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STATUTORY INSTRUMENTS

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**2013 No. 2429**

**ELECTRICITY  
GAS**

**The Electricity and Gas Appeals  
(Designation and Exclusion) Order 2013**

*Made - - - - 24th September 2013*  
*Laid before Parliament 26th September 2013*  
*Coming into force - - 21st October 2013*

The Secretary of State, in exercise of the powers conferred by section 173(2)(b) and (d), and (7) of the Energy Act 2004<sup>(1)</sup>, and having consulted the Gas and Electricity Markets Authority<sup>(2)</sup> and such other persons as the Secretary of State considers appropriate, makes the following Order:

**Citation and commencement**

1. This Order may be cited as the Electricity and Gas Appeals (Designation and Exclusion) Order 2013 and comes into force on 21st October 2013.

**Interpretation**

2. In this Order—

“the Act” means the Energy Act 2004;

“Change Board” has the same meaning as in section A1 of the Smart Energy Code;

“Panel” has the same meaning as in section A1 of the Smart Energy Code;

“Path 1 Modification” has the same meaning as in section A1 of the Smart Energy Code;

“Path 2 Modification” has the same meaning as in section A1 of the Smart Energy Code;

“Path 3 Modification” has the same meaning as in section A1 of the Smart Energy Code;

“Smart Energy Code” means the document of that title required to be maintained and in force pursuant to condition 21 of the smart meter communication licences<sup>(3)</sup>; and

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(1) 2004 c.20. Section 173 was amended by section 81(4) of the Energy Act 2011 (c.16).

(2) The Gas and Electricity Markets Authority, referred to as “GEMA” in accordance with section 196 of the Energy Act 2004, was established by section 1 of the Utilities Act 2000 (c.27).

(3) The Smart Energy Code came into force on 23rd September 2013 and is available at [www.gemserv.com](http://www.gemserv.com).

“smart meter communication licences” means—

- (a) the licence granted to Smart DCC Limited<sup>(4)</sup> on 20th September 2013 under section 7AB(2) of the Gas Act 1986<sup>(5)</sup>; and
- (b) the licence granted to Smart DCC Limited on 20th September 2013 under section 6(1A) of the Electricity Act 1989<sup>(6)</sup>.

### **Designation of Smart Energy Code**

- 3. The Smart Energy Code is designated for the purposes of section 173 of the Act.

### **Exclusion of decisions**

4.—(1) A right of appeal under section 173 of the Act is excluded in respect of a decision by GEMA relating to the Smart Energy Code where—

- (a) the decision accords with—
  - (i) a recommendation by the relevant body in respect of a Path 1 Modification or a Path 2 Modification; or
  - (ii) a decision by the Panel in respect of a Path 3 Modification; or
- (b) GEMA determines that the delay caused by the holding of the appeal against that decision is likely to have a material adverse effect on the availability of electricity or gas for meeting the reasonable demands of consumers in Great Britain.

(2) Where GEMA makes a determination under paragraph (1)(b), it shall give notice of the determination in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be interested in it.

(3) In paragraph (1)(a)(i), “relevant body” means—

- (a) the Change Board where, in accordance with section D8.1 of the Smart Energy Code, the Change Board has been established; or
- (b) the Panel where, in accordance with section X2.3(d) of the Smart Energy Code, the Change Board has not been established and the Panel is performing the functions of the Change Board.

24th September 2013

*Verma*  
Parliamentary Under Secretary of State  
Department of Energy and Climate Change

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(4) A company registered in England and Wales with number 08641679.  
(5) 1986 c.44. Section 7AB was inserted by the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I.2012/2400), Part 3, article 21. A smart meter communication licence authorises the carrying out of a smart meter communication service within the meaning of section 5(1)(d) of the Gas Act 1986.  
(6) 1989 c.29. Section 6 was substituted by the Utilities Act 2000 (c.27), section 30, and section 6(1A) was inserted by the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), Part 2, article 6(3). A smart meter communication licence authorises the carrying out of a smart meter communication service within the meaning of section 4(1)(e) of the Electricity Act 1989.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Order designates a document in relation to which certain decisions of the Gas and Electricity Markets Authority (“GEMA”) may be appealed to the Competition Commission under Part 3 of Chapter 4 of the Energy Act 2004 (c.20).

A smart meter communication licence has been granted to Smart DCC Limited (a company registered in England and Wales with number 08641679) under each of section 7AB(2) of the Gas Act 1986 (c.44) and section 6(1A) of the Electricity Act 1989 (c.29). The two licences have uniform licence conditions. The licensee is required to maintain and keep in force the Smart Energy Code under condition 21 of the licences.

Article 3 of the Order designates the Smart Energy Code (available at [www.gemserv.com](http://www.gemserv.com)) for the purposes of section 173 of the Energy Act 2004, with the effect that appeals may be made to the Competition Commission against certain decisions made in relation to the modification or proposed modification of that code by the Gas and Electricity Markets Authority. The licences referred to in this Order may be inspected at the offices of the Gas and Electricity Markets Authority, 9 Millbank, London, SW1P 3GE.

Article 4 also provides for the circumstances in which a decision which would otherwise be an appealable decision is excluded from the right of appeal.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Fuel Poverty and Smart Meters Directorate, Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).