



Gas Act 1986

1986 CHAPTER 44

PART I

GAS SUPPLY

Modification of public gas suppliers' authorisations

23 Modification by agreement

- (1) Subject to the following provisions of this section, the Director may modify the conditions of a public gas supplier's authorisation.
- (2) Before making modifications under this section, the Director shall give notice—
 - (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications ; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
 - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications ; and
 - (b) by sending a copy of the notice to the public gas supplier, to the Secretary of State and to the Council.
- (4) The Director shall not make the modifications without the consent of the public gas supplier and if, within the time specified in the notice under subsection (2) above, the Secretary of State directs the Director not to make any modification, the Director shall comply with the direction.

Status: This is the original version (as it was originally enacted).

- (5) The Secretary of State shall not give a direction under subsection (4) above in respect of any modification affecting the supply of gas by the public gas supplier to tariff customers unless it appears to him that the modification should be made, if at all, under section 26 below.

24 Modification references to Monopolies Commission

- (1) The Director may make to the Monopolies and Mergers Commission (in this Part referred to as " the Monopolies Commission ") a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which relate to the supply of gas by a public gas supplier to tariff customers and which are specified in the reference operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the public gas supplier's authorisation.
- (2) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of such notice the Commission shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—
- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have ; and
 - (b) any modifications of the conditions of the authorisation by which, in his opinion, those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director—
- (a) shall send a copy of the reference or variation to the public gas supplier and to the Council; and
 - (b) publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this section, to give to the Commission—
- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
 - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,
- and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.

- (6) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by section 4 above.
- (7) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the Competition Act 1980 (modifications of provisions about performance of such functions) shall apply in relation to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under the said Act of 1973 ;
 - (b) the expression " merger reference " included a reference under this section;
 - (c) in the said section 70 references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
 - (d) in paragraph 11 of the said Schedule 3 the reference to section 71 of the said Act of 1973 were a reference to subsection (2) above ; and
 - (e) paragraph 16(2) of that Schedule were omitted.

25 Report on modification references

- (1) In making a report on a reference under section 24 above, the Monopolies Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating proper understanding of those questions and of their conclusions ;
 - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
 - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the authorisation, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) Where, on a reference under section 24 above, the Monopolies Commission conclude that the public gas supplier is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.
- (3) Section 82 of the Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under section 24 above as it applies to reports of the Commission under that Act.
- (4) A report of the Monopolies Commission on a reference under section 24 above shall be made to the Director.

Status: This is the original version (as it was originally enacted).

- (5) Subject to subsection (6) below, the Director shall—
- (a) on receiving such a report, send a copy of it to the public gas supplier and to the Secretary of State ; and
 - (b) not less than 14 days after that copy is received by the Secretary of State, send another copy to the Council and publish that other copy in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in subsection (5) above, direct the Director to exclude that matter from the copy of the report to be sent to the Council and published under that subsection.

26 Modification following report

- (1) Where a report of the Monopolies Commission on a reference under section 24 above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
 - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
 - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the authorisation ; and
 - (d) specifies modifications by which those effects could be remedied or prevented,
- the Director shall, subject to the following provisions of this section, make such modifications of the conditions of the authorisation as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
- (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications ; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given_
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by sending a copy of the notice to the public gas supplier and to the Council.

27 Modification by order under other enactments

- (1) Where in the circumstances mentioned in subsection (2) below the Secretary of State by order exercises any of the powers specified in Parts I and II of Schedule 8 to the Fair Trading Act 1973 or section 10(2)(a) of the Competition Act 1980, the order may also provide for the modification of the conditions of a public gas supplier's authorisation to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to or of taking account of any provision made by the order.
- (2) Subsection (1) above shall have effect where—
 - (a) the circumstances are as mentioned in section 56(1) of the said Act of 1973 (order on report on monopoly reference) and the monopoly situation exists in relation to the supply of gas through pipes ;
 - (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and the two or more enterprises which ceased to be distinct enterprises were engaged in the supply of gas through pipes; or
 - (c) the circumstances are as mentioned in section 10(1) of the said Act of 1980 (order on report on competition reference) and the anti-competitive practice relates to the supply of gas through pipes.
- (3) In this section expressions which are also used in the said Act of 1973 or the said Act of 1980 have the same meanings as in that Act.