framework for a special administration regime for the national data and communications provider. Having been amended in Committee, it will also support the efficient and effective delivery of half-hourly settlement by the energy regulator Ofgem.

As the House knows, half-hourly settlement is another important stepping stone to that smarter, more flexible energy system. It will help to deliver benefits both to consumers and to the energy system as a whole by incentivising energy suppliers to develop and offer time-of-use tariffs. That will empower consumers by enabling them to use energy when it is cheapest, and reward them for being flexible about when they use energy. It will also help to make the energy system more resilient as we move towards an increasingly low-carbon generation mix.<sup>148</sup>

## 8. Lords consideration of the Bill

The Smart Meters Bill 2017-19 had its First Reading in the House of Lords on 6 February 2018,<sup>149</sup> Second Reading on 13 March, Committee Stage on 24 April and Report Stage on 15 May.

### 8.1 Second reading

Lord Henley, The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy, opened the debate:

The costs of the rollout were debated extensively in another place, and the Government have listened to the concerns raised. Along with the regulator Ofgem, we closely monitor progress and costs to ensure that the significant benefit case, estimated at £5.7 billion net benefits, is secured. It is worth highlighting to the House that, following those debates and as part of our broader commitment to transparency, we agreed to publish a further update of the cost-benefit analysis for the programme in 2019. The Bill received broad support at Third Reading in another place, as would be expected for a well-established programme that has its origins in the Energy Act 2008 and was considered further when its powers were amended in the Energy Act 2011. I hope that we can continue the same constructive debate that has characterised the Bill's passage to date.<sup>150</sup>

Lord Grantchester, speaking for the Opposition, said the Bill was “relatively uncontroversial” but there were a few issues:

On these Benches, the Bill remains relatively uncontroversial: Labour agrees with the measures in the Bill, agrees with the importance of smart meters and with the need to roll out their use as judiciously as possible. Nevertheless, there are a few buts and a few wider points to be made about the flaws in the smart meter rollout system, the inadequacy of the communications arrangements and the disruption caused between the introduction of SMETS 1 and SMETS 2 meters.<sup>151</sup>

### The 2020 target

Lord Grantchester repeated concerns from the Commons that the 2020 roll out target may be missed:

While it is understood that the Secretary of State needs time beyond 2018 to implement any conclusions from this review [post-roll out review to be undertaken by the Government – see Section 6.1], it is nevertheless likely to be understood that the initial end date slipping beyond 2020 to 2023 is the real reason behind this extension.<sup>152</sup>

Lord Teverson said the Government should admit the target would be missed and replan “sensibly”:

The noble Lord, Lord Grantchester, maybe with his tongue in his cheek, asked the Minister whether it was possible to meet this target. Clearly it is not, so for goodness' sake let us admit it, get

<sup>149</sup> [HL Deb 6 Feb 2018 c1912](#)

<sup>150</sup> HL Deb 13 March 2018 [c1525](#)

<sup>151</sup> HL Deb 13 March 2018 [c1527](#)

<sup>152</sup> HL Deb 13 March 2018 [c1528](#)

back from la-la land into the real world and allow the industry, consumers and everybody else including the Government to plan this sensibly.<sup>153</sup>

## Ownership of DCC

A number of peers commented on the special administration regime for the data communications company (DCC) and expressed concern about the risk to consumers. Lord Grantchester said:

Anxiety is rightly raised by Clause 7, which includes a provision that charges can be raised to make good any shortfall to meet the expenses of the DCC's administration. It is not clear from the Bill or the Explanatory Notes why customers and users should foot this bill, especially when they have already borne the cost of the rollout in their energy bills. The DCC is a wholly-owned subsidiary of Capita plc which, it must be borne in mind, has recently issued a profit warning. Members of your Lordships' House will recall that profit warnings were a precursor to the demise of Carillion. In Committee, we may wish to examine and test whether the safeguards in the Bill are adequate. The ownership of the DCC remains a concern.<sup>154</sup>

Baroness Featherstone asked a number of questions of the Government about the risk:

Coming to the DCC itself and the concerns over Capita's financial status, what checks are the Government carrying out on Capita? In addition, does the role of the special administration regime exist as of the passage of this Bill or only when there has been trouble, or can it kick in in advance of any collapse in the system? What are the protections for the consumer in this event? If a special administration regime has to be put in place because there has been a failure on the part of DCC or Capita, what can official scrutineers and the public expect in the way of transparency and information about what has happened? Can the Minister give an assurance that we parliamentarians and the public at large will not be kept in the dark about why a special administration regime has been put in place? Obviously, a further concern has to be that the costs will be passed on to the consumer. Can the Minister explain why the consumer should be in any way liable for such a failure?<sup>155</sup>

## Half hourly metering

The addition of half-hourly billing to the Bill, introduced by the Government in the Commons, was welcomed by peers. Lord Grantchester said the data aspects of this addition were important and should be clear to consumers:

Ofgem is considering options for access to consumers' half-hourly data to develop the data access regime and will be consulting on this, supported by a privacy impact assessment. This brings an added challenge to the understanding of what the offer should be in order for the consumer to agree to accept a smart meter.<sup>156</sup>

Lord Teverson also raised the issue of communicating half hourly metering to consumers:

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<sup>153</sup> HL Deb 13 March 2018 [c1531](#)

<sup>154</sup> HL Deb 13 March 2018 [c1529](#)

<sup>155</sup> HL Deb 13 March 2018 [c1543](#)

<sup>156</sup> HL Deb 13 March 2018 [c1528](#)

I have many questions to ask the Minister, but first I congratulate the Government on having the half-hour metering to make sure that we can actually push forward much greater use of smart meters for smart grids, and particularly for demand-side management—all of that area. However, they are going to have to be a lot cleverer in terms of explaining to the public that demand-side management is not compulsory, but voluntary...<sup>157</sup>

Additional issues raised in the debate reflected those raised in the Commons, including interoperability of smart meters with different suppliers,<sup>158</sup> the delay in the move from SMETS1 to SMETS2,<sup>159</sup> inaccurate meter readings,<sup>160</sup> installing smart meters in multiple occupation properties,<sup>161</sup> and whether there should be more emphasis on rolling out energy efficiency measures.<sup>162</sup>

At the end of the debate, Lord Henley, responded to some questions and said he would write on others. On 22 March 2018, Lord Henley wrote a letter to Peers regarding the Second Reading debate.<sup>163</sup>

On the target, [the letter](#) states:

Suppliers remain legally obliged to complete the smart meter rollout by the end of 2020

On insolvency, Lord Henley said there was low risk:

DCC's financial arrangements are constructed so as to make the risk of insolvency low and the proposed Special Administration Regime is entirely precautionary

On half hourly settlement, Lord Henley states that Ofgem is looking into the matter:

Ofgem is currently considering options for access to consumers' half-hourly data for settlement purposes, with the aim of developing a data access regime that provides appropriate consumer safeguards whilst enabling the delivery of the benefits of market-wide half-hourly settlement. Ofgem intends to consult on options for access to data for settlement purposes in Spring 2018. This will be supported by a Privacy Impact Assessment.

The letter also addressed a number of other concerns that were raised in the debate.

## 8.2 Committee Stage

Grand Committee Stage of the Bill took place on 24 April 2018. The Government did not table any amendments, but other peers tabled thirteen. All amendments were either withdrawn or not moved, and the Bill passed to Report Stage unamended.

- Opposition amendment 1 suggested extending the powers in Clause 1 from 2023 to 2026.

<sup>157</sup> HL Deb 13 March 2018 [c1532](#)

<sup>158</sup> HL Deb 13 March 2018 [c1536](#)

<sup>159</sup> HL Deb 13 March 2018 [c1531-1532](#)

<sup>160</sup> HL Deb 13 March 2018 [c1535](#)

<sup>161</sup> HL Deb 13 March 2018 [c1532](#)

<sup>162</sup> HL Deb 13 March 2018 [c1537](#)

<sup>163</sup> Department for Business, Energy and Industrial Strategy, [Letter from Lord Henley to House of Lords](#), 22 March 2018

- Opposition amendment 2 suggested preventing the Secretary of State from removing licensable activities relating to smart meter communications.
- Opposition amendment 3 was a new clause on Cyber security, requiring the Government Communications Headquarters to conduct an annual risk assessment on smart meters and cyber-attacks.
- Opposition amendment 4 was also a new clause, giving the Secretary of State the power to instruct Ofgem to develop a draft National Plan for Smart Metering and listing a number of duties on Ofgem and the Secretary of State should they use the power.
- Amendment 5, moved by Baroness Maddock, would have inserted a new Clause which would require the Secretary of State to commission a review into how the extension of powers from 2020 to 2023 will impact fuel poverty and energy efficiency.
- Amendment 6, also moved by Baroness Maddock, would have inserted a new Clause which would require the Secretary of State to commission a review of the code of practice for smart meter installation and lay the review before Parliament.
- Amendment 7, moved by Baroness Featherstone, would have inserted a Clause that would amend the Energy Act 2008 to require energy suppliers to pass on savings made from smart meters to consumers.
- Amendment 8, also moved by Baroness Featherstone, suggested requiring that the cost of the administration order is not passed to consumers. Amendment 9 was consequential to amendment 8.
- Opposition amendment 10 proposed a new clause similar to amendment 8 in that it gave the Secretary of State the option to prevent costs of insolvency and administration onto consumers.
- Amendment 11, moved by Baroness Featherstone, would have inserted a new clause that would require the Secretary of State to commission a review of the use of data obtained by energy suppliers.
- Amendments 12 and 13, moved by Lord Teverson, suggested changing the commencement of the Bill, so that Section 1 only comes into effect when either 500,000 SMETS2 are operated in UK properties, or the Secretary of State has laid before Parliament a review of the public satisfaction and value for money of the smart meter implementation programme.

### 8.3 Report Stage

Report Stage of the Bill took place in the Lords on 15 May 2018. There were two amendments:

- Opposition amendment 1 was similar to amendment 4 at Committee. The amendment proposed requiring the Secretary of State to instruct Ofgem to develop a draft National Plan for Smart Metering and listing a number of duties on Ofgem and the Secretary of State.

- Amendment 2, moved by Lord Teverson, was similar to amendment 13 at Committee and would have required the Secretary of State to test SMETS 2 and suggested that no more than 5,000 SMETS 2 should be installed until the testing regime requirements are met.

Amendment 1 was withdrawn and amendment 2 was not moved, meaning the Bill passed to Report Stage unamended.

However, Lord Henley did commit to producing further reports on the roll out:

The programme already publishes quarterly rollout statistics, and we have committed in the other place to publish more substantial reports on programme delivery. I can further commit to publishing, by the end of 2018, as part of our annual report on progress, a forward plan of activity. This will show that the Government have a clear plan for resolving the remaining technical and operational challenges to delivering the programme. The report will be placed in the Library of the House.

[...]

I sympathise with noble Lords' desire for further assurance that the Government have a firm hand on the tiller on all aspects of the programme. I therefore commit to publishing, by spring 2019, a report that will provide a stocktake of progress towards delivering the consumer benefits of the programme. We will take evidence from consumer representative bodies and Ofgem in preparing the progress report.

[...]

The amendment seeks an assessment of how well the programme is future-proofed and we recognise that there are merits in undertaking an assessment of the smart meter platform in support of this. I therefore commit to publishing a paper by the end of this year that will draw out and promote the potential of the data offered by smart meters for future innovative consumer technologies and services.<sup>164</sup>

## 8.4 Third Reading and Royal Assent

Third Reading of the Bill took place on 22 May 2018<sup>165</sup> and the Bill received its Royal Assent on 23 May 2018.<sup>166</sup>

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<sup>164</sup> HL Deb 15 May 2018 vol 791 [c607](#)

<sup>165</sup> HL Deb 22 May 2018 vol 791 [c984](#)

<sup>166</sup> HL Deb 23 May 2018 vol 791 [Royal Assent](#)

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