
STATUTORY INSTRUMENTS

1999 No. 742

DEREGULATION

The Deregulation (Pipe-lines) Order 1999

Made - - - - 6th March 1999

Coming into force in accordance with article 1

Whereas:

- (a) the Secretary of State is of the opinion that certain provisions of the Pipe-lines Act 1962(1) which are the subject of this Order impose burdens affecting persons in the carrying on of a trade, business, profession or otherwise and that by amending or repealing the provisions concerned and by making certain other provision it is possible to remove or reduce the burdens without removing any necessary protection;
- (b) he has consulted such organisations as appear to him to be representative of interests substantially affected by his proposals and such other persons as he considers appropriate;
- (c) it appears to the Secretary of State that it is appropriate, following that consultation, to proceed with the making of this Order;
- (d) a document setting out the Secretary of State's proposals has been laid before Parliament as required by section 3 of the Deregulation and Contracting Out Act 1994(2) and the period for Parliamentary consideration under section 4 of that Act has expired;
- (e) the Secretary of State has had regard to the representations made during that period and, in particular, to any resolution or report of, or of any committee of, either House of Parliament with regard to the document;
- (f) a draft of this Order has been laid before Parliament together with a statement giving details of the representations and any such resolution or report and the changes (if any) which the Secretary of State has made to his proposals in the light of such representations, resolution or report; and
- (g) a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 1 of the Deregulation and Contracting Out Act 1994 hereby makes the following Order—

(1) 1962 c. 58.
(2) 1994 c. 40.

Citation and commencement

1. This Order may be cited as the Deregulation (Pipe-lines) Order 1999 and shall come into force 28 days after the day on which it is made.

Amendment of the Pipe-lines Act 1962

2. The Pipe-lines Act 1962 shall have effect subject to the amendments specified in the Schedule to this Order.

Transitional Provisions

3. Nothing in this Order affects the operation of the Pipe-lines Act 1962 in relation to—
- (a) the execution of works begun before the date on which this Order comes into force;
 - (b) the execution of works in any other case under a pipe-line construction or diversion authorisation which has been granted before that date or for which an application has been received by the Secretary of State before that date;
 - (c) an application for, or the grant of, a pipe-line construction or diversion authorisation, where the application for the authorisation has been received by the Secretary of State before that date;
 - (d) the revocation under section 12(5) of that Act of a compulsory rights order where a pipe-line diversion authorisation becomes of no effect.

6th March 1999

John Battle
Minister for Energy and Industry,
Department of Trade and Industry

SCHEDULE

Article 2

AMENDMENTS TO THE PIPE-LINES ACT 1962

Local pipe-lines: repeal of section 2

1.—(1) Section 2 (local pipe-lines not to be constructed without notification to the Minister) is hereby repealed.

(2) In section 4(1), the words “or subsection (1) of section two thereof” shall be omitted.

(3) In section 4(5), for “either of the subsections therein mentioned”, there shall be substituted “subsection (1) of section one of this Act” and for “the subsection in question”, there shall be substituted “that subsection”.

(4) In section 6(1), in both paragraphs (a) and (b), the words “to the exclusion of section two thereof” shall be omitted.

(5) In section 58(2), for “Sections one and two”, there shall be substituted “Section one”.

(6) In section 59(1), for “Sections one and two”, there shall be substituted “Section one”.

(7) In section 64, for “sections one and two”, there shall be substituted “section one”.

Diversion of pipe-lines: repeal of section 3

2.—(1) Section 3 (diversion of pipe-lines) is hereby repealed.

(2) After section 1(1), there shall be inserted the following—

“(1A) For the purposes of this section—

(a) the construction of a diversion to a pipe-line shall be treated as the construction of a separate pipe-line, and

(b) if the diversion is to a pipe-line which is the subject of a pipe-line construction authorisation but the length of that pipe-line which is being diverted has not been constructed, the construction of the diversion shall be treated as the construction of a cross-country pipe-line whatever the length of the diversion.”

(3) In section 5(1), the words “or diversion” shall be omitted.

(4) In section 43, the words “or diversion” shall be omitted.

(5) In section 47(3), the words “or diversion” shall be omitted wherever they appear.

(6) In section 66(1), the definition of “pipe-line diversion authorisation” shall be omitted.

Additions to pipe-lines: repeal of section 7

3. Section 7 (provisions supplementary to sections 1 to 6) is hereby repealed.

Written representations procedure: amendments to the First Schedule

4.—(1) In the First Schedule, for paragraph 4, there shall be substituted—

“4.—(1) Where the proper notices concerning an application for the grant of a pipe-line construction authorisation have been published and served under paragraph 3 of this Schedule and an objection is duly made by a local planning authority in accordance with a notice under that paragraph and is not withdrawn, the Secretary of State shall before granting the application either—

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- (a) cause a public inquiry to be held with respect to the objection and consider the report of the person who held the inquiry; or
- (b) consider the objection by the written representations procedure in accordance with the provisions of paragraph 8A of this Schedule.

(2) Where the proper notices concerning an application for the grant of a pipe-line construction authorisation have been published and served under paragraph 3 of this Schedule and an objection is duly made by a person other than a local planning authority in accordance with a notice under that paragraph and is not withdrawn, the Secretary of State shall before granting the application—

- (a) cause a public inquiry to be held with respect to the objection and consider the report of the person who held the inquiry;
- (b) afford to the person making the objection an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose and consider the report of the person so appointed; or
- (c) consider the objection by the written representations procedure in accordance with the provisions of paragraph 8A of this Schedule.

4A.—(1) Where the Secretary of State decides under paragraph 4 above to consider an objection to an application under the written representations procedure, he shall give notice to the applicant and to every person who has made an objection to the application that, unless he receives a notice under sub-paragraph (2) below, the objection will be considered by written representations.

(2) The written representations procedure shall not apply to an objection to an application if either the applicant or any person who has made an objection to that application gives the Secretary of State notice, no later than 28 days from the date on which the notice under sub-paragraph (1) above is served on him, that he does not wish to proceed by way of written representations.

(3) On receiving a notice under sub-paragraph (2) above, the Secretary of State shall give notice to the applicant and to every person who has made an objection to the application that the written representations procedure will not be used and—

- (a) where a local planning authority is one of the objectors, that he will cause a public inquiry to be held in accordance with paragraph 4(1)(a) above;
- (b) in any other case, that he will either cause a public inquiry to be held, or afford the objectors a hearing in accordance with paragraph 4(2) above.

(4) The Secretary of State shall cease considering an objection to an application under the written representations procedure if, at any time before he has determined whether to grant the application—

- (a) the Secretary of State receives notice from the applicant or any person who has made an objection to the application to the effect that he does not wish to proceed by way of written representations; or
- (b) the Secretary of State decides to cause a public inquiry to be held, or to afford the objectors a hearing, instead of proceeding by way of written representations.

(5) Where an objection to an application ceases to be considered under the written representations procedure by virtue of sub-paragraph (4) above, the Secretary of State shall give notice to the applicant and to every person who has made an objection to the application that that procedure has ceased and—

- (a) where a local planning authority is one of the objectors, that he will cause a public inquiry to be held in accordance with paragraph 4(1)(a) above;

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(b) in any other case, that he will either cause a public inquiry to be held, or afford the objectors a hearing in accordance with paragraph 4(2) above.

(6) The Secretary of State may at any time before he has determined whether to grant the application direct that the written representations procedure shall apply to an objection to an application from the date of the direction, but only if the applicant and every objector to the application consents to the use of that procedure.

(7) If a notice under sub-paragraph (5) above or a direction under sub-paragraph (6) above is given, the Secretary of State may direct that any step already taken in satisfaction of any requirement under any one of the three procedures (that is to say the public inquiry, hearing or written representations procedure) shall be deemed to any extent he thinks fit to be a step taken in satisfaction of any similar requirement under another of the procedures.”.

(2) In the First Schedule, for sub-paragraphs (4) and (5) of paragraph 6A, there shall be substituted—

“(4) Where a local planning authority makes an objection in accordance with a notice under sub-paragraph (1) and does not withdraw it, the Secretary of State shall before granting the application either—

- (a) cause a public inquiry to be held with respect to the objection and consider the report of the person who held the inquiry; or
- (b) consider the objection by the written representations procedure in accordance with the provisions of paragraph 8A of this Schedule.

(5) Where a person other than a local planning authority makes an objection in accordance with a notice under sub-paragraph (1) and does not withdraw it, the Secretary of State shall before granting the application—

- (a) cause a public inquiry to be held with respect to the objection and consider the report of the person who held the inquiry;
- (b) afford to the person making the objection an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose and consider the report of the person so appointed; or
- (c) consider the objection by the written representations procedure in accordance with the provisions of paragraph 8A of this Schedule.

(6) The provisions of paragraph 4A of this Schedule shall apply to objections to a modification as they apply to objections to an application with the necessary modifications.”.

(3) At the end of Part I of the First Schedule there shall be added—

“**8A.**—(1) Where no notice has been received under paragraph 4A(2) above and an objection to an application is to be considered by the written representations procedure, the Secretary of State shall (if he has not already done so) serve a copy of the objection on the applicant and shall give notice to the applicant and to the person who has made the objection that—

- (a) the application will be considered by the written representations procedure, and
- (b) the applicant may, no later than 28 days from the date on which the notice is served on him, submit written representations to the Secretary of State on the objection.

(2) The Secretary of State shall, no later than 7 days from the last day on which the applicant could submit representations under sub-paragraph (1) above—

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- (a) serve a copy of any representations made by the applicant under that sub-paragraph on the person who made the objection to which the representations relate; and
- (b) notify that objector that he may, no later than 21 days from the date on which the notice is served on him, submit a written response to the representations to the Secretary of State.

(3) The Secretary of State shall serve a copy of any response received from the objector under sub-paragraph (2) above on the applicant no later than 7 days from the last day on which the objector could respond.

(4) The Secretary of State may, at any time before determining the application, by notice require the applicant or any objector to submit, within such reasonable time as the notice may specify, such further information in relation to an application or objection as the notice may specify and shall, in such a case, not determine the application until he has afforded to any person he considers affected by such further information a reasonable opportunity of commenting upon it.

(5) The Secretary of State may allow further time for the taking of any step under this paragraph (including a step to be taken by himself) and all references in this paragraph to a period within which any step is required to be taken shall be construed accordingly.”.

(4) Part II of the First Schedule is hereby repealed.

Consequential repeals and amendments

5. Section 8 (exception for emergency works) is hereby repealed.

6. After section 9(5) there shall be inserted the following—

“(6) This section does not apply where the application for the grant of a pipe-line construction authorisation relates to the construction of a diversion.”.

7. After section 9 (provisions for securing that a pipe-line is so constructed as to reduce necessity for construction of others) there shall be inserted—

“Provisions for securing that an additional pipe-line is so constructed as to reduce necessity for construction of other pipe-lines

9A.—(1) Where—

- (a) application is made for the grant of planning permission for the construction of an additional pipe-line to be designed for the conveyance of a particular kind of thing or of things of a particular class, and
- (b) the Secretary of State is satisfied that there is evidence of demand existing or likely to arise for the grant of planning permission or pipe-line construction authorisations for the construction of further pipe-lines to be designed for the conveyance of that kind of thing or, as the case may be, things of that class, and
- (c) the Secretary of State is also satisfied that the routes to be taken by the further lines will severally be, as to the whole or any part thereof, the same or substantially the same as the route or any part of the route to be taken by the line to which the application relates,

he may, at any time before planning permission for the construction of the additional pipe-line is granted, by notice served on the person who made the application for planning permission, direct that the line to be constructed pursuant to the application or any length of that line specified in the notice shall be so constructed as to be capable of conveying, during

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such period as may be so specified, not less than such quantity as may be so specified of the kind of thing in question or, as the case may be, things of the class in question.

(2) The Secretary of State may at any time, by notice served on the owner of an additional pipe-line in respect of which a notice under subsection (1) of this section was served, impose such requirements as he thinks it necessary or expedient to impose for all or any of the following purposes, namely,—

- (a) securing to persons other than the owner of the line the right to have conveyed by the line or, as the case may be, by any length of it specified in the notice by virtue of that subsection, the kind of thing specified in the notice or, as the case may be, things of the class so specified;
- (b) regulating the charges to be made for the conveyance by the line or, as the case may be, by that length thereof, on behalf of persons other than the owner of the line of that kind of thing or, as the case may be, things of that class;
- (c) securing that the exercise of a right secured by virtue of paragraph (a) of this subsection is not prevented or impeded; but requirements imposed for the purpose specified in paragraph (a) of this subsection shall be so framed as, in the Secretary of State's opinion, to secure that compliance therewith will not prejudice the proper and efficient operation of the line for the purpose of the conveyance on behalf of the owner thereof, in the quantity required by him, of the kind of thing, or things of the class, which it is designed to convey.

(3) A notice served under subsection (2) of this section with reference to an additional pipe-line may authorise the owner thereof to recover, from persons to whom a right is secured by the notice by virtue of paragraph (a) of that subsection, payments of such amounts as may be determined in accordance with provisions in that behalf contained in the notice, being payments in consideration of that right's being secured to them.

(4) Where an additional pipe-line in respect of which a notice is served under subsection (1) of this section is constructed without conformity to that notice, the works for the construction of the line shall be deemed, for the purposes of the foregoing provisions of this Act, to have been executed in contravention of subsection (1) of section one of this Act.

(5) If the owner of a pipe-line fails to comply with a requirement imposed by a notice served under subsection (2) of this section with reference to the line he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale; and, if the failure continues after his conviction, he shall be guilty of a further offence and liable, in respect thereof, to a fine not exceeding twenty-five pounds for each day on which the failure continues.

(6) In this section "planning permission" means permission under Part III of the Town and Country Planning Act 1990 or under Part III of the Town and Country Planning (Scotland) Act 1997."

8. In section 10 (provisions for securing that a pipe-line is so used as to reduce necessity for construction of others), after subsection (6), there shall be inserted the following—

“(7) An additional pipe-line shall be treated as a pipe-line constructed pursuant to a pipe-line construction authorisation for the purposes of this section.

(8) Any diversion to a pipe-line constructed pursuant to a pipe-line construction authorisation (or treated as so constructed) shall be treated as part of that pipe-line for the purposes of this section.

Accordingly, a diversion which required such an authorisation shall be treated for those purposes as constructed pursuant to the pipe-line construction authorisation of the pipe-line it is diverting.”

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9. After section 10 there shall be inserted the following—

“Diversions of pipe-lines subject to requirements under section 9 or 10

10A.—(1) A length of pipe-line—

- (a) in respect of which any condition has been imposed under section 9(1) or a notice has been served under section 9A(1); and
- (b) which is to be diverted,

shall continue for the purposes of and after the diversion to be subject to any condition or any direction contained in any such notice.

(2) A pipe-line in respect of which any requirements have been imposed by virtue of a notice served under section 9(2), 9A(2) or 10(4) which is subsequently diverted, shall continue to be subject to such requirements after the diversion.

(3) This section applies to a diversion which exceeds 16.093 kilometres as well as to a diversion which does not exceed that length.”

10. In subsection 12(5) for the words from the beginning to the words “and he may” there shall be substituted—

“(5) If—

- (a) any such pipe-line or length of a pipe-line as has been placed in land by virtue of a compulsory rights order is diverted from the land comprised in the order or is abandoned; or
- (b) a pipe-line construction authorisation relating to a pipe-line or length of a pipe-line to be placed in land in pursuance of a compulsory rights order becomes of no effect by virtue of subsection (4) of section one of this Act,

the Secretary of State may by order revoke the compulsory rights order to the extent to which it appears to him to have become unnecessary in consequence of the diversion or abandonment or of the authorisation’s so becoming of no effect.

(5A) The Secretary of State may”.

11. In section 16—

- (a) in subsections (2)(b) and (3) for “an unacceptable diversion”, there shall be substituted “a diversion”; and
- (b) subsection (4) shall be repealed.

12. In section 35—

- (a) in subsection (1), the words “or diversion” and the words “or, as the case may be, portion of pipe-line to be diverted” shall be omitted,
- (b) subsections (2) and (3) are hereby repealed, and
- (c) in subsection (4), for “any of the foregoing subsections”, there shall be substituted “subsection (1) above”.

13. After section 36(2) there shall be inserted—

“(3) This section applies only to pipe-lines constructed pursuant to a pipe-line construction authorisation and to diversions to any such line.”.

14. In section 46—

- (a) for paragraph (a), there shall be substituted—

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- “(a) sends to the Secretary of State an application for the grant of a pipe-line construction authorisation or the making of a compulsory purchase or rights order, being an application which he knows to be false in a material particular, or recklessly sends to the Secretary of State such an application which is so false; or”, and
- (b) in paragraph (c), for the words from “paragraph (b)” to “thirty-five thereof”, there shall be substituted “subsection (1) of section thirty-five of this Act”.
- 15.** In section 66(1)–
- (a) before the definition of “agriculture”, there shall be inserted the following–
- ““additional pipe-line” means a pipe-line (other than a diversion)–
- (a) which is of a length not exceeding 16.093 kilometres and is to form an addition to another pipe-line, if the aggregate of the lengths of both exceeds 16.093 kilometres, or
- (b) which is of a length not exceeding 16.093 kilometres and is to be constructed so as to connect two or more other pipe-lines, if the aggregate of the lengths of the line and of those connected thereby exceeds 16.093 kilometres;”;
- (b) after the definition of “cross-country pipe-line”, there shall be inserted the following–
- ““diversion” means a lateral diversion of any length of a pipe-line (whether or not that pipe-line has been constructed) where the diversion is–
- (a) beyond the limits of lateral diversion permitted by an authorisation under this Act relating to that pipe-line, or
- (b) if no such authorisation is required, beyond the lateral limits of deviation permitted by planning permission granted in relation to that pipe-line under Part III of the Town and Country Planning Act 1990 or under Part III of the Town and Country Planning (Scotland) Act 1997;”;
- (c) the definition of “emergency works” shall be omitted.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Deregulation and Contracting Out Act 1994 which allows statutory provisions to be amended, without removing any necessary protection, in order to reduce burdens affecting persons carrying on business.

This Order amends the Pipe-lines Act 1962 which regulates and facilitates the construction of onshore pipe-lines. The 1962 Act covers all onshore pipe-lines in Great Britain except those of public gas transporters, the water companies, the Government and some other minor classes of pipes (see sections 58 to 62 of the 1962 Act). The Act creates two categories of pipe-lines. “Cross-country” pipe-lines (defined as those which exceed 16.093 kilometres in length) require authorisation from the Secretary of State under section 1 of the 1962 Act by means of a pipe-line construction authorisation which carries with it deemed planning permission. Pipe-lines 16.093 kilometres in length or less are classed as “local pipe-lines” and are subject to section 2 of the 1962 Act which requires notification

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to the Secretary of State at least sixteen weeks prior to construction. Local pipe-lines require local authority planning permission under the normal planning system.

This Order amends the procedure set out in the First Schedule to the 1962 Act for dealing with objections to applications for pipe-line construction authorisations. Currently, the Secretary of State cannot grant a pipe-line construction authorisation until any outstanding objections to the application for it have first been heard either at a public inquiry or hearing. This Order introduces a procedure allowing objections to be dealt with by means of written representations rather than by an oral hearing or a public inquiry. Objections will only be dealt with in this way if all objectors and the applicant so agree.

This Order repeals section 2 of the 1962 Act so that in future the Secretary of State will not have to be notified of the construction of local pipe-lines.

This Order also repeals section 7 of the 1962 Act. At present if a new pipe-line is to be added to another pipe-line, or connects two other pipe-lines, such that their combined length exceeds 16.093 kilometres, section 7(1) requires the new pipe to be authorised by the Secretary of State under section 1 of the Act. The repeal of section 7 means that in future an authorisation from the Secretary of State will only be required for the construction of a pipe where the length of the pipe being constructed is over 16.093 kilometres in length, regardless of the length of any pipe to which the new pipe is to be connected.

Under section 3(1) of the 1962 Act, a pipe-line diversion authorisation from the Secretary of State is required if a cross-country pipe is to be diverted outside permitted limits of deviation. A pipe-line diversion authorisation is also required for a local pipe-line for a diversion which makes the new length of the line as a whole more than 16.093 kilometres. This Order repeals section 3 of the 1962 Act so that diversions of existing pipes will be treated in the same way as the construction of new pipes, i.e. authorisation from the Secretary of State will only be required where the length of the section being constructed for the diversion is over 16.093 kilometres in length. However, the Order amends section 1 of the 1962 Act so that where a cross-country pipe-line is to be diverted after a pipe-line construction authorisation has been granted but prior to construction of the line in question, a pipe-line construction authorisation will be required for the diversion, whatever its length.

The Order also makes a number of consequential amendments, including amendments to preserve the powers of the Secretary of State under the existing sections 9 and 10 of the Act to avoid the construction of superfluous pipe-lines.