



# Gas Act 1986

## 1986 CHAPTER 44

### PART I

#### GAS SUPPLY

##### Modifications etc. (not altering text)

- C1** Pt. I: definition of "public gas supplier" applied (E.W.) (1.12.1991) by [Water Resources Act 1991](#) (c. 57, SIF 130), **ss. 208(3)(b)**, 225(2) (with [ss. 16\(6\)](#), 179, 222(3), [Sch. 22 para. 1](#), [Sch. 23 para. 6](#))
- Pt. I: definition of "public gas supplier" applied (E.W.) (1.12.1991) by [Water Resources Act 1991](#) (c. 57, SIF 130), [ss. 178](#), 225(2), **Sch. 22 para. 1(4)(e)** (with [ss. 16\(6\)](#), 179, 222(3), [Sch. 22 para. 1](#), [Sch. 23 para. 6](#))
- Pt. I applied (1.3.1996) by [1995 c. 45, s. 6\(7\)](#); S.I. 1996/218, **art. 2**
- Pt. I applied (1.3.1996) by [1995 c. 45, s. 16\(1\)](#), **Sch. 4 para. 1**; S.I. 1996/218, **art. 2**

#### *Introductory*

### **1 The Director General of Gas Supply.**

- (1) The Secretary of State shall appoint an officer to be known as the Director General of Gas Supply (in this Act referred to as "the Director") for the purpose of performing the functions assigned to the Director by this Part.
- (2) An appointment of a person to hold office as the Director shall not be for a term exceeding five years; but previous appointment to that office shall not effect eligibility for re-appointment.
- (3) The Director may at any time resign his office as the Director by reasonable notice addressed to the Secretary of State; and the Secretary of State may remove any person from that office on the ground of incapacity or misbehaviour.
- (4) Subject to subsections (2) and (3) above, the Director shall hold and vacate office as such in accordance with the terms of his appointment.

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(5) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

## 2 The Gas Consumers' Council.

- (1) There shall be a body corporate to be known as the Gas Consumers' Council (in this Part referred to as "the Council") for the purpose of performing the functions assigned to it by this Part.
- (2) The Council shall consist of a chairman and such other members as the Secretary of State may from time to time appoint.
- (3) In appointing members of the Council, the Secretary of State shall so far as practicable, ensure—
  - (a) that the members of the Council include members who, by reason of their familiarity with the special requirements and circumstances of the different areas of Great Britain or of small businesses, are able together to represent the interests of consumers of gas supplied through pipes in all those areas and of such businesses; and
  - (b) that the interests of consumers of gas supplied through pipes in different areas are represented by different members wherever that appears to the Secretary of State to be appropriate having regard to the manner in which the various parts of the gas supply industry in Great Britain organise themselves.
- (4) A member of the Council shall hold and vacate office in accordance with the terms of the instrument appointing him and shall, on ceasing to hold office, be eligible for re-appointment.
- (5) The provisions of Schedule 2 to this Act shall have effect with respect to the Council.
- (6) In consequence of the provisions of this section, the National Gas Consumers' Council and the Regional Gas Consumers' Councils shall cease to exist.

## 3 Abolition of Corporation's special privilege.

As from such day as the Secretary of State may by order appoint for the purposes of this section and the following provisions of this Part (in this Act referred to as "the appointed day"), the privilege with respect to the supply of gas through pipes conferred on the British Gas Corporation (in this Act referred to as "the Corporation") by section 29 of the 1972 Act shall cease to exist.

### Modifications etc. (not altering text)

- C2** 23.8.1986 appointed for the purposes of section 3 and the following provisions of Part I (gas supply) by SI 1986/1316

## [<sup>F1</sup>4] General duties of Secretary of State and Director.

- (1) The Secretary of State and the Director shall each have a duty to exercise the functions assigned to him by or under this Part in the manner which he considers is best calculated—
  - (a) to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;

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- (b) to secure that licence holders are able to finance the carrying on of the activities which they are authorised or required by their licences to carry on; and
  - (c) to secure effective competition in the carrying on of activities the carrying on of which is required to be licensed under section 7A below.
- (2) Subject to subsection (1) above, the Secretary of State and the Director shall each have a duty to exercise the functions assigned to him by or under this Part in the manner which he considers is best calculated—
- (a) to protect the interests of consumers of gas conveyed through pipes in respect of the prices charged and the other terms of supply, the continuity of supply, the quality of the gas supply services provided and the exercise of rights under this Part to enter their premises;
  - (b) to promote efficiency and economy on the part of persons authorised by or under this Part to carry on any activities, and the efficient use of gas conveyed through pipes; and
  - (c) to secure effective competition—
    - (i) in the conveyance of gas through pipes to pipe-line systems and to areas to which it has not previously been so conveyed;
    - (ii) in the supplying and laying of service pipes; and
    - (iii) in the carrying on of activities ancillary to those mentioned in subsection (1)(c) above;
 and a duty to take into account, in exercising those functions, the effect on the environment (whether by way of pollution or otherwise) of activities connected with the conveyance of gas through pipes.
- (3) In performing his duty under subsection (2) above to exercise functions assigned to him in the manner which he considers is best calculated to protect the interests of consumers of gas conveyed through pipes in respect of the quality of the gas supply services provided, the Secretary of State or, as the case may be, the Director shall take into account, in particular, the interests of those who are chronically sick, disabled or of pensionable age.
- [ Subsections (1) to (3) above and section 4A below do not apply in relation to anything
- <sup>F2</sup>(3A) done by the Director in the exercise of functions assigned to him by section 36A below (“Competition Act functions”).
- (3B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (3) above or section 4A below, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.]
- (4) In this section “environment” and “pollution”, in relation to the environment, shall be construed in accordance with section 1 of the <sup>M1</sup>Environmental Protection Act 1990.
- (5) In this Part, unless the context otherwise requires, “licence” means a licence under section 7 or 7A below and “licence holder” shall be construed accordingly.]

#### Textual Amendments

**F1** S. 4 substituted (1.3.1996) by 1995 c. 45, s. 1; S.I. 1996/218, art. 2

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**F2** S. 4(3A)(3B) inserted (26.11.1998 in accordance with art. 2 of the commencing S.I. and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 3(3)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**

#### Marginal Citations

**M1** 1990 c. 43.

VALID FROM 20/12/2000

#### [<sup>F3</sup>4AB Guidance on social and environmental matters.

- (1) The Secretary of State shall from time to time issue guidance about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) The Authority shall, in carrying out its functions under this Part, have regard to any guidance issued under this section.
- (3) Before issuing guidance under this section the Secretary of State shall consult—
  - (a) the Authority;
  - (b) the Gas and Electricity Consumer Council (in this Act referred to as “the Council”);
  - (c) licence holders; and
  - (d) such other persons as the Secretary of State considers it appropriate to consult in relation to the guidance.
- (4) A draft of any guidance proposed to be issued under this section shall be laid before each House of Parliament.
- (5) Guidance shall not be issued under this section until after the period of forty days beginning with—
  - (a) the day on which the draft is laid before each House of Parliament; or
  - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.
- (6) If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it.
- (7) In reckoning any period of forty days for the purposes of subsection (5) or (6), no account shall be taken of any time during which—
  - (a) Parliament is dissolved or prorogued; or
  - (b) both Houses are adjourned for more than four days.
- (8) The Secretary of State shall arrange for any guidance issued under this section to be published in such manner as he considers appropriate.]

#### Textual Amendments

**F3** S. 4AB inserted (20.12.2000) by 2000 c. 27, s. 10; S.I. 2000/3343, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-15**)

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#### [<sup>F4</sup>4A Duties of Secretary of State and Director with respect to safety.

- (1) Subject to section 4(1) above, the Secretary of State and the Director shall each have a duty to exercise the functions assigned to him by or under this Part in the manner which he considers is best calculated to protect the public from dangers arising from the conveyance of gas through pipes or from the use of gas conveyed through pipes.
- (2) In performing his duty under subsection (1) above, the Secretary of State or, as the case may be, the Director shall consult with and take into account any advice offered by the Health and Safety Executive.
- (3) It shall also be the duty of the Director—
  - (a) in conjunction with the Health and Safety Executive, to prepare and from time to time revise a document setting out such means as may, with the approval of the Health and Safety Commission, be agreed between the Director and that Executive for securing co-operation and the exchange of information between them; and
  - (b) without prejudice to the effect or operation of any relevant statutory provisions (within the meaning of Part I of the <sup>M2</sup>Health and Safety at Work etc. Act 1974), to exercise the functions assigned to him by or under this Part in accordance with any agreement contained in that document.
- (4) As soon as practicable after agreement is reached for the purposes of—
  - (a) the preparation of a document in accordance with subsection (3) above, or
  - (b) any revision of a document prepared in accordance with that subsection,
 the Director shall send a copy of the document or, as the case may be, of the revised version of it to the Secretary of State, and the Secretary of State shall lay the copy before each House of Parliament.]

#### Textual Amendments

**F4** S. 4A inserted (1.3.1996) by 1995 c. 45, s. 2; S.I. 1996/218, art. 2

#### Marginal Citations

**M2** 1974 c. 37.

VALID FROM 20/12/2000

#### [<sup>F5</sup>4B Exceptions from sections 4AA to 4A.

- (1) Section 4AA does not apply in relation to the issuing by the Secretary of State of guidance under section 4AB.
- (2) Sections 4AA to 4A do not apply in relation to anything done by the Authority—
  - (a) in the exercise of functions relating to the determination of disputes; or
  - (b) in the exercise of functions under section 36A(3).
- (3) The Authority may nevertheless, when exercising any function under section 36A(3), have regard to any matter in respect of which a duty is imposed by sections 4AA to 4A if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.

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- (4) The duties imposed by sections 4AA to 4A do not affect the obligation of the Authority or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any Community obligation or otherwise).]

#### Textual Amendments

- F5** S. 4B inserted (20.12.2000) by 2000 c. 27, s. 12; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15)

#### Modifications etc. (not altering text)

- C3** S. 4B(3) excluded (20.12.2000) by S.I. 2000/3343, art. 10(1)(b) (subject to transitional provisions in arts. 3-15)

### *[<sup>F6</sup> Licensing of activities relating to gas]*

#### Textual Amendments

- F6** S. 5 and cross-heading preceding it substituted (1.3.1996) by 1995 c. 45, s. 3; S.I. 1996/218, art. 2

## [5 <sup>F7</sup>Prohibition on unlicensed activities

- (1) Subject to section 6A below and Schedule 2A to this Act, a person who—
- conveys gas through pipes to any premises, or to a pipe-line system operated by a public gas transporter;
  - supplies to any premises gas which has been conveyed to those premises through pipes; or
  - arranges with a public gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter,
- shall be guilty of an offence unless he is authorised to do so by a licence.
- (2) The exceptions to subsection (1) above which are contained in Schedule 2A to this Act shall have effect.
- (3) A person guilty of an offence under this section shall be liable—
- on summary conviction to a fine not exceeding the statutory maximum;
  - on conviction on indictment, to a fine.
- (4) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Director.
- (5) Any reference in this Part to the conveyance by any person of gas through pipes to any premises is a reference to the conveyance by him of gas through pipes to those premises with a view to the gas being supplied to those premises by any person, or being used in those premises by the holder of a licence under section 7A(2) below.]

#### Textual Amendments

- F7** S. 5 and cross-heading substituted (1.3.1996) by 1995 c. 45, s. 3; S.I. 1996/218, art. 2

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- C4** S. 5(1)(a) excluded (8.11.1995 with effect as mentioned in Sch. 5 Pt. II para. 16(1) of the amending Act) by 1995 c. 45, s. 17(1), **Sch. 5 Pt. II para. 16(1)(a)**; S.I. 1996/218, **art. 2**  
 S. 5(1)(a) excluded (14.10.1999) (*temp.* to 1.3.2011 unless revoked earlier) by S.I. 1999/2639, **arts. 1(2)(3)**, 3, 4-6, 7(1)  
 S. 5(1)(a) restricted (9.12.1999) (*temp.* to 1.3.2011 unless revoked earlier) by S.I. 1999/3089, **arts. 1(2)(3)**, 3, 5(1)
- C5** S. 5(1)(a)-(c) excluded (8.11.1995 for specified purposes) by 1995 c. 45, s. 17(1), **Sch. 5 Pt. II para. 17(1)(a)**
- C6** S. 5(1)(a) excluded (1.12.1996) by S.I. 1996/2795, **arts. 3, 4**
- C7** S. 5(1)(b) excluded (8.11.1995) by 1995 c. 45, s. 17(1), **Sch. 5 Pt. II para. 16(1)(b)**; S.I. 1996/218, **art. 2**  
 S. 5(1)(b) excluded (14.10.1999) (*temp.* to 1.3.2011 unless revoked earlier) by S.I. 1999/2639, **arts. 1(2)(3)**, 3, 4-6, 7(2)  
 S. 5(1)(b) restricted (9.12.1999) (*temp.* to 1.3.2011 unless revoked earlier) by S.I. 1999/3089, **arts. 1(2)(3)**, 5(2)
- C8** S. 5(1)(c) modified (8.11.1995) by 1995 c. 45, s. 17(1), **Sch. 5 Pt. II paras. 18(1)**

**F8**<sub>6</sub>

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#### Textual Amendments

- F8** S. 6 repealed (1.3.1996) by 1995 c. 45, ss. 3(3), 17(5), **Sch. 6**; S.I. 1996/218, **art. 2**

#### [**F9**]**6A Exemptions from prohibition.**

- (1) The Secretary of State may, after consultation with the Director, by order grant exemption from paragraph (a), (b) or (c) of section 5(1) above—
  - (a) either to a person or to persons of a class;
  - (b) either generally or to such extent as may be specified in the order; and
  - (c) either unconditionally or subject to such conditions as may be so specified.
- (2) An exemption granted to persons of a class, and the revocation of such an exemption, shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of that class.
- (3) An exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified in or determined by or under the exemption.
- (4) Without prejudice to the generality of paragraph (c) of subsection (1) above, conditions included by virtue of that paragraph in an exemption may require any person carrying on any activity in pursuance of the exemption—
  - (a) to comply with any direction given by the Secretary of State or the Director as to such matters as are specified in the exemption or are of a description so specified;
  - (b) except in so far as the Secretary of State or the Director consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and

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- (c) to refer for determination by the Secretary of State or the Director such questions arising under the exemption as are specified in the exemption or are of a description so specified.
- (5) If any condition of an exemption granted to persons of a class is not complied with by any person of that class, the Secretary of State may give to that person a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.]

#### Textual Amendments

**F9** S. 6A substituted (1.3.1996) by 1995 c. 45, s. 4; S.I. 1996/218, art. 2

#### Modifications etc. (not altering text)

**C9** S. 6A extended (8.11.1995 with effect as mentioned in Sch. 5 Pt. II paras. 16(1), 17(1) of the amending Act) by 1995 c. 45, s. 17(1), Sch. 5 Pt. II paras. 16(1)(b), 17(1)(b); S.I. 1996/218, art. 2

### [<sup>F107</sup> Licensing of public gas transporters.

- (1) In this Part “public gas transporter” means the holder of a licence under this section except where the holder is acting otherwise than for purposes connected with—
- (a) the carrying on of activities authorised by the licence;
  - (b) the conveyance of gas through pipes which—
    - (i) are situated in an authorised area of his; or
    - (ii) are situated in an area which was an authorised area of his, or an authorised area of a previous holder of the licence, and were so situated at a time when it was such an area; or
  - (c) the conveyance through pipes of gas which is in the course of being conveyed to or from a country or territory outside Great Britain.
- (2) Subject to subsection (3) below, the Director may grant a licence authorising any person to do either or both of the following, namely—
- (a) to convey gas through pipes to any premises in an authorised area of his, that is to say, so much of any area specified in the licence or an extension of the licence as is not specified in a subsequent licence or extension granted under this section to another person; and
  - (b) to convey gas through pipes either to any pipe-line system operated by another public gas transporter, or to any pipe-line system so operated which is specified in the licence or an extension of the licence.
- (3) A licence shall not be granted under this section to a person who is the holder of a licence under section 7A below.
- (4) The Director may, with the consent of the licence holder, direct that any licence under this section shall have effect—
- (a) as if any area or pipe-line system specified in the direction were specified in the licence;
  - (b) in the case of a licence under subsection (2)(a) above, as if it were also a licence under subsection (2)(b) above and any pipe-line system specified in the direction were specified in the licence; or



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- (c) in the case of a licence under subsection (2)(b) above, as if it were also a licence under subsection (2)(a) above and any area specified in the direction were specified in the licence;
- and references in this Part to, or to the grant of, an extension under this section, or an extension of such a licence, shall be construed as references to, or to the giving of, such a direction.
- (5) Before granting a licence or extension under this section, the Director shall give notice—
- (a) stating that he proposes to grant the licence or extension;
  - (b) stating the reasons why he proposes to grant the licence or extension; and
  - (c) specifying the time from the date of publication of the notice (not being less than two months or, in the case of an extension, such shorter time as may be prescribed) within which representations or objections with respect to the proposed licence or extension may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (6) A notice under subsection (5) above shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence or extension; and
  - (b) by sending a copy of the notice to the Secretary of State, to the Health and Safety Executive and to any public gas transporter whose area includes the whole or any part of the area proposed to be specified in the licence or extension.
- (7) A licence or extension under this section shall not specify any area which is specified in an earlier licence or extension granted under this section to another public gas transporter unless the Director considers that the applicant intends to carry on the activities authorised by the licence in a substantial part of that area.
- (8) A licence or extension under this section shall not specify any area which is situated within 23 metres from a main of another public gas transporter unless—
- (a) the other public gas transporter has consented in writing to the area being so specified; or
  - (b) no premises connected to the main are situated in the area and the Director considers—
    - (i) that the main is not, and is not intended to be, a relevant main;
    - (ii) that the other public gas transporter is not performing his duty under section 9(1) or 10(2) or (3) below in relation to any premises situated in the area; or
    - (iii) that the configuration of the main and of the surrounding area is such that it would be appropriate to specify the area in the licence or extension.
- (9) As soon as practicable after the granting of a licence under this section, the public gas transporter shall publish, in such manner as the Director considers appropriate for bringing it to the attention of persons who are likely to do business with the transporter, a notice—
- (a) stating that the licence has been granted; and

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- (b) explaining that, as a result, it might be necessary for those persons to be licensed under section 7A below.
- (10) In this section—
- (a) “relevant main” has the same meaning as in section 10 below;
  - (b) references to an area specified in a licence or direction include references to an area included in an area so specified; and
  - (c) references to a pipe-line system specified in a licence or direction include references to a pipe-line system of a description, or situated in an area, so specified.
- (11) Any reference in this Part (however expressed) to activities authorised by a licence under this section shall be construed without regard to any exception contained in Schedule 2A to this Act.]

#### Textual Amendments

**F10** S. 7 substituted (1.3.1996) by 1995 c. 45, s. 5; S.I. 1996/218, art. 2

#### Modifications etc. (not altering text)

**C10** S. 7 amended (16.5.2001) by 2000 c. 27, s. 81(1); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)

**C11** S. 7 applied (with modifications) (8.11.1995) by 1995 c. 45, s. 17(1), Sch. 5 Pt. II para. 15(1)(4); S.I. 1996/218, art. 2

**C12** S. 7 extended (8.11.1995) by 1995 c. 45, s. 17(1), Sch. 5 Pt. I para. 1(1)(a); S.I. 1996/218, art. 2

### [<sup>F11</sup>7A Licensing of gas suppliers and gas shippers.

- (1) Subject to subsection (3) below, the Director may grant a licence authorising any person to do either or both of the following, namely—
- (a) to supply, to any premises specified in the licence, gas which has been conveyed through pipes to those premises; and
  - (b) to supply, to any premises at a rate which, at the time when he undertakes to give the supply, he reasonably expects to exceed 2,500 therms a year, gas which has been conveyed through pipes to those premises.
- (2) Subject to subsection (3) below, the Director may grant a licence authorising any person to arrange with any public gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter, either generally or for purposes connected with the supply of gas to any premises specified in the licence.
- (3) A licence shall not be granted under this section to a person who is the holder of a licence under section 7 above.
- (4) The Director may, with the consent of the licence holder, direct that any licence under this section shall have effect—
- (a) as if any premises specified in the direction were specified in the licence; or
  - (b) in the case of a licence under subsection (1)(b) above, as if it were also a licence under subsection (1)(a) above and any premises specified in the direction were specified in the licence,

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and references in this Part to, or to the grant of, an extension under this section, or an extension of such a licence, shall be construed as references to, or to the giving of, such a direction.

- (5) Subsection (4) above shall not apply in relation to a licence under subsection (1) above which authorises only the supply to premises of gas which has been conveyed to the premises otherwise than by a public gas transporter.
- (6) The Director may, with the consent of the licence holder, direct that any licence under this section shall have effect as if any premises specified in the direction were not specified in the licence; and references in this Part to, or to the grant of, a restriction under this section, or a restriction of such a licence, shall be construed as references to, or to the giving of, such a direction.
- (7) In this section references to premises specified in a licence or direction include references to premises of a description, or situated in an area, so specified.
- (8) The Director shall not, in any licence under subsection (1) above, or in any extension or restriction of such a licence, specify any premises by description or area if he is of the opinion that the description or area has been so framed as—
  - (a) in the case of a licence or extension, artificially to exclude from the licence or extension; or
  - (b) in the case of a restriction, artificially to include in the restriction, premises likely to be owned or occupied by persons who are chronically sick, disabled or of pensionable age, or who are likely to default in the payment of charges.
- (9) If the holder of a licence under subsection (1) above applies to the Director for a restriction of the licence, or for the revocation of the licence in accordance with any term contained in it, the Director shall, subject to subsection (8) above, accede to the application if he is satisfied that such arrangements have been made as—
  - (a) will secure continuity of supply for all relevant consumers; and
  - (b) in the case of each such consumer who is supplied with gas in pursuance of a contract, will secure such continuity on the same terms as nearly as may be as the terms of the contract.
- (10) A person is a relevant consumer for the purposes of subsection (9) above if—
  - (a) immediately before the restriction or revocation takes effect, he is being supplied with gas by the holder of the licence; and
  - (b) in the case of a restriction, his premises are excluded from the licence by the restriction;and in that subsection “contract” does not include any contract which, by virtue of paragraph 8 of Schedule 2B to this Act, is deemed to have been made.
- (11) In this Part “gas supplier” and “gas shipper” mean respectively the holder of a licence under subsection (1) above, and the holder of a licence under subsection (2) above, except (in either case) where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.
- (12) Any reference in this Part (however expressed) to activities authorised by a licence under subsection (1) above shall be construed without regard to any exception contained in Schedule 2A to this Act.]

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### Textual Amendments

**F11** S. 7A inserted (1.3.1996) by 1995 c. 45, s. 6; S.I. 1996/218, art. 2

### Modifications etc. (not altering text)

**C13** S. 7A applied (with modifications) (8.11.1995) by 1995 c. 45, s. 17(1), **Sch. 5 Pt. II para. 15(1)(4)**; S.I. 1996/218, art. 2

S. 7A applied (with modifications) (1.3.1996) by S.I. 1996/399, art. 2(2)

**C14** S. 7A(1) extended (8.11.1995) by 1995 c. 45, s. 17(1), **Sch. 5 Pt. I para. 1(1)(b)**, Pt. II para. 16(1)(b); S.I. 1996/218, art. 2

**C15** S. 7A(2) extended (8.11.1995) by 1995 c. 45, s. 17(1), **Sch. 5 Pt. I para. 1(1)(c)**, Pt. II para. 16(1)(c); S.I. 1996/218, art. 2

### [<sup>F12</sup>7B Licences: general.

- (1) An application for a licence or an extension or restriction of a licence shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.
- (2) Within the prescribed period after the making of an application for a licence or an extension or restriction of a licence, the applicant shall—
  - (a) publish a notice of the application in the prescribed manner; and
  - (b) in the case of an application for a licence or extension under section 7 above, give notice of the application to any public gas transporter whose authorised area includes the whole or any part of the area to which the application relates.
- (3) A licence or an extension or restriction of a licence shall be in writing and, unless revoked or suspended in accordance with any term contained in it, a licence shall continue in force for such period as may be specified in or determined by or under the licence.
- (4) A licence may include—
  - (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the Director to be requisite or expedient having regard to the duties imposed by section 4 or 4A above;
  - (b) such conditions requiring arrangements to be made with respect to the provision of special services for meeting the needs of consumers of gas conveyed through pipes who are chronically sick, disabled or of pensionable age as appear to the Director to be requisite or expedient having regard to those duties;
  - (c) conditions requiring the rendering to the Director of a payment on the grant of the licence or payments during the currency of the licence or both of such amount or amounts as may be determined by or under the licence; and
  - (d) conditions requiring the holder to furnish the Council in such manner and at such times with such information—
    - (i) as appears to the Director to be requisite or expedient for the purpose of facilitating the exercise by the Council of the functions assigned to it by this Part; or
    - (ii) as may be reasonably required by the Council for that purpose.
- (5) Without prejudice to the generality of paragraph (a) of subsection (4) above—

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- (a) conditions included by virtue of that paragraph in a licence may—
    - (i) require the holder to comply with any direction given by the Director or the Secretary of State as to such matters as are specified in the licence or are of a description so specified;
    - (ii) require the holder, except in so far as the Director or the Secretary of State consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified; and
    - (iii) provide for the determination by the Director, the Secretary of State or the Health and Safety Executive of such questions arising under the licence, or under any document specified or described in the licence, as are specified in the licence or are of a description so specified; and
  - (b) conditions included by virtue of that paragraph in a licence under section 7 above may require the holder, in such circumstances as are specified in the licence—
    - (i) so to increase his charges for the conveyance of gas as to raise such amounts as may be determined by or under the conditions; and
    - (ii) to pay the amounts so raised to such holders of licences under section 7A above as may be so determined.
- (6) Conditions included in a licence may—
- (a) impose requirements by reference to designation, acceptance or approval by the Director, the Secretary of State or the Health and Safety Executive; and
  - (b) provide for references in the conditions to any document specified or described in the licence to operate as references to that document as revised or re-issued from time to time.
- (7) Conditions included in a licence may contain provision for the conditions to—
- (a) have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
  - (b) be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.
- (8) Any provision included in a licence by virtue of subsection (7) above shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- (9) As soon as practicable after granting a licence or an extension or restriction of a licence, the Director shall send a copy of the licence or extension or restriction—
- (a) to the Health and Safety Executive; and
  - (b) in the case of a licence or extension under section 7 above, to any public gas transporter whose authorised area previously included the whole or any part of the area specified in the licence or extension.
- (10) Any sums received by the Director under or by virtue of this section shall be paid into the Consolidated Fund.]

#### Textual Amendments

**F12** S. 7B inserted (1.3.1996) by 1995 c. 45, s. 7; S.I. 1996/218, art. 2

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#### **Modifications etc. (not altering text)**

**C16** S. 7B applied (with modifications) (1.3.1996) by S.I. 1996/399, **art. 2(2)**

**C17** S. 7B applied (with modifications) (8.11.1995 ) by 1995 c. 45, s. 17(1), **Sch. 5 Pt. II para. 15(1)(4)**; S.I. 1996/218, **art. 2**

#### **[<sup>F13</sup>8 Standard conditions of licences.**

- (1) Subject to subsections (2) and (3) and sections 23(2), 26(1A) and 27(2) below, each condition which by virtue of section 8(2) of the Gas Act 1995 is a standard condition for the purposes of—
  - (a) licences under section 7 above;
  - (b) licences under subsection (1) of section 7A above; or
  - (c) licences under subsection (2) of that section,
 shall be incorporated (that is to say, incorporated by reference) in each licence under that section or, as the case may be, that subsection.
- (2) Subsection (1) above shall not apply in relation to a licence under section 7A(1) above which authorises only the supply to premises of gas which has been conveyed to the premises otherwise than by a public gas transporter.
- (3) Subject to the following provisions of this section, the Director may, in granting a licence, modify any of the standard conditions to such extent as he considers requisite to meet the circumstances of the particular case.
- (4) Before making any modifications under subsection (3) above, 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.
- (5) A notice under subsection (4) 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 Secretary of State, to the Health and Safety Executive and to the Council.
- (6) If, within the time specified in the notice under subsection (4) above, the Secretary of State directs the Director not to make any modification, the Director shall comply with the direction.
- (7) The Director shall not make any modifications under subsection (3) above of a condition of a licence under subsection (1) or (2) of section 7A above unless he is of the opinion that the modifications are such that no other holder of such a licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).

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- (8) The modification under subsection (3) above of a condition of a licence shall not prevent so much of the condition as is not so modified being regarded as a standard condition for the purposes of this Part.
- (9) In this section “modify” includes fail to incorporate and “modification” shall be construed accordingly.]

#### Textual Amendments

**F13** S. 8 substituted (1.3.1996) by 1995 c. 45, s. 8(1); S.I. 1996/218, art. 2

#### [<sup>F14</sup>8AA Assignment of licences.

- (1) A licence shall be capable of being assigned either generally or—
- (a) in the case of a licence under section 7 above, so far as relating to the whole or any part of an authorised area or any specified pipe-line system;
  - (b) in the case of a licence under section 7A above, so far as relating to any specified premises,
- but only if it includes a condition authorising such assignment.

In this subsection “specified” means specified in the licence, or of a description, or situated in an area, so specified.

- (2) A licence shall not be capable of being assigned except with the consent of the Director.
- (3) In deciding whether to give his consent under subsection (2) above, the Director shall apply the same criteria as he would apply if—
- (a) in the case of a general assignment, he were deciding whether to grant a corresponding licence to the assignee;
  - (b) in the case of any other assignment, he were deciding whether—
    - (i) to grant to the assignee a licence corresponding to so much of the licence as is proposed to be assigned; and
    - (ii) to grant to the assignor a licence corresponding to so much of the licence as is proposed to be retained.
- (4) Subject to subsection (5) below, a consent under subsection (2) above may be given subject to compliance with—
- (a) such modification or other conditions as the Director considers necessary or expedient for the purpose of protecting the interests of consumers; and
  - (b) such incidental or consequential modification conditions as he considers necessary or expedient,
- and in the case of an assignment other than a general assignment, modification conditions may make as respects so much of the licence as is proposed to be retained by the assignor provision different from that made as respects so much of the licence as is proposed to be assigned.
- (5) The Director shall—
- (a) give the Health and Safety Executive not less than 28 days’ notice of any proposal of his to give a consent under subsection (2) above; and
  - (b) give that Executive and the Secretary of State not less than 28 days’ notice of any proposal of his to impose a modification condition;

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and if, before the expiry of the time specified in a notice given to the Secretary of State under paragraph (b) above, the Secretary of State directs the Director not to impose the condition, the Director shall comply with the direction.

- (6) A licence may include conditions which must be complied with before the licence can be assigned.
- (7) An assignment, or purported assignment, of a licence shall be void—
  - (a) if the licence is not capable of assignment;
  - (b) if the assignment, or purported assignment, is in breach of a condition of the licence; or
  - (c) if there has, before the assignment or purported assignment, been a contravention of a condition subject to compliance with which the consent required by subsection (2) above is given.
- (8) A licence shall not be capable of being assigned under or by virtue of any other provision of this Act.
- (9) In this section—
  - “assignment” includes any form of transfer and cognate expressions shall be construed accordingly;
  - “modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence.
- (10) Any reference in this section to “assignment” shall be construed in Scotland as a reference to assignation.]

**Textual Amendments**  
**F14** S. 8AA inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 1; S.I. 1996/218, art. 2

**[8A** <sup>F15</sup>**Modification or removal of the 25,000 therm limits.**

- (1) The Secretary of State may by order amend [<sup>F16</sup>section 10(8) or (12) below, paragraph 4 of Schedule 2A to this Act or paragraph 4, 8 or 16 of Schedule 2B to this Act]] by substituting—
  - (a) where the limit is for the time being expressed by reference to a number of therms—
    - (i) such lower number of therms as he considers appropriate; or
    - (ii) such lower limit, expressed by reference to a number of kilowatt hours, as he considers appropriate; or
  - (b) where the limit is for the time being expressed by reference to a number of kilowatt hours, such lower number of kilowatt hours as he considers appropriate.
- (2) An order under subsection (1) above may be made so as to provide for the number specified in one provision to differ from that for the time being specified in any of the other provisions.

<sup>F17</sup>(3) .....

<sup>F17</sup>(4) .....



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#### Textual Amendments

- F15** S. 8A inserted (30.5.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 37](#); Commencement Order No. 1 made on 29.5.1992, art. 2.
- F16** Words in s. 8A(1) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 2\(1\)](#); S.I. 1996/218, [art. 2](#)
- F17** S. 8A(3)(4) repealed (1.3.1996) by [1995 c. 45, ss. 10\(1\), 17\(5\), Sch. 3 para. 2\(2\), Sch. 6](#); S.I. 1996/218, [art. 2](#)

[<sup>F18</sup> *The gas code*]

#### Textual Amendments

- F18** S. 8B and cross-heading inserted (1.3.1996) by [1995 c. 45, s. 9](#); S.I. 1996/218, [art. 2](#)

### 8B [<sup>F19</sup> *The gas code.*]

The provisions of Schedule 2B to this Act (which relate to rights and obligations of licence holders and consumers and related matters) shall have effect.

#### Textual Amendments

- F19** S. 8B and cross-heading inserted (1.3.1996) by [1995 c. 45, s. 9\(1\)](#); S.I. 1996/218, [art. 2](#)

[<sup>F20</sup> *Powers and duties of public gas transporters*]

#### Textual Amendments

- F20** Cross-heading substituted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 3](#); S.I. 1996/218, [art. 2](#)

### [<sup>F219</sup> *General powers and duties.*]

- (1) It shall be the duty of a public gas transporter as respects each authorised area of his—
  - (a) to develop and maintain an efficient and economical pipe-line system for the conveyance of gas; and
  - (b) subject to paragraph (a) above, to comply, so far as it is economical to do so, with any reasonable request for him to connect to that system, and convey gas by means of that system to, any premises.
- (2) It shall also be the duty of a public gas transporter to avoid any undue preference or undue discrimination—
  - (a) in the connection of premises to any pipe-line system operated by him; or
  - (b) in the terms on which he undertakes the conveyance of gas by means of such a system.
- (3) The following provisions shall have effect, namely—
  - (a) Schedule 3 to this Act (which provides for the acquisition of land by public gas transporters); and

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- (b) Schedule 4 to this Act (which relates to the breaking up of streets and bridges by such transporters).]

#### Textual Amendments

**F21** S. 9 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 3**; S.I. 1996/218, **art. 2**

#### Modifications etc. (not altering text)

**C18** S. 9(1)(b) applied (with modifications) (1.3.1996) by S.I. 1996/399, **art. 3(1)**

**C19** S. 9(3)(a) functions exercisable in or as regards Scotland (14.12.2000) by S.I. 2000/3253, **art. 2**, **Sch. 1 para. 6** (with transitional provisions in **art. 6**)

S. 9(3)(a) functions transferred to Scottish Ministers (15.12.2000) by S.I. 2000/3253, **art. 3**, **Sch. 2** (with transitional provisions in **art. 6**)

### [<sup>F22</sup>10 Duty to connect certain premises.

- (1) Subsection (2) below applies to any premises in an authorised area of a public gas transporter which—
- (a) are situated within 23 metres from a relevant main of the transporter; or
  - (b) could be connected to any such main by a pipe supplied and laid, or proposed to be supplied and laid, by the owner or occupier of the premises.
- (2) Subject to the provisions of this Part and any regulations made under those provisions, a public gas transporter shall, on being required to do so by the owner or occupier of any premises to which this subsection applies—
- (a) in the case of premises falling within paragraph (a) of subsection (1) above, connect the premises to the relevant main, and supply and lay any pipe that may be necessary for that purpose; and
  - (b) in the case of premises falling within paragraph (b) of that subsection, connect the premises to the relevant main by the pipe there mentioned;
- and in the following provisions of this section “connect”, in relation to any premises, means connect to a relevant main of a public gas transporter and “connection” shall be construed accordingly.
- (3) Subject to the provisions of this Part and any regulations made under those provisions, where any premises are connected (whether by virtue of subsection (2) above or otherwise), the public gas transporter shall maintain the connection until such time as it is no longer required by the owner or occupier of the premises.
- (4) Where any person requires a connection in pursuance of subsection (2) above, he shall serve on the public gas transporter a notice specifying—
- (a) the premises in respect of which the connection is required; and
  - (b) the day (not being earlier than a reasonable time after the service of the notice) upon which the connection is required to be made.
- (5) Where any pipe is supplied and laid by a public gas transporter in pursuance of subsection (2)(a) above, the cost of supplying and laying the pipe shall, if and to the extent that the transporter so requires and the conditions of his licence so allow, be defrayed by the person requiring the connection.
- (6) Where at any time a public gas transporter connects any premises under subsection (2) (b) above—

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- (a) the pipe supplied and laid by the owner or occupier of the premises; and
- (b) any rights of the owner or occupier which relate to the laying, maintenance, repair, alteration or removal of the pipe,

shall at that time vest in and become property or rights of the transporter.

(7) The Director may, with the consent of the Secretary of State, make provision by regulations for entitling a public gas transporter to require a person requiring a connection in pursuance of subsection (2) above to pay to the transporter an amount in respect of the expenses of the laying of the main used for the purpose of making that connection if—

- (a) the connection is required within the prescribed period after the laying of the main;
- (b) a person for the purpose of connecting whose premises the main was laid has made a payment to the transporter in respect of those expenses;
- (c) the amount required does not exceed any amount paid in respect of those expenses by such a person or by any person previously required to make a payment under the regulations; and
- (d) the transporter has not recovered those expenses in full.

(8) Nothing in subsection (2) or (3) above shall be taken as requiring a public gas transporter to connect, or maintain the connection of, any premises if the supply of gas to those premises is likely to exceed 75,000 therms in any period of twelve months.

(9) Nothing in subsection (2) or (3) above shall be taken as requiring a public gas transporter to connect, or to maintain the connection of, any premises if—

- (a) he is prevented from doing so by circumstances not within his control;
- (b) circumstances exist by reason of which his doing so would or might involve danger to the public, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
- (c) in the case of premises falling within paragraph (b) of subsection (1) above, the pipe supplied and laid by the owner or occupier of the premises is not fit for the purpose.

(10) Where—

- (a) any person requires a connection to be made or maintained in pursuance of subsection (2) or (3) above;
- (b) the making or maintenance of the connection would involve a new or increased supply of gas to the premises in question;
- (c) the public gas transporter reasonably expects that, if the connection were made or maintained, gas would be supplied to the premises in question at a rate exceeding 2,500 therms a year; and
- (d) the new or increased supply is such that the connection cannot be made or maintained without the laying of a new main, or the enlarging of an existing main, or the construction or enlarging of any other works required for the conveyance of gas,

the transporter may, if he thinks fit, refuse to make or maintain the connection unless that person enters into a written contract with the transporter to make such payments to him as he may reasonably require having regard to the expense to be incurred in laying or enlarging the main or constructing or enlarging the other works and the extent to

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which it is reasonable to expect that the transporter will recover that expense from elsewhere.

- (11) If and to the extent that regulations made by the Director with the consent of the Secretary of State so provide, subsection (10) above shall have effect as if—
- (a) the reference in paragraph (d) to the laying of a new main, the enlarging of an existing main or the construction or enlarging of any other works required for the conveyance of gas included a reference to a new main which had previously been laid, an existing main which had previously been enlarged or any other works required for the conveyance of gas which had previously been constructed or enlarged;
  - (b) the reference to the expense to be incurred in laying or enlarging the main or constructing or enlarging the other works included a reference to the expense which had been so incurred; and
  - (c) the reference to the extent to which it is reasonable to expect that the transporter will recover that expense from elsewhere included a reference to the extent to which the transporter had been able so to recover that expense.
- (12) Subject to subsection (13) below, in this section “relevant main”, in relation to a public gas transporter, means any distribution main in his authorised area which is being used for the purpose of giving a supply of gas to any premises in that area at a rate not exceeding 75,000 therms a year.
- (13) Any pipe which—
- (a) vests in and becomes the property of a public gas transporter by virtue of subsection (6) above; and
  - (b) apart from this subsection, would be a relevant main for the purposes of this section,
- shall be such a main if, and only if, it has been declared to be such a main by the transporter.
- (14) A public gas transporter shall make a declaration under subsection (13) above in respect of each pipe falling within that subsection which is fit for the purpose of being a relevant main; and a declaration under that subsection shall not be capable of being revoked.]

#### Textual Amendments

**F22** S. 10 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 4**; S.I. 1996/218, **art. 2**

VALID FROM 01/10/2001

#### <sup>F23</sup>**10A Restriction on use of certain pipe-lines for providing a supply.**

- (1) Any pipe-line of a gas transporter—
- (a) for the construction of which the execution of works has begun before the commencement of section 76 of the Utilities Act 2000 (abolition of geographical exclusivity of authorised areas of gas transporters); and
  - (b) which is situated in an area which, immediately before the commencement of that section, is the authorised area of a public gas transporter (the “other transporter”),

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shall not be used for the purpose of giving a supply of gas to any premises in that area at a rate less than 2,196,000 kilowatt hours per year unless the other transporter consents in writing to such use.

- (2) If the other transporter refuses or fails to give consent under subsection (1) consent may instead be given in writing by the Authority where it considers it appropriate to do so.
- (3) Consent given under this section may not be withdrawn.
- (4) In this section “pipe-line” has the same meaning as in the <sup>M3</sup>Pipe-lines Act 1962.]

#### Textual Amendments

**F23** S. 10A inserted (1.10.2001) by 2000 c. 27, s. 77(1); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M3** 1962 c. 58.

### [<sup>F24</sup>11 Power to require security.

- (1) Where any person requires a connection in pursuance of paragraph (a) of section 10(2) above and a pipe falls to be supplied and laid by the public gas transporter in pursuance of that paragraph—
  - (a) the transporter may require that person to give him reasonable security for the payment to him of all money which may become due to him in respect of the supply and laying of the pipe; and
  - (b) if that person fails to give such security or, where any security given by him has become invalid or insufficient, fails to provide alternative or additional security, the transporter may if he thinks fit refuse to supply and lay the pipe for so long as the failure continues.
- (2) Where any amount is deposited with a public gas transporter by way of security in pursuance of this section, the transporter shall pay interest on that amount, at such rate as may from time to time be fixed by the transporter with the approval of the Director, in respect of the period during which it remains in the hands of the transporter.
- (3) In this section “connection” shall be construed in accordance with section 10(2) above.]

#### Textual Amendments

**F24** S. 11 substituted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 5; S.I. 1996/218, art. 2

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### [<sup>F25</sup> Gas conveyed by Public Gas Transporters]

#### Textual Amendments

**F25** S. 12 and preceding cross-heading substituted for s. 12 (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 6**; S.I. 1996/218, **art. 2**

#### [<sup>F26</sup>12 Methods of calculating therms.

- (1) Except in prescribed cases, the number of therms or kilowatt hours conveyed by a public gas transporter to premises, or to pipe-line systems operated by other public gas transporters, shall be calculated in the prescribed manner—
  - (a) on the basis of calorific values of the gas determined by the transporter in accordance with regulations under this section, or so determined by another public gas transporter and adopted by the transporter in accordance with such regulations; or
  - (b) if and to the extent that regulations under this section so provide and the transporter thinks fit, on the basis of declared calorific values of the gas;
 and regulations under this section shall be made by the Director with the consent of the Secretary of State.
- (2) In this Part—
 

“calorific value”, in relation to any gas, means the number of megajoules (gross) which would be produced by—

  - (a) the combustion of one cubic metre of the gas measured at a temperature of 15°C and a pressure of 1013.25 millibars; or
  - (b) if regulations under this section so provide, the combustion of one kilogram of the gas,

containing in either case, if the Director so determines, such an amount of water vapour as is specified in the determination;

“declared calorific value”, in relation to any gas conveyed by a public gas transporter, means a calorific value declared by the transporter in accordance with regulations under this section, or so declared by another public gas transporter and adopted by the transporter in accordance with such regulations.
- (3) Regulations under this section may make provision as to the manner in which prescribed information with respect to the making of calculations in accordance with the regulations is to be made available to other licence holders and to the public.
- (4) Regulations under this section made for the purposes of subsection (1)(a) above may make provision—
  - (a) for requiring determinations of calorific values of gas conveyed by public gas transporters to be made on the basis of samples of gas taken at such places or premises, at such times and in such manner as the Director may direct;
  - (b) for requiring such determinations to be made at such places or premises, at such times and in such manner as the Director may direct;
  - (c) as to the manner in which the results of such determinations are to be made available to other licence holders and to the public;

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- (d) for requiring such premises, apparatus and equipment as the Director may direct to be provided and maintained by public gas transporters for the purpose of making such determinations;
  - (e) for requiring public gas transporters to carry out tests of apparatus and equipment so provided and maintained by them; and
  - (f) for requiring the results of such tests to be notified to the Director or to any person appointed under section 13(1) below, and to be made available to other licence holders and to the public.
- (5) Regulations under this section made for the purposes of subsection (1)(b) above may make provision—
- (a) for requiring declarations of calorific values of gas conveyed by public gas transporters to be made at such times and in such manner as the Director may direct;
  - (b) as to the times when such declarations are to take effect, and as to the manner in which the calorific values declared are to be made available to other licence holders and to the public;
  - (c) for imposing requirements on public gas transporters as to the correlation between—
    - (i) the calorific values of the gas conveyed by them for any period; and
    - (ii) the calorific values declared by them for that period;
  - (d) for requiring public gas transporters to carry out tests of gas for the purpose of ascertaining whether they are complying with the requirements of regulations made by virtue of paragraph (c) above;
  - (e) for requiring such tests to be carried out at such places or premises, at such times and in such manner as the Director may direct; and
  - (f) for requiring the results of such tests to be notified to the Director or to any person appointed under section 13(1) below, and to be made available to other licence holders and to the public.
- (6) Subject to subsection (7) below, the Director may by notice in writing require a public gas transporter to give to the Director, or to any person appointed by him for the purpose, within such time and at such place as may be specified in the notice, such information as the Director may reasonably require for the purpose of making regulations under this section or section 13 below or of giving directions under such regulations.
- (7) A public gas transporter shall not be required under subsection (6) above to give any information which he could not be compelled to give in evidence in civil proceedings before the court; and in this subsection “the court” means—
- (a) in relation to England and Wales, the High Court;
  - (b) in relation to Scotland, the Court of Session.]

#### Textual Amendments

**F26** S. 12 and preceding cross-heading substituted for s. 12 (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 6**; S.I. 1996/218, **art. 2**

#### [<sup>F27</sup> 13 Calorific values: tests of apparatus etc.

- (1) The Director shall appoint competent and impartial persons—

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- (a) to carry out tests of apparatus and equipment provided and maintained by public gas transporters in pursuance of regulations made by virtue of subsection (4)(d) of section 12 above for the purpose of ascertaining whether they comply with the regulations;
  - (b) to carry out tests of gas conveyed by public gas transporters where the number of therms or kilowatt hours falls to be calculated in accordance with subsection (1)(b) of that section for the purpose of ascertaining whether the transporters are complying with the requirements of regulations made by virtue of subsection (5)(c) of that section; and
  - (c) generally to assist the Director in exercising his functions under, or under regulations made under, this section or that section.
- (2) Regulations under this section, which shall be made by the Director with the consent of the Secretary of State, may make provision—
  - (a) for requiring such tests as are mentioned in subsection (1)(b) above to be carried out at such places or premises as the Director may direct;
  - (b) for requiring such premises, apparatus and equipment as the Director may direct to be provided and maintained by public gas transporters for the purpose of carrying out such tests;
  - (c) for requiring samples of gas to be taken by public gas transporters at such places or premises, at such times and in such manner as the Director may direct; and
  - (d) for requiring samples of gas so taken to be provided by public gas transporters, for the purpose of carrying out such tests, at such places or premises, at such times and in such manner as the Director may direct.
- (3) Regulations under this section may make provision—
  - (a) for persons representing the public gas transporter concerned to be present during the carrying out of such tests as are mentioned in subsection (1) above;
  - (b) as to the manner in which the results of such tests are to be made available to other licence holders and to the public; and
  - (c) for conferring powers of entry on property owned or occupied by public gas transporters for the purpose of carrying out such tests and otherwise for the purposes of this section or section 12 above.
- (4) There shall be paid out of money provided by Parliament to persons appointed under subsection (1) above who are members of the Director's staff such remuneration and such allowances as may be determined by the Director with the approval of the Treasury, and such pensions as may be so determined may be paid out of money provided by Parliament to or in respect of such persons.
- (5) Every person who is a public gas transporter during any period shall pay to the Director such proportion (if any) as the Director may determine of—
  - (a) any sums paid by him under subsection (4) above in respect of that period; and
  - (b) such part of his other expenses for that period as he may with the consent of the Treasury determine to be attributable to his functions under section 12 above or this section;

and any liability under this subsection to pay to the Director sums on account of pensions (whether paid by him under subsection (4) above or otherwise) shall, if the Director so determines, be satisfied by way of contributions calculated, at such rate as may be determined by the Treasury, by reference to remuneration.



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(6) Any sums received by the Director under this section shall be paid into the Consolidated Fund.]

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**Textual Amendments**

**F27** S. 13 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 7**; S.I. 1996/218, **art. 2**

**F28** **14** .....

.....  
**Textual Amendments**

**F28** S. 14 repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 8, **Sch. 6**; S.I. 1996/218, **art. 2**

**F29** **14A** .....

.....  
**Textual Amendments**

**F29** S. 14A repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 9, **Sch. 6**; S.I. 1996/218, **art. 2**

**F30** **15** .....

.....  
**Textual Amendments**

**F30** S. 15 repealed (1.3.1996) by 1995 c. 45, ss. 9(3), 17(5), **Sch. 6**; S.I. 1996/218, **art. 2**

**F31** **15B** .....

.....  
**Textual Amendments**

**F31** S. 15B repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 11, **Sch. 6**; S.I. 1996/218, **art. 2**

*[<sup>F32</sup> Gas conveyed by public gas transporters and others]*

.....  
**Textual Amendments**

**F32** S. 16 and cross-heading preceding it substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 12**; S.I. 1996/218, **art. 2**

**F33** **16** .....

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### Textual Amendments

**F33** S. 16 repealed (1.4.1996) by S.I. 1996/551, reg. 12(1)

## [<sup>F34</sup>17 Meter testing and stamping.

- (1) No meter shall be used for the purpose of ascertaining the quantity of gas supplied through pipes to any person unless it is stamped either by, or on the authority of, a meter examiner appointed under this section or in such other manner as may be authorised by regulations under this section.
- (2) Subject to subsections (3) to (5) below, it shall be the duty of a meter examiner who is a member of the Director's staff, on being required to do so by any person and on payment of the requisite fee—
  - (a) to examine any meter used or intended to be used for ascertaining the quantity of gas supplied to any person; and
  - (b) to stamp, or authorise the stamping of, that meter.
- (3) A meter examiner shall not stamp, or authorise the stamping of, any meter unless he is satisfied that it is of such pattern and construction and is marked in such manner as is approved by the Director and that the meter conforms with such standards as may be prescribed for the purposes of this subsection.
- (4) A meter examiner may stamp or authorise another person to stamp a meter, notwithstanding that he has not himself examined it, if—
  - (a) the meter was manufactured or repaired by the person submitting it to the examiner;
  - (b) that person has obtained the consent of the Director to his submission; and
  - (c) any conditions subject to which the consent was given have been satisfied.
- (5) A meter examiner may authorise another person to stamp a meter, notwithstanding that he has not himself examined it, if—
  - (a) the meter was manufactured or repaired by that person;
  - (b) that person has obtained the consent of the Director to his stamping of the meter; and
  - (c) any conditions subject to which the consent was given have been satisfied.
- (6) The Director shall appoint competent and impartial persons as meter examiners for the purposes of this section.
- (7) There shall be paid out of money provided by Parliament to meter examiners who are members of the Director's staff such remuneration and such allowances as may be determined by the Director with the approval of the Treasury, and such pensions as may be so determined may be paid out of money provided by Parliament to or in respect of such examiners.
- (8) All fees payable to meter examiners who are members of the Director's staff for the performance of functions conferred by or under this section shall be paid to the Director; and any sums received by him under this subsection shall be paid into the Consolidated Fund.
- (9) Regulations under this section, which shall be made by the Director with the consent of the Secretary of State, may make provision—

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- (a) for re-examining meters already stamped, and for the cancellation of stamps in the case of meters which no longer conform with the prescribed standards and in such other circumstances as may be prescribed;
  - (b) for requiring meters to be periodically overhauled; and
  - (c) for the revocation of any approval given by the Director to any particular pattern or construction of meter, and for requiring existing meters of that pattern or construction to be replaced within such period as may be prescribed for the purposes of this subsection.
- (10) The fees to be paid to meter examiners who are members of the Director’s staff for the performance of functions conferred by or under this section, and the persons by whom they are to be paid, shall be such as the Director may, with the approval of the Treasury, from time to time determine; and a determination under this subsection may—
- (a) make different provision for different areas or in relation to different cases or different circumstances; and
  - (b) make such supplementary, incidental or transitional provision as the Director considers necessary or expedient.
- (11) If any person supplies gas through a meter which has not been stamped under this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (12) Where the commission by any person of an offence under subsection (11) above is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.
- (13) In any proceedings for an offence under subsection (11) above it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (14) The preceding provisions of this section shall not have effect in relation to the supply of gas to a person under any agreement providing for the quantity of gas supplied to him to be ascertained by a meter designed for rates of flow which, if measured at a temperature of 15°C and a pressure of 1013.25 millibars, would exceed 1600 cubic metres an hour.
- (15) Regulations under this section may provide that subsection (14) above shall have effect as if for the number of cubic metres an hour which is for the time being applicable for the purposes of that subsection there were substituted such lower number of cubic metres an hour as the Director considers appropriate.]

**Textual Amendments**

**F34** S. 17 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 13**; S.I. 1996/218, **art. 2**

**18 Safety regulations.**

<sup>F35</sup>(1) .....

- (2) The Secretary of State may by regulations make provision for empowering any officer authorised by the relevant authority—

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- (a) to enter any premises in which there is a service pipe connected with a gas main, for the purpose of inspecting any gas fitting on the premises, any flue or means of ventilation used in connection with any such gas fitting, or <sup>F36</sup>any part of the gas system on the premises, that is to say, any service pipe or other apparatus (not being a gas fitting) which is on the premises and is used for the <sup>F36</sup>conveyance or supply of gas or is connected with a gas main;
  - (b) where he so enters any such premises, to examine or apply any test to any such object as is mentioned in paragraph (a) above and (where the object is a gas fitting) to verify what supply of air is available for it; and
  - (c) where in his opinion it is necessary to do so for the purpose of averting danger to life or property, and notwithstanding any contract previously existing, to disconnect and seal off any gas fitting or any part of the <sup>F37</sup>gas system on the premises, or disconnect the premises or, if the premises are not connected, to signify the refusal of the relevant authority to convey gas or, as the case may be, allow gas to be conveyed to the premises].
- (3) Where any regulations under subsection (2) above confer any power in accordance with paragraph (c) of that subsection, the regulations shall also include provision—
  - (a) for securing that, where any such power is exercised, the consumer will be notified as to the nature of the defect or other circumstances in consequence of which it has been exercised;
  - (b) for enabling any consumer so notified to appeal to the Secretary of State on the grounds that the defect or other circumstances in question did not constitute a danger such as to justify the action taken in the exercise of the power, or did not exist or have ceased to exist; and
  - (c) for enabling the Secretary of State to give such directions as may in accordance with the regulations be determined by him to be appropriate in consequence of any such appeal.
- (4) Regulations made under subsection (2) above may make provision for prohibiting any person, except with the consent of the relevant authority or in pursuance of any directions given by the Secretary of State as mentioned in subsection (3)(c) above, from—
  - (a) reconnecting any gas fitting or <sup>F38</sup>any part of any gas system] which has been disconnected by or on behalf of the relevant authority in exercise of a power conferred by the regulations; or
  - (b) <sup>F39</sup>reconnecting any premises which have been disconnected] by or on behalf of the relevant authority in the exercise of any such power; or
  - (c) causing gas from a gas main to be <sup>F40</sup>conveyed] to any premises where in pursuance of the regulations the refusal of the relevant authority to <sup>F41</sup>convey gas or, as the case may be, allow gas to be conveyed] to those premises has been signified and that refusal has not been withdrawn.
- (5) Where in pursuance of any powers conferred by regulations made under subsection (2) above, entry is made on any premises by an officer authorised by the relevant authority—
  - (a) the officer shall ensure that the premises are left no less secure by reason of the entry; and
  - (b) the relevant authority shall make good, or pay compensation for, any damage caused by the officer, or by any person accompanying him in entering the premises, in taking any action therein authorised by the regulations, or in making the premises secure.

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- (6) Any officer exercising powers of entry conferred by regulations made under subsection (2) above may be accompanied by such persons as may be necessary or expedient for the purpose for which entry is made, or for the purposes of subsection (5) above.
- (7) If any person intentionally obstructs any officer exercising powers of entry conferred by regulations made under subsection (2) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) The <sup>M4</sup>Rights of Entry (Gas and Electricity Boards) Act 1954 (entry under a justice's warrant) shall apply in relation to any powers of entry conferred by regulations made under subsection (2) above as if [<sup>F42</sup>any reference to a gas operator were a reference to the relevant authority].
- [<sup>F43</sup>(9) In this section “the relevant authority”—
- (a) in relation to dangers arising from the conveyance of gas by a public gas transporter, or from the use of gas conveyed by such a transporter, means that transporter; and
- (b) in relation to dangers arising from the conveyance of gas by a person other than a public gas transporter, or from the use of gas conveyed by such a person, means the Secretary of State.
- (10) Where the relevant authority is a public gas transporter, any reference in this section to any officer authorised by the authority includes a reference to any officer authorised by another such transporter with whom the authority has made arrangements for officers authorised by the other transporter to discharge any functions of the authority under this section.
- (11) Except in cases of emergency, no officer shall be authorised by a public gas transporter to exercise any powers of entry conferred by regulations under this section unless the transporter has taken all reasonable steps to ensure that he is a fit and proper person to exercise those powers.]

#### Textual Amendments

- F35** S. 18(1) repealed (6.3.1992) by Offshore Safety Act 1992 (c. 15), ss. 3(3)(a), 7(2), **Sch. 2**.
- F36** Words in s. 18(2)(a) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 14(1)(a)**; S.I. 1996/218, **art. 2**.
- F37** Words in s. 18(2)(c) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 14(1)(b)**; S.I. 1996/218, **art. 2**.
- F38** Words in s. 18(4)(a) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 14(2)(a)**; S.I. 1996/218, **art. 2**.
- F39** Words in s. 18(4)(b) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 14(2)(b)**; S.I. 1996/218, **art. 2**.
- F40** Word in s. 18(4)(c) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 14(2)(c)**; S.I. 1996/218, **art. 2**.
- F41** Words in s. 18(4)(c) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 14(2)(c)**; S.I. 1996/218, **art. 2**.
- F42** Words in s. 18(8) substituted for s. 18(8)(a)(b) (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 14(3)**; S.I. 1996/218, **art. 2**.
- F43** S. 18(9)-(11) substituted for s. 18(9) (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 14(4)**; S.I. 1996/218, **art. 2**.

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### Marginal Citations

M4 1954 c. 21.

## [<sup>F44</sup>18A Gas escape regulations.

- (1) The Secretary of State may by regulations make provision—
- (a) for empowering any officer authorised by a public gas transporter, if the transporter has reasonable cause to suspect—
    - (i) that gas conveyed by the transporter is escaping, or may escape, in any premises; or
    - (ii) that gas so conveyed which has escaped has entered, or may enter, any premises,
 to enter the premises, to carry out any work necessary to prevent the escape of gas and to take any other steps necessary to avert danger to life or property; and
  - (b) for empowering any officer so authorised, if the transporter has reasonable cause to suspect—
    - (i) that gas conveyed through pipes by some other person is escaping, or may escape, in any premises; or
    - (ii) that gas so conveyed which has escaped has entered, or may enter, any premises,
 to enter the premises and take any steps necessary to avert danger to life or property.
- (2) Subsections (5) to (7) and (11) of section 18 above shall apply for the purposes of this section as if—
- (a) any reference to subsection (2) of that section were a reference to subsection (1) above;
  - (b) any reference to the relevant authority were a reference to a public gas transporter;
  - (c) any reference to subsection (5) of that section were a reference to that subsection as applied by this subsection; and
  - (d) the reference in subsection (11) of that section to regulations under that section were a reference to regulations under this section.
- (3) The <sup>M5</sup>Rights of Entry (Gas and Electricity Boards) Act 1954 (entry under a justice’s warrant) shall apply in relation to any powers of entry conferred by regulations made under subsection (1) above.
- (4) Any reference in this section to any officer authorised by a public gas transporter includes a reference to any officer authorised by another such transporter with whom the transporter has made arrangements for officers authorised by the other transporter to discharge any functions under this section of officers authorised by the transporter.]

### Textual Amendments

F44 S. 18A inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 15; S.I. 1996/218, art. 2

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#### Marginal Citations

M5 1954 c.21.

*[<sup>F45</sup> Use by other persons of public gas transporter's pipe-line systems]*

#### Textual Amendments

F45 S. 19 and preceding cross-heading substituted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 16; S.I. 1996/218, art. 2

### [<sup>F46</sup>19 Acquisition of rights to use pipe-line systems.

- (1) In the case of a pipe-line system operated by a public gas transporter, any person may, after giving the transporter not less than 28 days' notice, apply to the Director for directions under this section which would secure to the applicant a right of a description specified in the application to have conveyed by the system gas which—
  - (a) is of a kind so specified; and
  - (b) is of, or of a kind similar to, the kind which the system is designed to convey.
- (2) Where an application is made under subsection (1) above, it shall be the duty of the Director—
  - (a) to decide whether the application is to be adjourned (so as to enable negotiations or further negotiations to take place), considered further or rejected;
  - (b) to give notice of his decision to the applicant;
  - (c) in the case of a decision that the application is to be considered further, to give to the transporter, to the Health and Safety Executive and to any person who has a right to have gas conveyed by the pipe-line system, notice that the application is to be so considered and an opportunity of being heard about the matter.
- (3) Where, after further considering an application under subsection (1) above, the Director is satisfied that the giving of directions under this section would not prejudice the efficient operation of the pipe-line system, or the conveyance by the system of—
  - (a) the quantities of gas which the public gas transporter requires or may reasonably be expected to require to be conveyed by the system to enable the transporter to comply with the conditions of his licence and to perform his contractual obligations;
  - (b) the quantities of gas which any person who has a right to have gas conveyed by the system is entitled to require to be so conveyed in the exercise of that right,the Director may give such directions to the transporter.
- (4) Directions under this section may—
  - (a) specify the terms on which the Director considers the public gas transporter should enter into an agreement with the applicant for all or any of the following purposes—
    - (i) for securing to the applicant the right to have conveyed by the pipe-line system, for the period specified in the directions and in the

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- quantities so specified or determined by or under the directions, gas which is of a kind so specified;
- (ii) for securing that the exercise of that right is not prevented or impeded;
- (iii) for regulating the charges which may be made for the conveyance of gas by virtue of that right;
- (iv) for securing to the applicant such ancillary or incidental rights as the Director considers necessary or expedient, which may include the right to have a pipe-line of his connected to the pipe-line system by the transporter;
- (b) specify the sums or the method of determining the sums which the Director considers should be paid by way of consideration for any such right; and
- (c) require the transporter, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.
- (5) In giving any directions under this section, the Director shall apply the principle that the public gas transporter should be entitled to receive by way of charges for the conveyance of gas by virtue of the right—
- (a) the appropriate proportion of the costs incurred by the transporter in administering, maintaining and operating his pipe-line system; and
- (b) a return equal to the appropriate proportion of the return received by the transporter (otherwise than by virtue of the right) on the capital value of the system (including so much of that return as is set aside to meet the need from time to time to renew the system).
- (6) In subsection (5) above “the appropriate proportion” means such proportion as properly—
- (a) reflects the use made of the public gas transporter’s pipe-line system by virtue of the right as compared with the use made of that system for other purposes; and
- (b) takes into account the sums paid by way of consideration for the right and any sums paid in respect of the pipe-line system (whether by the applicant or by any other person) in pursuance of directions under section 21(1) below.
- (7) Any reference in this section to a right to have gas of any kind conveyed by a pipe-line system includes a reference to a right to introduce into, or take out of, such a system gas of that kind.]

#### Textual Amendments

**F46** S. 19 and preceding cross-heading substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 16**; S.I. 1996/218, **art. 2**

#### Modifications etc. (not altering text)

**C20** S. 19 applied (with modifications) (1.3.1996) by S.I. 1996/399, **art. 4(2)**

**C21** S. 19(2)(c) applied (with modifications) (1.3.1996) by S.I. 1996/399, **art. 4(4)(c)**



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VALID FROM 10/08/2000

**[<sup>F47</sup>19A Application of section 19B to storage facilities.**

- (1) Section 19B applies to storage facilities other than exempt storage facilities.
- (2) An owner of a storage facility may apply in writing to the Director for an exemption for the facility or for facilities of a particular description.
- (3) An exemption shall be given in writing and may be given—
  - (a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
  - (b) unconditionally or subject to such conditions as the Director considers appropriate.
- (4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the facility or facilities concerned not less than four months before the coming into force of the revocation.
- (5) The Director shall give an exemption with respect to a facility or description of facility where he is satisfied that either—
  - (a) the requirements of section 19B(1), (3) and (7) and section 19E(3) are already met with respect to the facility or facilities concerned by existing market arrangements which promote competition; or
  - (b) use of the facility or facilities concerned by other persons is not necessary for the operation of an economically efficient gas market.]

**Textual Amendments**

**F47** Ss. 19A-19E inserted (10.8.2000) by [S.I. 2000/1937, reg. 2\(2\)](#), [Sch. 2 para. 1](#)

VALID FROM 10/08/2000

**[19B <sup>F48</sup>Acquisition of rights to use storage facilities.**

- (1) The owner of a storage facility to which this section applies (a “relevant facility”)—
  - (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas stored in the facility on that person’s behalf; and
  - (b) shall publish any changes to the published conditions as soon as they become effective.
- (2) In subsection (1) “year” means any year ending with 9th August.
- (3) The owner of a relevant facility shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas stored in the facility.

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- (4) Any person who seeks a right to have gas stored on his behalf in a relevant facility (“the applicant”) shall, before making an application to the Director under subsection (8), apply to the owner of the facility for the right.
- (5) An application under subsection (4) shall be made by giving notice to the owner specifying what is being sought.
- (6) Such a notice shall, in particular, specify—
  - (a) the period during which the gas is to be stored in the facility;
  - (b) the kind of gas to be stored (which must be of, or similar to, the kind which the facility is designed to store); and
  - (c) the quantities of gas to be stored.
- (7) Where an applicant gives notice under subsection (5), he and the owner of the facility shall negotiate in good faith and endeavour to reach agreement on the application.
- (8) If the owner and the applicant do not reach any such agreement, the applicant may apply to the Director for directions under subsection (11) which would secure to the applicant the right specified in the notice under subsection (5).
- (9) The Director shall not entertain an application under subsection (8) unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (7).
- (10) Where a person applies to the Director under subsection (8) and the Director is satisfied as mentioned in subsection (9), the Director shall—
  - (a) decide whether the application is to be adjourned (so as to enable further negotiations to take place), considered further or rejected;
  - (b) give notice of his decision to the applicant; and
  - (c) in the case of a decision that the application is to be considered further, give to the owner of the facility, the Health and Safety Executive and any person who has a right to have gas stored in the facility notice that the application is to be so considered and an opportunity of being heard on the matter.
- (11) Where, after considering an application under subsection (8), the Director is satisfied that the giving of directions under this subsection would not prejudice the efficient operation of the facility, or the storage in the facility of—
  - (a) the quantities of gas which the owner of the facility requires or may reasonably be expected to require to be stored in the facility; and
  - (b) the quantities of gas which any person who has a right to have gas stored in the facility is entitled to require to be so stored in the exercise of that right;the Director may give such directions to the owner of the facility.
- (12) Directions under subsection (11) may—
  - (a) specify the terms on which the Director considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
    - (i) for securing to the applicant the right to have stored in the facility, for the period specified in the directions and in the quantities so specified or determined by or under the directions, gas which is of a kind so specified;
    - (ii) for securing that the exercise of that right is not prevented or impeded;

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- (iii) for regulating the charges which may be made for the storage of gas by virtue of that right;
- (iv) for securing to the applicant such ancillary or incidental rights as the Director considers necessary or expedient (which may include, in particular, a right to have a pipeline of his connected to the facility by the owner);
- (b) specify the sums or the method of determining the sums which the Director considers should be paid by way of consideration for any such right; and
- (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.]

#### Textual Amendments

**F48** Ss. 19A-19E inserted (10.8.2000) by S.I. 2000/1937, reg. 2(2), Sch. 2 para. 1

VALID FROM 10/08/2000

#### [19C <sup>F49</sup> Application of section 19D to LNG facilities.

- (1) Section 19D applies to LNG facilities other than exempt LNG facilities.
- (2) An owner of an LNG facility may apply in writing to the Director for an exemption for the facility or for facilities of a particular description.
- (3) An exemption shall be given in writing and may be given—
  - (a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
  - (b) unconditionally or subject to such conditions as the Director considers appropriate.
- (4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the facility or facilities concerned not less than four months before the coming into force of the revocation.
- (5) The Director shall give an exemption with respect to a facility or description of facility where he is satisfied that the requirements of section 19D(1), (3) and (7) and section 19E(3) are already met with respect to the facility or facilities concerned by existing market arrangements which promote competition.]

#### Textual Amendments

**F49** Ss. 19A-19E inserted (10.8.2000) by S.I. 2000/1937, reg. 2(2), Sch. 2 para. 1

*Status: Point in time view as at 26/11/1998. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 10/08/2000

**[19D] <sup>F50</sup> Acquisition of rights to use LNG facilities.**

- (1) The owner of an LNG facility to which this section applies (a “relevant facility”)—
  - (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have LNG treated in the facility on that person’s behalf; and
  - (b) shall publish any changes to the published conditions as soon as they become effective.
- (2) In subsection (1) “year” means any year ending with 9th August.
- (3) The owner of a relevant facility shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have LNG treated in the facility.
- (4) Any person who seeks a right to have LNG treated on his behalf in a relevant facility (“the applicant”) shall, before making an application to the Director under subsection (8), apply to the owner of the facility for the right.
- (5) An application under subsection (4) shall be made by giving notice to the owner specifying what is being sought.
- (6) Such a notice shall, in particular, specify—
  - (a) the period during which LNG is to be treated in the facility;
  - (b) the kind of LNG to be treated (which must be of, or similar to, the kind which the facility is designed to treat); and
  - (c) the quantities of LNG to be treated.
- (7) Where an applicant gives notice under subsection (5), he and the owner of the facility shall negotiate in good faith and endeavour to reach agreement on the application.
- (8) If the owner and the applicant do not reach any such agreement, the applicant may apply to the Director for directions under subsection (11) which would secure to the applicant the right specified in the notice under subsection (5).
- (9) The Director shall not entertain an application under subsection (8) unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (7).
- (10) Where a person applies to the Director under subsection (8) and the Director is satisfied as mentioned in subsection (9), the Director shall—
  - (a) decide whether the application is to be adjourned (so as to enable further negotiations to take place), considered further or rejected;
  - (b) give notice of his decision to the applicant; and
  - (c) in the case of a decision that the application is to be considered further, give to the owner of the facility, the Health and Safety Executive and any person who has a right to have LNG treated in the facility notice that the application is to be so considered and an opportunity of being heard about the matter.

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- (11) Where, after considering an application under subsection (8), the Director is satisfied that the giving of directions under this subsection would not prejudice the efficient operation of the facility, or the treatment in the facility of—
- (a) the quantities of LNG which the owner of the facility requires or may reasonably be expected to require to be treated in the facility; and
  - (b) the quantities of LNG which any person who has a right to have LNG treated in the facility is entitled to require to be so treated in the exercise of that right;
- the Director may give such directions to the owner of the facility.
- (12) Directions under subsection (11) may—
- (a) specify the terms on which the Director considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
    - (i) for securing to the applicant the right to have treated in the facility, for the period specified in the directions and in the quantities so specified or determined by or under the directions, LNG which is of a kind so specified;
    - (ii) for securing that the exercise of that right is not prevented or impeded;
    - (iii) for regulating the charges which may be made for the treatment of LNG by virtue of that right;
    - (iv) for securing to the applicant such ancillary or incidental rights as the Director considers necessary or expedient (which may include, in particular, a right to have a pipeline of his connected to the facility by the owner);
  - (b) specify the sums or the method of determining the sums which the Director considers should be paid by way of consideration for any such right; and
  - (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.]

#### Textual Amendments

**F50** Ss. 19A-19E inserted (10.8.2000) by [S.I. 2000/1937](#), reg. 2(2), [Sch. 2 para. 1](#)

VALID FROM 10/08/2000

#### [<sup>F51</sup>19E Sections 19A to 19D: supplemental.

- (1) In sections 19A to 19D and this section—
- “accounting information” means such accounting records as would be required by section 221 of the Companies Act 1985 in respect of each of the storage or (as the case may be) treatment activities undertaken by the owner of the facility if those activities were the only business undertaken by the owner and the owner were a person to whom that section applied;
- “LNG” means liquid gas, and gas which has been, or is to be, treated in an LNG facility;

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“LNG facility” means a facility for any or all of the following: the liquefaction of gas, the storage of LNG in its liquid form and the re-gasification of liquid gas;

“main commercial conditions” means—

- (a) such information as would enable a potential applicant for a right to have gas stored or (as the case may be) treated in a relevant facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) the other significant terms on which such a right would be granted; and
- (c) such additional information as the Director may from time to time specify by notice;

“owner” in relation to a storage facility or an LNG facility includes any person occupying or having control of the facility;

“significant transaction” means—

- (a) any transaction which relates to rights to have gas stored in a gas storage facility, or (as the case may be) treated in an LNG facility; and
- (b) any other transaction which is of a description specified from time to time by the Director by notice;

“storage facility” means a facility in Great Britain (excluding the territorial sea adjacent to the United Kingdom) for the storage of gas in cavities in strata or in porous strata, provided that the facility is used for the storage of gas which has previously been conveyed in a pipeline system operated by a public gas transporter; and

“treatment” in relation to LNG in an LNG facility, includes liquefaction, storage in liquid form and regasification of the LNG, and “treat” shall be construed accordingly.

- (2) For the purpose of considering an application under section 19B(8) or 19D(8), the Director may by notice require the owner of the relevant facility to provide him with accounting information and details of the main commercial terms of any significant transactions with associated undertakings.
- (3) Owners of relevant facilities shall keep their internal accounts in such manner as will enable them to provide accounting information if required to do so by a notice under subsection (2).
- (4) For the purposes of sections 19B and 19D, an undertaking is an associated undertaking of another undertaking if one of the undertakings has control of the other, or both undertakings are under the control of the same person or persons; and subsections (2) to (5) of section 416 of the Income and Corporation Taxes Act 1988 shall apply with any necessary modifications for the purposes of this subsection as they apply for the purposes of Part XI of that Act.
- (5) Any reference in section 19B to a right to have gas or gas of any kind stored in a storage facility includes a reference to a right to introduce into, or take out of, such a facility gas or gas of that kind.
- (6) Any reference in section 19D to a right to have LNG or LNG of any kind treated in an LNG facility includes a reference to a right to introduce into, or take out of, such a facility LNG or LNG of that kind.]

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**Textual Amendments**

**F51** Ss. 19A-19E inserted (10.8.2000) by S.I. 2000/1937, reg. 2(2), Sch. 2 para. 1

<sup>F52</sup>20 .....

**Textual Amendments**

**F52** S. 20 repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 17, Sch. 6; S.I. 1996/218, art. 2

**21 Increase of capacity etc. of pipelines.**

[<sup>F53</sup>(1) If in the case of a pipe-line system operated by a public gas transporter it appears to the Director, on the application of a person other than the transporter, that the system can and should be modified—

- (a) by installing in it a junction through which another pipe-line may be connected to the system; or
- (b) by modifying apparatus and works associated with a high pressure pipe-line so as to increase the capacity of the pipe-line,

then, subject to subsection (3) below, the Director may, after giving to the transporter an opportunity of being heard about the matter and giving to the Health and Safety Executive notice of his proposed directions, give directions to the transporter in accordance with subsection (2) below in consequence of the application.]

(2) Directions under subsection (1) above may—

- (a) specify the modifications which the Director considers should be made in consequence of the application;
- (b) specify the sums or the method of determining the sums which the Director considers should be paid to the [<sup>F54</sup>public gas transporter] by the applicant [<sup>F55</sup>by way of consideration for] the modifications;
- (c) specify the arrangements which the Director considers should be made by the applicant, within a period specified in that behalf in the directions, for the purpose of securing that those sums will be paid to [<sup>F56</sup>the transporter] if he carries out the modifications;
- (d) require [<sup>F56</sup>the transporter], if the applicant makes those arrangements within the period aforesaid, to carry out the modifications within a period specified in that behalf in the directions.

(3) Where the Director proposes to give directions under subsection (1) above, it shall be his duty before doing so to give to the applicant—

- (a) particulars of the modifications which he proposes to specify in the directions; and
- (b) an opportunity of making an application under subsection (1) of section 19 above in respect of the [<sup>F57</sup>pipe-line system];

and that section shall have effect in relation to such an application made by virtue of this subsection as if for references to a [<sup>F57</sup>pipe-line system] there were substituted references to the [<sup>F57</sup>pipe-line system] as it would be with those modifications and the

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reference in subsection (2) to the Director deciding whether the application is to be adjourned were omitted.

[<sup>F58</sup>(3A) In giving any directions under this section, the Director shall apply the principle that, in so far as the following, namely—

- (a) the cost of carrying out the modifications; and
- (b) a reasonable element of profit,

will not be recoverable by the public gas transporter from elsewhere, the transporter should be entitled to receive them by way of consideration for carrying out the modifications.]

- (4) References in this section to modifications include, in the case of modifications to any apparatus and works, references to changes in, substitutions for and additions to the apparatus and works; and the reference in subsection (1) above to apparatus and works associated with a pipe-line shall be construed in accordance with section 65(2) of the <sup>M6</sup>Pipe-lines Act 1962.

[<sup>F59</sup>(5) In this section—

“high pressure pipe-line” means any pipe-line which has a design operating pressure exceeding 7 bar gauge;

“pipe-line” has the same meaning as in the <sup>M7</sup>Pipe-lines Act 1962.]

#### Textual Amendments

- F53** S. 21(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(1)**; S.I. 1996/218, **art. 2**
- F54** Words in s. 21(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(2)(a)**; S.I. 1996/218, **art. 2**
- F55** Words in s. 21(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(2)(b)**; S.I. 1996/218, **art. 2**
- F56** Words in s. 21(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(2)(c)**; S.I. 1996/218, **art. 2**
- F57** Words in s. 21(3) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(3)**; S.I. 1996/218, **art. 2**
- F58** S. 21(3A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(4)**; S.I. 1996/218, **art. 2**
- F59** S. 21(5) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(5)**; S.I. 1996/218, **art. 2**

#### Marginal Citations

- M6** 1962 c. 58.
- M7** 1962 c.58.

## 22 Effect of directions.

- (1) The obligation to comply with any directions under section [<sup>F60</sup>19 or 21(1)] above (in this section referred to as “relevant directions”) is a duty owed to any person who may be affected by a contravention of them.
- (2) Where a duty is owed by virtue of subsection (1) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.



**Status:** Point in time view as at 26/11/1998. This version of this part contains provisions that are not valid for this point in time.

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- (3) In any proceedings brought against any person in pursuance of subsection (2) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the relevant directions.
- (4) Without prejudice to any right which any person may have by virtue of subsection (2) above to bring civil proceedings in respect of any contravention or apprehended contravention of any relevant directions, compliance with any such directions shall be enforceable by civil proceedings by the Director for an injunction or interdict or for any other appropriate relief.

#### Textual Amendments

**F60** Words in s. 22(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 19**; S.I. 1996/218, **art. 2**

#### Modifications etc. (not altering text)

**C22** S. 22 applied (with modifications) (1.3.1996) by 1995 c. 45, **s. 12(5)**; S.I. 1996/218, **art. 3**

### [<sup>F61</sup>22A Construction of pipe-lines.

- (1) A public gas transporter shall not at any time execute in an authorised area of another public gas transporter any works for the construction of a pipe-line unless—
  - (a) he has given the other transporter a notice stating that he intends to construct the pipe-line;
  - (b) he has consulted with that transporter as to exactly where in that area the proposed pipe-line is to be located, having regard to the location of other pipe-lines in that area; and
  - (c) he has consulted with that transporter as to the manner in which—
    - (i) the safety of the pipe-line is to be secured; and
    - (ii) any escapes of gas (actual or suspected) from the pipe-line are to be dealt with.
- (2) A notice under subsection (1)(a) above shall—
  - (a) specify the points between which the proposed pipe-line is to run and be accompanied by a map (drawn to an appropriate scale) on which is delineated the route which it is proposed to take;
  - (b) specify the length, diameter and operating pressure of the proposed pipe-line and the kind of gas which it is designed to convey; and
  - (c) contain such other particulars (if any) as may be prescribed.
- (3) In this section—
 

“construction”, in relation to a pipe-line, includes placing;

“pipe-line” has the same meaning as in the Pipe-lines Act 1962.
- (4) For the purposes of this section the execution of works in land for the purpose of determining whether or not it is suitable for the placing in it of a pipe-line and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line shall be deemed not to constitute the execution of works for the construction of a pipe-line.]

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#### Textual Amendments

**F61** S. 22A inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 20**; S.I. 1996/218, **art. 2**

#### *[<sup>F62</sup> Modification of licences]*

#### Textual Amendments

**F62** S. 23 and preceding cross-heading substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 21**; S.I. 1996/218, **art. 2**

#### **[<sup>F63</sup>23 Modification by agreement.**

- (1) Subject to the following provisions of this section, the Director may—
  - (a) modify the conditions of a particular licence; or
  - (b) modify the standard conditions of licences under section 7 above, licences under subsection (1) of section 7A above or licences under subsection (2) of that section.
- (2) Where at any time the Director modifies under subsection (1)(b) above the standard conditions of licences under section 7 above, licences under subsection (1) of section 7A above or licences under subsection (2) of that section, he—
  - (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that section or, as the case may be, that subsection granted after that time; and
  - (b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that provision granted before that time.
- (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 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 holder of the licence or, as the case may be, the relevant licence holders, to the Secretary of State, to the Health and Safety Executive and to the Council.
- (5) If, within the time specified in the notice under subsection (3) above, the Secretary of State directs the Director not to make any modification, the Director shall comply with the direction.

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- (6) The Director shall not make any modifications under subsection (1)(a) above unless—
- (a) the holder of the licence has consented to the modifications; and
  - (b) in the case of standard conditions of a licence under subsection (1) or (2) of section 7A above, the Director is of the opinion that the modifications—
    - (i) are requisite to meet the circumstances of the particular case; and
    - (ii) are such that no other holder of such a licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).
- (7) The Director shall not make any modifications under subsection (1)(b) above unless—
- (a) the percentage given by each of subsections (8) and (9) below is not less than 90 per cent;
  - (b) the percentage given by subsection (8) below is not less than 90 per cent and no relevant activities have been carried on by relevant licence holders; or
  - (c) subsection (10) below applies.
- (8) The percentage given by this subsection is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C+N}$$

where—C = the number of consenting holders; N = the number of non-consenting holders.

- (9) The percentage given by this subsection is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C+N}$$

where—C = the volume of gas to which relevant activities carried on by consenting holders relate; N = the volume of gas to which relevant activities carried on by non-consenting holders relate, as estimated (in each case) by the Director on the basis of the information available to him.

- (10) This subsection applies where the Director is of the opinion—
- (a) that the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
  - (b) that the modifications would remove or reduce the burden without removing any necessary protection; and
  - (c) in the case of a licence under subsection (1) or (2) of section 7A above, that the modifications are such that no holder of such a licence would be unduly disadvantaged in competing with other holders of such licences.
- (11) Where at any time the Director modifies standard conditions under subsection (2)(a) above for the purposes of their incorporation in licences under section 7 or 7A(1) or

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(2) above granted after that time, he shall publish the modifications in such manner as he considers appropriate.

(12) In this section, in relation to modifications of standard conditions under subsection (1) (b) above—

“consenting holder” means a relevant licence holder who has consented to the modifications;

“non-consenting holder” means a relevant licence holder who has not so consented;

“relevant activity” means an activity to which the modifications relate and which is carried on in the period of twelve months immediately preceding the making of the modifications;

“relevant licence holder” means a licence holder whose licence incorporates the standard conditions.]

#### Textual Amendments

**F63** S. 23 and preceding cross-heading substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 21**; S.I. 1996/218, **art. 2**

## 24 Modification references to Monopolies Commission.

[<sup>F64</sup>(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—

(i) the carrying on of activities authorised or required by a particular licence, or

(ii) the storage of gas on terms which have been determined by the holder of a particular licence under section 7 above, or could have been determined by the holder if he had thought fit or had been required to determine them by or under a condition of the licence,

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 relevant conditions, that is to say, the conditions of the licence.

(1A) The Director may make to 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 carrying on of activities authorised or required by—

(i) licences under section 7 above,

(ii) licences under subsection (1) of section 7A above which incorporate the standard conditions, or

(iii) licences under subsection (2) of that section,

and which are specified in the reference operate, or may be expected to operate, against the public interest; and

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- (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 relevant conditions, that is to say, the standard conditions of licences under that section or, as the case may be, that subsection.]
- (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 [<sup>F65</sup>relevant conditions] 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 [<sup>F66</sup>the holder of the licence or, as the case may be, the relevant licence holders] 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.
- [<sup>F67</sup>(4A) The Director shall also send a copy of a reference under subsection (1A) above, or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 28 days beginning with the day on which he receives the copy of the reference or variation, the Secretary of State directs the Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.]
- (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 [<sup>F68</sup>sections 4 and 4A(1) and (2)] 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 <sup>M8</sup>Fair Trading Act 1973, Part II of Schedule 3 to that Act (performance of

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functions of the Monopolies Commission) and section 24 of the <sup>M9</sup>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.

[<sup>F69</sup>(8) In this section and sections 25 and 26 below—

“relevant conditions” has the meaning given by subsection (1) or (1A) above;

“relevant licence holder”—

- (a) in relation to a reference under subsection (1A) above, means the holder of a licence to which the reference relates;
- (b) in relation to modifications of relevant conditions within the meaning given by that subsection, means the holder of a licence which incorporates the conditions.]

#### Textual Amendments

- F64** S. 24(1)(1A) substituted for s. 24(1) (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 22(1)**; S.I. 1996/218, **art. 2**
- F65** Words in s. 24(3) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 22(2)**; S.I. 1996/218, **art. 2**
- F66** Words in s. 24(4) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 22(3)**; S.I. 1996/218, **art. 2**
- F67** S. 24(4A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 22(4)**; S.I. 1996/218, **art. 2**
- F68** Words in s. 24(6) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 22(5)**; S.I. 1996/218, **art. 2**
- F69** S. 24(8) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 22(6)**; S.I. 1996/218, **art. 2**

#### Marginal Citations

- M8** 1973 c. 41.  
**M9** 1980 c. 21.

VALID FROM 20/06/2003

#### [<sup>F70</sup>24A References under section 24: time limits

- (1) Every reference under section 24 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 24 above shall not have effect (and no action shall be taken in relation to it under section 26 below) unless the report is made before the end of the period specified in the reference or

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such further period (if any) as may be allowed by the Authority under subsection (3) below.

- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.]

#### Textual Amendments

**F70** S. 24A inserted (*prosp.*) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 15(4)**

VALID FROM 20/06/2003

#### [<sup>F71</sup>24B References under section 24: powers of investigation

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 24 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;

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- (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

#### Textual Amendments

**F71** S. 24B inserted (*prosp.*) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 15(4)**

## 25 Reports 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 [<sup>F72</sup>the relevant conditions], 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 [<sup>F73</sup>holder of the licence or, as the case may be, any of the relevant licence holders] is a party to an agreement to which the <sup>M10</sup>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 <sup>M11</sup>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.
- (5) Subject to subsection (6) below, the Director shall—
- (a) on receiving [<sup>F74</sup>a report on a reference under section 24(1) above, send a copy of it to the licence holder] and to the Secretary of State; and



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- (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.

[<sup>F75</sup>(5A) Subject to subsection (6) below, the Director shall—

- (a) on receiving a report on a reference under section 24(1A) above, send a copy of it to the Secretary of State; and
- (b) not less than 14 days after that copy is received by the Secretary of State—
  - (i) send another copy to the Council and to each relevant licence holder; and
  - (ii) not less than 24 hours after complying with sub-paragraph (i) above, publish the copy sent to the Council 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) [<sup>F76</sup>or (5A)] above, direct the Director to exclude that matter from [<sup>F77</sup>the copy of the report, or (as the case may be) each copy of the report, to be sent and published as mentioned in paragraph (b) of that subsection].

#### Textual Amendments

- F72** Words in s. 25(1)(c) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 23(1)**; S.I. 1996/218, **art. 2**
- F73** Words in s. 25(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 23(2)**; S.I. 1996/218, **art. 2**
- F74** Words in s. 25(5)(a) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 23(3)**; S.I. 1996/218, **art. 2**
- F75** S. 25(5A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 23(4)**; S.I. 1996/218, **art. 2**
- F76** Words in s. 25(6) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 23(5)(a)**; S.I. 1996/218, **art. 2**
- F77** Words in s. 25(6) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 23(5)(b)**; S.I. 1996/218, **art. 2**

#### Marginal Citations

- M10** 1976 c. 34.
- M11** 1973 c. 41.

## 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 [<sup>F78</sup>the relevant conditions]; and

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(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 [<sup>F78</sup>the relevant conditions] as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

[<sup>F79</sup>(1A) Where at any time the Director modifies under subsection (1) above the standard conditions of licences under section 7 above, licences under subsection (1) of section 7A above or licences under subsection (2) of that section, he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that section or, as the case may be, that subsection granted after that time; and
- (b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that provision granted before that time;

and the above reference to subsection (1) above is a reference to that subsection as it applies in relation to a report on a reference under section 24(1A) above.]

(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 [<sup>F80</sup>holder of the licence or, as the case may be, the relevant licence holders, to the Health and Safety Executive] and to the Council.

[<sup>F81</sup>(5) Where at any time the Director modifies standard conditions under subsection (1A) (a) above for the purposes of their incorporation in licences under section 7 or 7A(1) or (2) above granted after that time, he shall publish the modifications in such manner as he considers appropriate.]

#### Textual Amendments

**F78** Words in s. 26(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 24(1)**; S.I. 1996/218, **art. 2**

**F79** S. 26(1A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 24(2)**; S.I. 1996/218, **art. 2**

**F80** Words in s. 26(4) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 24(3)**; S.I. 1996/218, **art. 2**

**F81** S. 26(5) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 24(4)**; S.I. 1996/218, **art. 2**

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VALID FROM 01/10/2001

**[<sup>F82</sup>26A Competition Commission’s power to veto modifications following report.**

- (1) The Competition Commission (in this section referred to as “the Commission”) may, within the period of four weeks after the date on which it is given a notice under section 26(4A), direct the Authority—
  - (a) not to make the modifications set out in that notice; or
  - (b) not to make such of the modifications as may be specified in the direction; and the Authority shall comply with any such direction.
- (2) The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under section 26(4A) and on the application of the Commission, direct that the period for giving a direction under subsection (1) (and, accordingly, the period mentioned in section 26(4C)) shall be extended by 14 days.
- (3) The power to give a direction under subsection (1) may only be exercised in respect of such of the modifications set out in the notice under section 26(4A)(a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the Commission gives a direction under subsection (1), the Commission—
  - (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
  - (b) shall itself make such modifications of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
    - (i) if the direction was given under subsection (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
    - (ii) if the direction was given under subsection (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 26(4C)(b).
- (5) In exercising its function under subsection (4)(b) the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence.
- (6) Before making modifications under subsection (4)(b) the Commission shall give notice—
  - (a) stating that it proposes to make the modifications and setting them out;
  - (b) stating the reason why it proposes to make them;
  - (c) specifying the period (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.
- (7) A notice under subsection (4)(a) or (6) shall be given—

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- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders.
- (8) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) Where, in consequence of a reference under section 24(1A), the Commission modifies under subsection (4)(b) the standard conditions of licences of any type (that is to say, licences under section 7 or section 7A(1) or 7A(2)) the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time.
- (10) Where the Commission modifies the standard conditions of licences of any type as mentioned in subsection (9) the Authority—
- (a) shall make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) shall publish the modifications made for those purposes in such manner as it considers appropriate.
- (11) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 24(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (12) The provisions mentioned in subsection (13) are to apply in relation to the exercise by the Commission of its functions under this section as if—
- (a) in section 82(1) and (2) of the <sup>M12</sup>Fair Trading Act 1973 references to a report of the Commission under that Act were references to a notice under subsection (4)(a), (6) or (8) of this section;
  - (b) in section 85 of that Act references to an investigation on a reference made to the Commission were references to an investigation by the Commission for the purposes of the exercise of its functions under this section.
- (13) The provisions are—
- (a) section 82(1) and (2) of the <sup>M13</sup>Fair Trading Act 1973 (general provisions as to reports under that Act);
  - (b) section 85 of that Act (attendance of witnesses and production of documents);
  - (c) section 24 of the <sup>M14</sup>Competition Act 1980 (modification of provisions about the Competition Commission’s general functions); and
  - (d) Part II of Schedule 7 to the <sup>M15</sup>Competition Act 1998 (the Competition Commission’s general functions).
- (14) This section does not apply to the modification of a licence following a report of the Commission made before the commencement of section 83(4) of the Utilities Act 2000.]

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**Changes to legislation:** Gas Act 1986, Part I is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

**F82** S. 26A inserted (1.10.2001) by 2000 c. 27, ss. 83(4), 104(1)(2) (with s. 104(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

### Marginal Citations

**M12** 1973 c. 41.

**M13** 1973 c. 41.

**M14** 1980 c. 21.

**M15** 1998 c.41.

## [<sup>F83</sup>27] **Modification by order under other enactments.**

- (1) Where in the circumstances mentioned in subsection (3) or (4) below the Secretary of State by order exercises any of the powers specified in Parts I and II of Schedule 8 to the <sup>M16</sup>Fair Trading Act 1973 or section 10(2)(a) of the <sup>M17</sup>Competition Act 1980, the order may also provide for the modification of—
  - (a) the conditions of a particular licence; or
  - (b) the standard conditions of licences under section 7 above, licences under subsection (1) of section 7A above or licences under subsection (2) of that section,

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) Where at any time the Secretary of State modifies under subsection (1)(b) above the standard conditions of licences under section 7 above, licences under subsection (1) of section 7A above or licences under subsection (2) of that section, he—
  - (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that section or, as the case may be, that subsection granted after that time; and
  - (b) may, after consultation with the Director, make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that provision granted before that time.
- (3) 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), or in section 10(1) of the said Act of 1980 (order on report on competition reference); and
  - (b) the monopoly situation exists in relation to, or (as the case may be) the anti-competitive practice relates to—
    - (i) the carrying on of activities authorised or required by a licence; or
    - (ii) the storage of gas on terms which have been determined by the holder of a licence under section 7 above, or could have been determined by the holder if he had thought fit or had been required to determine them by or under a condition of the licence.
- (4) Subsection (1) above shall also have effect where—
  - (a) the circumstances are as mentioned in section 73(1) of the said Act of 1973 (order on report on merger reference); and
  - (b) at least one of the two or more enterprises—

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- (i) which ceased to be distinct enterprises; or
  - (ii) in the application of that provision as it has effect by virtue of section 75(4)(e) of that Act, which would cease to be distinct enterprises,
- was or, as the case may be, is engaged in the carrying on of activities authorised or required by a licence.
- (5) Where at any time the Secretary of State modifies standard conditions under subsection (2)(a) above for the purposes of their incorporation in licences granted after that time, he shall publish those modifications in such manner as he considers appropriate.
- (6) 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.]

#### Textual Amendments

**F83** S. 27 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 25**; S.I. 1996/218, **art. 2**

#### Marginal Citations

**M16** 1973 c.41.

**M17** 1980 c.21.

### *[<sup>F84</sup> Determination of disputes]*

#### Textual Amendments

**F84** S. 27A and the preceding cross-heading inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 26**; S.I. 1996/218, **art. 2**

### **[<sup>F85</sup> 27A Determination of certain disputes.**

- (1) Subject to subsection (2) below, any dispute arising under section 9(1)(b) or (2), 10 or 11 above, regulations under section 10 above, or any provision of paragraphs 2, 3, 15 or 16 of Schedule 2B to this Act, between a public gas transporter or gas supplier and a person who is, or wishes to become, a domestic customer—
- (a) may be referred to the Director by either party, or with the agreement of either party, by the Council; and
  - (b) on such a reference, shall be determined by order made either by the Director, or if he thinks fit by an arbitrator (or in Scotland arbiter) appointed by him.
- (2) No dispute which—
- (a) arises under section 9(1)(b) above and relates to the connection of any premises to a pipe-line system operated by a public gas transporter; or
  - (b) arises under section 10 above, or regulations under that section, and relates to the connection of any premises to a main of such a transporter,
- may be referred to the Director after the end of the period of 12 months beginning with the time when the connection is made.

**Status:** Point in time view as at 26/11/1998. This version of this part contains provisions that are not valid for this point in time.

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- (3) Any person making an order under subsection (1) above shall include in the order his reasons for reaching his decision with respect to the dispute.
- (4) The practice and procedure to be followed in connection with any such determination shall be such as the Director may consider appropriate.
- (5) Where any dispute between a public gas transporter and a person requiring a connection to a main of the transporter falls to be determined under this section, the Director may give directions as to the circumstances in which, and the terms on which, the transporter is to connect or (as the case may be) to maintain the connection pending the determination of the dispute.
- (6) Where any dispute between a gas supplier and a person requiring a supply of gas falls to be determined under this section, the Director may give directions as to the circumstances in which, and the terms on which, the supplier is to give or (as the case may be) to continue to give the supply pending the determination of the dispute.
- (7) Where any dispute arising under section 11(1) above falls to be determined under this section, the Director may give directions as to the security (if any) to be given pending the determination of the dispute.
- (8) Any direction under subsection (5), (6) or (7) above may be expressed to apply either in relation to a particular case or in relation to a class of case.
- (9) An order under this section—
  - (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and
  - (b) shall be final and—
    - (i) in England and Wales, enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of a county court; and
    - (ii) in Scotland, enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (10) In including in an order under this section any such provision as to costs or expenses, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.]

#### Textual Amendments

**F85** S. 27A inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 26**; S.I. 1996/218, **art. 2**

### *Public gas suppliers: enforcement*

## **28 Orders for securing compliance with certain provisions.**

- (1) Subject to subsections (2) and (5) and section 29 below, where the Director is satisfied that a [<sup>F86</sup>licence holder] is contravening, or [<sup>F87</sup>is likely] to contravene, any relevant condition or requirement, the Director shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

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**Status:** Point in time view as at 26/11/1998. This version of this part contains provisions that are not valid for this point in time.

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- (2) Subject to subsection (5) below, where it appears to the Director—
- (a) that a [<sup>F86</sup>licence holder] is contravening, or [<sup>F87</sup>is likely] to contravene, any relevant condition or requirement; and
  - (b) that it is requisite that a provisional order be made,
- the Director shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition or requirement.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the Director shall have regard, in particular—
- (a) to the extent to which any person is likely to sustain loss or damage in consequence anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and
  - (b) to the fact that the effect of the provisions of this section and section 30 below is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.
- (4) Subject to subsection (5) and section 29 below, the Director shall confirm a provisional order, with or without modifications, if—
- (a) he is satisfied that the [<sup>F86</sup>licence holder] is contravening, or [<sup>F87</sup>is likely] to contravene, any relevant condition or requirement; and
  - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) The Director shall not make a final order or make or confirm a provisional order if he is satisfied—
- (a) that the duties imposed on him by [<sup>F88</sup>section 4 or 4A] above preclude the making or, as the case may be, the confirmation of the order[<sup>F89</sup>(aa) that the [<sup>F90</sup>licence holder] has agreed to take and is taking all such steps as it appears to the Director for the time being to be appropriate for the [<sup>F91</sup>licence holder] to take for the purpose of securing or facilitating compliance with the condition or requirement in question;]; or
  - (b) that the contraventions were or the apprehended contraventions are of a trivial nature.
- (6) Where the Director is satisfied as mentioned in subsection (5) above, he shall—
- (a) give notice that he is so satisfied to the [<sup>F92</sup>licence holder]; and
  - (b) publish a copy of 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 them.
- (7) A final or provisional order—
- (a) shall require the [<sup>F92</sup>licence holder] (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the Director.



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[<sup>F93</sup>(7A) Without prejudice to the generality of the power conferred by subsection (1) above, the provision that may be made in a final order includes, in particular, the imposition by the Director on the licence holder to whom the order relates of a requirement to pay to the Director a monetary penalty of such amount as may be appropriate, in all the circumstances of the case, in respect of the contravention in question.]

(8) In this section and sections 29 and 30 below—

“final order” means an order under this section other than a provisional order;

“provisional order” means an order under this section which, if not previously confirmed under subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order;

“relevant condition”, in relation to a [<sup>F94</sup>licence holder], means any condition of his [<sup>F94</sup>licence holder];

[<sup>F95</sup>“relevant requirement”, in relation to a licence holder, means any requirement imposed on him by or under section 9(1) or (2), 10(2), (3) or (14), 11(2), 12(1) or (6), 18(11), 22A(1) or 27A(5) or (6) above or section 33B, 33BB, 33D or 33E below or any provision of paragraphs 3, 6, 15, 16, 20(5) and 28(2) of Schedule 2B to this Act.]

[<sup>F96</sup>(9) Any sums received by the Director by way of monetary penalty under this section shall be paid into the Consolidated Fund.]

#### Textual Amendments

- F86** Words in s. 28(1)(2)(4) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 27(1)**; S.I. 1996/218, **art. 2**
- F87** Words in s. 28(1)(2)(4)(a) substituted (1.7.1992) by **Competition and Service (Utilities) Act 1992 (c. 43), s. 48(2)**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.
- F88** Words in s. 28(5) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 27(2)(a)**; S.I. 1996/218, **art. 2**
- F89** S. 28(5)(aa) inserted (1.7.1992) by **Competition and Service (Utilities) Act 1992 (c. 43), s. 48(3)**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.
- F90** Words in s. 28(5) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 27(2)(b)**; S.I. 1996/218, **art. 2**
- F91** Words in s. 28(5) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 27(2)(c)**; S.I. 1996/218, **art. 2**
- F92** Words in s. 28(6)(7) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 27(3)**; S.I. 1996/218, **art. 2**
- F93** S. 28(7A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 27(4)**; S.I. 1996/218, **art. 2**
- F94** Words in s. 28(8) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 27(5)(a)**; S.I. 1996/218, **art. 2**
- F95** Words in s. 28(8) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 27(5)(b)**; S.I. 1996/218, **art. 2**
- F96** S. 28(9) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 27(6)**; S.I. 1996/218, **art. 2**

## 29 Procedural requirements.

(1) Before making a final order or confirming a provisional order, the Director shall give notice—

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- (a) stating that he proposes to make or confirm the order and setting out its effect;
  - (b) stating the relevant condition or requirement, the acts or omissions which, in his opinion, constitute or would constitute contraventions of it and the other facts which, in his opinion, justify the making or confirmation of the order; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections to the proposed order or confirmation of the order may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) 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 them; and
  - (b) by sending a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, to the [<sup>F97</sup>licence holder].
- (3) The Director shall not make a final order, or confirm a provisional order, with modifications except with the consent of the [<sup>F97</sup>licence holder] or after complying with the requirements of subsection (4) below.
- (4) The said requirements are that the Director shall—
- (a) give to the [<sup>F97</sup>licence holder] such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
  - (b) specify the time (not being less than 28 days from the date of the service of the notice) within which representations or objections to the proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—
- (a) stating that he proposes to revoke the order and setting out its effect; and
  - (b) specifying the time (not being less than 28 days) from the date of publication of the notice within which representations or objections to the proposed revocation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (6) A notice under subsection (5) 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 them; and
  - (b) by sending a copy of the notice to the [<sup>F97</sup>licence holder].
- (7) As soon as practicable after a final order is made or a provisional order is made or confirmed, the Director shall—
- (a) serve a copy of the order on the [<sup>F97</sup>licence holder]; and
  - (b) publish such a copy in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.

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### Textual Amendments

**F97** Words in s. 29(2)-(4)(6)(7) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 28**; S.I. 1996/218, **art. 2**

## 30 Validity and effect of orders.

(1) If the [<sup>F98</sup>licence holder] is aggrieved by a final or provisional order and desires to question its validity on the ground that the making or confirmation of it was not within the powers of section 28 above or that any of the requirements of section 29 above have not been complied with in relation to it, he may within 42 days from the date of service on him of a copy of the order make an application to the court under this section.

[<sup>F99</sup>(2) On any such application the court, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements—

- (a) may quash the order or any provision of the order; or
- (b) if and to the extent that the application related to so much of an order as imposes a monetary penalty, may substitute a monetary penalty of such lesser amount as the court considers appropriate in all the circumstances of the case.]

(3) Except as provided by this section, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.

(4) No criminal proceedings shall, by virtue of the making of a final order or the making or confirmation of a provisional order, lie against any person on the ground that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.

(5) The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of it.

(6) Where a duty is owed by virtue of subsection (5) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(7) In any proceedings brought against any person in pursuance of subsection (6) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(8) Without prejudice to any right which any person may have by virtue of subsection (6) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or interdict or for any other appropriate relief.

(9) In this section “the court” means—

- (a) in relation to England and Wales, the High Court;
- (b) in relation to Scotland, the Court of Session.

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### Textual Amendments

- F98** Words in s. 30(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 29(1)**; S.I. 1996/218, **art. 2**
- F99** S. 30(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 29(2)**; S.I. 1996/218, **art. 2**

VALID FROM 20/12/2000

### [<sup>F100</sup>30A Penalties.

- (1) Where the Authority is satisfied that a licence holder—
  - (a) has contravened or is contravening any relevant condition or requirement; or
  - (b) has failed or is failing to achieve any standard of performance prescribed under section 33A or 33AA,
 the Authority may, subject to section 30C, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.
- (2) The Authority shall not impose a penalty on a licence holder under subsection (1) where it is satisfied that the most appropriate way of proceeding is under the <sup>M18</sup>Competition Act 1998.
- (3) Before imposing a penalty on a licence holder under subsection (1) the Authority shall give notice—
  - (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
  - (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
  - (d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (4) Before varying any proposal stated in a notice under subsection (3)(a) the Authority shall give notice—
  - (a) setting out the proposed variation and the reasons for it; and
  - (b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after imposing a penalty, the Authority shall give notice—
  - (a) stating that it has imposed a penalty on the licence holder and its amount;

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- (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and
  - (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.
- (6) The licence holder may, within 21 days of the date of service on him of a notice under subsection (5), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.
- (7) Any notice required to be given under this section shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
  - (b) by serving a copy of the notice on the licence holder; and
  - (c) by serving a copy of the notice on the Council.
- (8) No penalty imposed by the Authority under this section may exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Secretary of State).
- (9) An order under subsection (8) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (10) Any sums received by the Authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (11) The power of the Authority under subsection (1) is not exercisable in respect of any contravention or failure before the commencement of section 95 of the Utilities Act 2000.]

#### Textual Amendments

**F100** SS. 30A-30F inserted (20.12.2000 for specified purposes otherwise 1.10.2001) by 2000 c. 27, s. 95(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C23** S. 30A(1)(b) amended (*temp.* from 19.12.2000) by S.I. 2000/3343, art. 9(2) (subject to transitional provisions in arts. 3-15)

#### Marginal Citations

**M18** 1998 c. 41.

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VALID FROM 20/12/2000

**[<sup>F101</sup>30B Statement of policy with respect to penalties.**

- (1) The Authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) The Authority may revise its statement of policy and where it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.]

**Textual Amendments**

**F101** Ss. 30A-30F inserted (20.12.2000 for specified purposes otherwise 1.10.2001) by 2000 c. 27, s. 95(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 20/12/2000

**[<sup>F102</sup>30C Time limits on the imposition of penalties.**

- (1) Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period—
  - (a) the notice under section 30A(3) relating to the penalty is served on the licence holder under section 30A(7), or
  - (b) a notice relating to the contravention or failure is served on the licence holder under section 38(1).
- (2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 30A(3) was served on the licence holder under section 30A(7)—
  - (a) within three months from the confirmation of the provisional order or the making of the final order, or
  - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.]

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### Textual Amendments

**F102** Ss. 30A-30F inserted (20.12.2000 for specified purposes otherwise 1.10.2001) by 2000 c. 27, s. 95(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 20/12/2000

### [<sup>F103</sup>30D Interest and payment of instalments.

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the <sup>M19</sup>Judgments Act 1838.
- (2) If an application is made under subsection (6) of section 30A in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the Authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under that subsection, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.]

### Textual Amendments

**F103** Ss. 30A-30F inserted (20.12.2000 for specified purposes otherwise 1.10.2001) by 2000 c. 27, s. 95(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

### Marginal Citations

**M19** 1838 c. 110.

VALID FROM 20/12/2000

### [<sup>F104</sup>30E Appeals.

- (1) If the licence holder on whom a penalty is imposed is aggrieved by—
  - (a) the imposition of the penalty;
  - (b) the amount of the penalty; or
  - (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,the licence holder may make an application to the court under this section.
- (2) An application under subsection (1) must be made—
  - (a) within 42 days from the date of service on the licence holder of a notice under section 30A(5), or
  - (b) where the application relates to a decision of the Authority on an application by the licence holder under section 30A(6), within 42 days from the date the licence holder is notified of the decision.

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- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4), the court—
- (a) may quash the penalty;
  - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
  - (c) in the case of an application under subsection (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
- (a) that the imposition of the penalty was not within the power of the Authority under section 30A;
  - (b) that any of the requirements of subsections (3) to (5) or (7) of section 30A have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance; or
  - (c) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.
- (9) In this section “the court” means—
- (a) in relation to England and Wales, the High Court; and
  - (b) in relation to Scotland, the Court of Session.]

#### Textual Amendments

**F104** Ss. 30A-30F inserted (20.12.2000 for specified purposes otherwise 1.10.2001) by 2000 c. 27, s. 95(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)



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VALID FROM 20/12/2000

### **[<sup>F105</sup>30F Recovery of penalties.**

Where a penalty imposed under section 30A(1), or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 30E during the period within which such an application can be made, or
  - (b) an application has been made under that section and determined,
- the Authority may recover from the licence holder, as a civil debt due to it, any of the penalty and any interest which has not been paid.]

#### **Textual Amendments**

**F105** Ss. 30A-30F inserted (20.12.2000 for specified purposes otherwise 1.10.2001) by 2000 c. 27, s. 95(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

### *Investigation of complaints etc.*

## **31 Duty of Director to investigate certain matters.**

- (1) It shall be the duty of the Director to investigate any matter which appears to him to be [<sup>F106</sup>a reserved matter] and which—
  - (a) is the subject of representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter; or
  - (b) is referred to him by the Council under subsection (2) below.
- (2) It shall be the duty of the Council to refer to the Director any matter which appears to the Council to be [<sup>F106</sup>a reserved matter] and which is the subject of a representation (other than one appearing to the Council to be frivolous) made to the Council by or on behalf of a person appearing to the Council to have an interest in that matter.

- [<sup>F107</sup>(3) In this section and section 32 below “reserved matter” means any matter—
- (a) in respect of which any functions of the Director under section 28 above are or may be exercisable; and
  - (b) which has not been designated by the Director as a matter which is to be investigated by the Council.
- (4) A designation under subsection (3) above may be made—
- (a) either generally or in relation to matters of a particular class or a particular matter; and
  - (b) either unconditionally or subject to such conditions as may be specified in the designation.
- (5) Conditions specified in a designation under subsection (3) above may contain provision for the designation to cease to have effect, either generally or in relation to

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matters of a particular class or a particular matter, in such circumstances as may be determined by or under the conditions.]

**Textual Amendments**

**F106** Words in s. 31(1)(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 30(1)**; S.I. 1996/218, **art. 2**

**F107** S. 31(3)-(5) substituted for s. 31(3) (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 30(2)**; S.I. 1996/218, **art. 2**

**32 Duty of Council to investigate certain matters.**

- (1) It shall be the duty of the Council to investigate any matter which appears to it to be a matter to which subsection (2) below applies and which—
  - (a) is the subject of a representation (other than one appearing to the Council to be frivolous) made to the Council by or on behalf of a person appearing to the Council to have an interest in that matter; or
  - (b) is referred to it by the Director under subsection (3) below.

[<sup>F108</sup>(2) This subsection applies to any matter (not being a reserved matter) in respect of which any functions of the Director under this Part are or may be exercisable.]

- (3) Subject to subsection (4) below, it shall be the duty of the Director to refer to the Council any matter which appears to the Director to be a matter falling within <sup>F109</sup> . . . subsection (2) above and which is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter.
- (4) Nothing in subsection (3) above shall require the Director to refer to the Council any matter in respect of which he is <sup>F110</sup> . . . considering exercising functions under this Part.
- (5) Where on an investigation under subsection (1) above any matter appears to the Council to be a matter falling within <sup>F109</sup> . . . subsection (2) above in respect of which it would be appropriate for the Director to exercise any functions under this Part, the Council shall refer that matter to the Director with a view to his exercising those functions with respect to that matter.

<sup>F111</sup>(6) . . . . .

<sup>F111</sup>(7) . . . . .

**Textual Amendments**

**F108** S. 32(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 31(1)**; S.I. 1996/218, **art. 2**

**F109** Words in s. 32(3)(5) repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 31(2), **Sch. 6**; S.I. 1996/218, **art. 2**

**F110** Word in s. 32(4) repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 31(3), **Sch. 6**; S.I. 1996/218, **art. 2**

**F111** S. 32(6)(7) repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 31(4), **Sch. 6**; S.I. 1996/218, **art. 2**

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### **[32A] <sup>F112</sup> Preliminary investigation by Council of certain disputes.**

- (1) This section applies where—
  - (a) representations are made to the Council by or on behalf of a person who appears to the Council to have an interest in the matter to which the representations relate; and
  - (b) that matter appears to the Council to constitute a dispute of a kind which may be referred to the Director under [<sup>F113</sup>section 27A]] above or 33A below, or under regulations made under section 15A above.
- (2) It shall be the duty of the Council—
  - (a) to inform the person by or on whose behalf the representations are made that he may have the right to refer his dispute to the Director; and
  - (b) to make such investigations with respect to the matter to which the representations relate as may be specified in a direction given by the Director.
- (3) Any such direction may be given so as to apply generally or to a specified class of matter or particular matter and may, in particular, specify in relation to any investigation which the Council is required to make under this section—
  - (a) the practice and procedure which it is to follow in conducting its investigation; and
  - (b) the information which it is to give to the Director with respect to the matter investigated.

#### **Textual Amendments**

**F112** S. 32A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 18](#);  
Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.

**F113** Words in s. 32A(1) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 32](#); [S.I. 1996/218, art. 2](#)

### **33 Power of Council to investigate other matters.**

- (1) The Council shall have power to investigate any matter (not being a matter which it is its duty to investigate under section 32 above) which—
  - (a) appears to it to be a matter to which subsection (2) below applies and not to be an enforcement matter within the meaning of that section; and
  - (b) is the subject of a representation (other than one appearing to the Council to be frivolous) made to the Council by or on behalf of a person appearing to the Council to have an interest in that matter.
- (2) This subsection applies to—
  - (a) any matter relating to the design, manufacture, importation or supply (whether by sale, hire or loan or otherwise) of gas fittings used or intended to be used by persons supplied with gas by [<sup>F114</sup>gas suppliers];
  - (b) any matter relating to the installation, maintenance or inspection of gas fittings used or intended to be used by such persons; and
  - (c) any other matter relating to, or to anything connected with, the use by such persons of gas supplied by such a supplier or the use of such fittings.

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- (3) Where the Council has investigated any matter under this section, it may prepare a report on that matter and (subject to section 42 below) shall send a copy of any such report to such (if any) of the following persons as it thinks appropriate, that is to say—
- (a) any person to whom the report refers or who (whether or not he has made a representation to the Council) appears to the Council to have an interest in the matter to which the report relates;
  - (b) the Director General of Fair Trading or any person whose functions under any enactment appear to the Council to be exercisable in relation to that matter;
  - (c) any person who appears to the Council to be a person who ought to take account of the report in determining how to act in relation to that matter;

F115 . . .

[<sup>F116</sup>(4) References in this section to gas suppliers include references to persons supplying gas which they are authorised to supply by paragraph 1 of Schedule 2A to this Act.]

#### Textual Amendments

**F114** Words in s. 33(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 33(1)**; S.I. 1996/218, **art. 2**

**F115** Words in s. 33(3) repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), **Sch. 3 para. 33(2)**, **Sch. 6**; S.I. 1996/218, **art. 2**

**F116** S. 33(4) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 33(3)**; S.I. 1996/218, **art. 2**

[<sup>F117</sup> *Standards of performance*]

#### Textual Amendments

**F117** Cross heading, ss. 33A and 33B inserted (1.7.1992) by **Competition and Service (Utilities) Act 1992** (c. 43), **s. 11**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I.

### [<sup>F118</sup>33A Standards of performance in individual cases.

- (1) The Director may make regulations prescribing such standards of performance in connection with the provision of gas supply services by [<sup>F119</sup>gas suppliers to domestic customers]] as, in his opinion, ought to be achieved in individual cases.
- (2) Regulations under subsection (1) above may only be made—
  - (a) with the consent of the Secretary of State;
  - (b) after consulting—
    - (i) [<sup>F120</sup>gas suppliers]; and
    - (ii) persons or bodies appearing to the Director to be representative of persons likely to be affected by the regulations; and
  - (c) after arranging for such research as the Director considers appropriate with a view to discovering the views of a representative sample of persons likely to be so affected and considering the results.
- (3) Regulations under this section may—
  - (a) prescribe circumstances in which [<sup>F121</sup>gas suppliers] are to inform [<sup>F122</sup>domestic customers] of their rights under this section;

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- (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) above as, in the Director’s opinion, ought to be achieved in all cases;
  - (c) prescribe circumstances in which [<sup>F121</sup>gas suppliers] are to be exempted from any requirements of the regulations or this section; and
  - (d) [<sup>F123</sup>if the Director is of the opinion that the differences are such that no gas supplier would be unduly disadvantaged in competing with other gas suppliers,] make different provision with respect to different [<sup>F121</sup>gas suppliers].
- (4) If a [<sup>F124</sup>gas supplier] fails to meet a prescribed standard, he shall make to any [<sup>F125</sup>domestic customer] who is affected by the failure such compensation as may be determined by or under the regulations.
- (5) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (6) Any dispute arising under this section or regulations made under this section—
- (a) may be referred to the Director by either party or, with the agreement of either party, by the Council; and
  - (b) on such a reference, shall be determined by order made—
    - (i) by the Director; or
    - (ii) by such other person as may be prescribed.
- (7) Any person making an order under subsection (6) above shall include in the order his reasons for reaching his decision with respect to the dispute.
- (8) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.
- (9) An order under subsection (6) above shall be final and shall be enforceable—
- (a) in England and Wales, as if it were a judgment of a county court; and
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.

<sup>F126</sup>(10) .....

<sup>F126</sup>(11) .....

#### Textual Amendments

**F118** Cross heading, ss. 33A and 33B inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 11](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.

**F119** Words in s. 33A(1) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 34\(1\)](#); S.I. 1996/218, [art. 2](#)

**F120** Words in s. 33A(2) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 34\(2\)](#); S.I. 1996/218, [art. 2](#)

**F121** Words in s. 33A(3) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 34\(3\)\(a\)](#); S.I. 1996/218, [art. 2](#)

**F122** Words in s. 33A(3) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 34\(3\)\(b\)](#); S.I. 1996/218, [art. 2](#)

**F123** Words in s. 33A(3)(d) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 34\(3\)\(c\)](#); S.I. 1996/218, [art. 2](#)

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**F124** Words in s. 33A(4) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 34(4)(a)**; S.I. 1996/218, **art. 2**

**F125** Words in s. 33A(4) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 34(4)(b)**; S.I. 1996/218, **art. 2**

**F126** S. 33A(10)(11) repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 34(5), **Sch. 6**; S.I. 1996/218, **art. 2**

VALID FROM 16/05/2001

**[<sup>F127</sup>33A Standards of performance in individual cases: gas transporters.**

- (1) The Authority may make regulations prescribing such standards of performance in connection with the activities of gas transporters, so far as affecting customers or potential customers of gas suppliers, as in the Authority's opinion ought to be achieved in individual cases.
- (2) Regulations under this section may only be made with the consent of the Secretary of State.
- (3) If a gas transporter fails to meet a prescribed standard, he shall make to any customer or potential customer of a gas supplier who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.
- (4) The regulations may—
  - (a) prescribe circumstances in which gas transporters are to inform customers or potential customers of gas suppliers of their rights under this section;
  - (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) as, in the Authority's opinion, ought to be achieved in all cases;
  - (c) make provision as to the manner in which compensation under this section is to be made;
  - (d) prescribe circumstances in which gas transporters are to be exempted from any requirements of the regulations or this section; and
  - (e) if the Authority is of the opinion that the differences are such that no gas transporter would be unduly disadvantaged in competing with other gas transporters, make different provision with respect to different gas transporters.
- (5) Provision made under subsection (4)(c) may—
  - (a) require or permit compensation to be made on behalf of gas transporters by gas suppliers to customers or potential customers;
  - (b) require gas suppliers to provide services to gas transporters in connection with the making of compensation under this section.
- (6) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.]

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#### Textual Amendments

**F127** S. 33AA inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 90(2); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 16/05/2001

#### **[<sup>F128</sup>33A] Standards of performance in individual cases: disputes.**

- (1) Any dispute arising under section 33A or 33AA or regulations made under either of those sections—
  - (a) may be referred to the Authority by either party or, with the agreement of either party, by the Council; and
  - (b) on such a reference, shall be determined by order made by the Authority or, if it thinks fit, by such person (other than the Council) as may be prescribed.
- (2) A person making an order under subsection (1) shall include in the order his reasons for reaching his decision with respect to the dispute.
- (3) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.
- (4) An order under subsection (1) shall be final and shall be enforceable—
  - (a) in England and Wales, as if it were a judgment of a county court; and
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (5) In this section “prescribed” means prescribed by regulations made by the Authority with the consent of the Secretary of State.]

#### Textual Amendments

**F128** S. 33AB inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 90(2); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### **[33B] <sup>F129</sup> Overall standards of performance.**

- (1) The Director may from time to time—
  - (a) determine such standards of overall performance in connection with the provision of gas supply services by [<sup>F130</sup>gas suppliers]] as, in his opinion, ought to be achieved by them; and
  - (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.
- (2) The Director may only make a determination under subsection (1)(a) above after—
  - (a) consulting [<sup>F131</sup>gas suppliers] and persons or bodies appearing to the Director to be representative of persons likely to be affected; and

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- (b) arranging for such research as the Director considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and considering the results.
- [<sup>F132</sup>(3) Different standards may be determined for different gas suppliers if the Director is of the opinion that the differences are such that no gas supplier would be unduly disadvantaged in competing with other gas suppliers.
- (3A) Standards may be determined either as respects the provision of gas supply services generally or as respects the provision of such services to customers of a particular class or description.]
- (4) It shall be the duty of every [<sup>F133</sup>gas supplier] to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.

#### Textual Amendments

- F129** Cross heading, ss. 33A and 33B inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s. 11](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.
- F130** Words in [s. 33B\(1\)](#) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\)](#), [Sch. 3 para. 35\(1\)](#); S.I. 1996/218, [art. 2](#)
- F131** Words in [s. 33B\(2\)](#) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\)](#), [Sch. 3 para. 35\(2\)](#); S.I. 1996/218, [art. 2](#)
- F132** [S. 33B\(3\)\(3A\)](#) substituted for [s. 33B\(3\)](#) (1.3.1996) by [1995 c. 45, s. 10\(1\)](#), [Sch. 3 para. 35\(3\)](#); S.I. 1996/218, [art. 2](#)
- F133** Words in [s. 33B\(4\)](#) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\)](#), [Sch. 3 para. 35\(4\)](#); S.I. 1996/218, [art. 2](#)

VALID FROM 16/05/2001

#### [<sup>F134</sup>~~33B~~ Overall standards of performance: gas transporters.

- (1) The Authority may from time to time—
- (a) determine such standards of overall performance in connection with the activities of gas transporters as, in its opinion, ought to be achieved by them; and
  - (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.
- (2) Different standards may be determined for different gas transporters if the Authority is of the opinion that the differences are such that no gas transporter would be unduly disadvantaged in competing with other gas transporters.
- (3) It shall be the duty of every gas transporter to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.]



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### Textual Amendments

- F134** S. 33BA inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 91; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 16/05/2001

### <sup>F135</sup>**33BA Procedures for prescribing or determining standards of performance.**

- (1) Before prescribing standards of performance in regulations under section 33A or 33AA, or determining standards of performance under section 33B or 33BA, the Authority shall—
  - (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
  - (b) publish a notice of its proposals in accordance with subsections (2) and (3) and consider any representations which are duly made in respect of those proposals; and
  - (c) consult the Council and other persons or bodies mentioned in subsection (4).
- (2) The notice required by subsection (1)(b) is a notice—
  - (a) stating that the Authority proposes to prescribe or determine standards of performance and setting out the standards of performance proposed;
  - (b) stating the reasons why it proposes to prescribe or determine those standards of performance; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.
- (3) A notice required by subsection (1)(b) shall be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals.
- (4) The persons or bodies to be consulted by the Authority under subsection (1)(c) are—
  - (a) gas suppliers (in the case of standards of performance under section 33A or 33B) or gas transporters and gas suppliers (in the case of standards of performance under section 33AA or 33BA); and
  - (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the regulations or determination.
- (5) The Authority shall make arrangements for securing that notices under subsection (1)(b), regulations under section 33A or 33AA and determinations under section 33B or 33BA are made available to the public by whatever means it considers appropriate.]

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### Textual Amendments

**F135** S. 33BAA inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 92; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 01/10/2001

### <sup>F136</sup>**33B Promotion of the efficient use by consumers of gas.**

- (1) The Secretary of State may by order impose—
  - (a) on each gas transporter (or each gas transporter of a specified description); and
  - (b) on each gas supplier (or each gas supplier of a specified description),
 an obligation to achieve, within a specified period and in accordance with the order, the energy efficiency target to be determined by the Authority under the order for that transporter or supplier (and that obligation is referred to in this section as an “energy efficiency obligation”).
- (2) In this section “energy efficiency target” means a target for the promotion of improvements in energy efficiency, that is to say, efficiency in the use by consumers of gas conveyed through pipes, electricity or any other source of energy which is specified in the order.
- (3) An order under this section may specify criteria by reference to which the Authority is to determine energy efficiency targets for the gas transporters and gas suppliers on whom obligations are imposed by the order.
- (4) The Secretary of State and the Authority shall carry out their respective functions under this section in the manner he or it considers is best calculated to ensure that no gas transporter is unduly disadvantaged in competing with other gas transporters and no gas supplier is unduly disadvantaged in competing with other gas suppliers.
- (5) The order may make provision generally in relation to the energy efficiency obligations which it imposes, including in particular provision—
  - (a) as to the treatment of persons who become gas transporters or gas suppliers after the beginning of the period to which the order relates;
  - (b) as to the action which qualifies for the purpose of meeting the whole or any part of an energy efficiency target;
  - (c) as to the method by which improvements in energy efficiency attributable to any qualifying action are to be assessed;
  - (d) requiring transporters and suppliers to give to the Authority specified information, or information of a specified nature, about their proposals for complying with their energy efficiency obligations;
  - (e) requiring the Authority to determine—
    - (i) whether any proposed action qualifies for the purpose of achieving the whole or any part of a person’s energy efficiency target; and
    - (ii) if so, what improvement in energy efficiency is to be attributed for that purpose to the proposed action or to any result of that action specified in the determination; and

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- (f) requiring transporters or suppliers to produce to the Authority evidence of a specified kind demonstrating that they have complied with their energy efficiency obligations.
- (6) The order may make provision authorising the Authority to require a transporter or supplier to provide it with specified information, or information of a specified nature, relating to—
- (a) his proposals for complying with his energy efficiency obligation; or
  - (b) the question whether he has complied with that obligation.
- (7) The order may make provision as to circumstances in which—
- (a) a person’s energy efficiency target may be altered during the period to which the order relates;
  - (b) the whole or any part of a person’s energy efficiency target may be treated as having been achieved by action taken otherwise than by or on behalf of that person;
  - (c) any action taken before the period to which the order relates may be treated as qualifying action taken during that period;
  - (d) the whole or any part of a person’s energy efficiency target may be transferred to another gas transporter or gas supplier or to an electricity distributor or electricity supplier (within the meaning of Part I of the <sup>M20</sup>Electricity Act 1989); or
  - (e) a person may carry forward the whole or any part of his energy efficiency target for the period to which the order relates to a subsequent period.
- (8) The order may—
- (a) provide for exceptions from any requirement of the order;
  - (b) provide that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of this Part;
  - (c) make supplementary, incidental and transitional provision; and
  - (d) subject to subsection (4), make different provision for different cases (including different provision in relation to different transporters or suppliers).
- (9) The order may include provision for treating the promotion of the supply to premises of—
- (a) electricity generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity;
  - (b) heat produced in association with electricity or steam produced from (or air or water heated by) such heat; or
  - (c) any gas or liquid subjected to a cooling effect produced in association with electricity,
- as promotion of improvements in energy efficiency.
- (10) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.
- (11) Before making an order under this section the Secretary of State shall consult the Authority, the Council, gas transporters and gas suppliers and such other persons as he considers appropriate.

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- (12) An order under this section shall not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.]

#### Textual Amendments

**F136** S. 33BC substituted (1.10.2001) for s. 33BB by 2000 c. 27, s. 99; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C24** Definition of “energy efficiency target” in s. 33BC(2) modified (15.12.2001) by S.I. 2001/4011, art. 5

#### Marginal Citations

**M20** 1989 c. 29.

### [<sup>F137</sup>33BB] Standards for promoting efficient use of gas.

- (1) The Director may, after consulting gas suppliers and persons or bodies appearing to him to be representative of persons likely to be affected, from time to time—
  - (a) determine such standards of performance in connection with the promotion of the efficient use of gas by consumers as, in his opinion, ought to be achieved by gas suppliers; and
  - (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.
- (2) Different standards may be determined for different gas suppliers if the Director is of the opinion that the differences are such that no gas supplier would be unduly disadvantaged in competing with other gas suppliers.
- (3) Each gas supplier shall, in such form and manner and with such frequency as the Director may direct, take steps to inform his customers of—
  - (a) the standards determined under this section which are applicable to that supplier; and
  - (b) that supplier’s level of performance as respects those standards.]

#### Textual Amendments

**F137** S. 33BB inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 36; S.I. 1996/218, art. 2

#### Modifications etc. (not altering text)

**C25** S. 33BB extended (8.11.1995) by 1995 c. 45, s. 17(1), Sch. 5 Pt. II para. 21; S.I. 1996/218, art. 2

### [33C] <sup>F138</sup> Information with respect to levels of performance.

- (1) The Director shall from time to time collect information with respect to—
  - (a) the compensation made by [<sup>F139</sup>gas suppliers]] under section 33A above;

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- (b) the levels of overall performance achieved by [<sup>F139</sup>gas suppliers] in connection with the provision of gas supply services; and
  - (c) the levels of performance achieved by [<sup>F139</sup>gas suppliers] in connection with the promotion of the efficient use of gas by consumers.
- (2) At such times as the Director may direct, each [<sup>F140</sup>gas supplier] shall give the following information to the Director—
- (a) as respects each standard prescribed by regulations under section 33A above, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under [<sup>F141</sup>section 33B or 33BB] above, such information with respect to the level of performance achieved by the supplier as may be so specified.
- (3) A [<sup>F142</sup>gas supplier] who without reasonable excuse fails to do anything required of him by subsection (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or given to him under this section as appears to him expedient to give to customers, or potential customers, of [<sup>F143</sup>gas suppliers].
- (5) In arranging for the publication of any such information, the Director shall have regard to the need for excluding, so far as practicable—
- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.

#### Textual Amendments

**F138** S. 33C inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 12](#);  
Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.

**F139** Words in s. 33C(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), [Sch. 3 para. 36\(1\)](#); S.I. 1996/218, [art. 2](#)

**F140** Words in s. 33C(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), [Sch. 3 para. 37\(2\)\(a\)](#); S.I. 1996/218, [art. 2](#)

**F141** Words in s. 33C(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), [Sch. 3 para. 37\(2\)\(b\)](#); S.I. 1996/218, [art. 2](#)

**F142** Words in s. 33C(3) substituted (1.3.1996) by 1995 c. 45, s. 10(1), [Sch. 3 para. 37\(3\)](#); S.I. 1996/218, [art. 2](#)

**F143** Words in s. 33C(4) substituted (1.3.1996) by 1995 c. 45, s. 10(1), [Sch. 3 para. 37\(4\)](#); S.I. 1996/218, [art. 2](#)

#### [33D] <sup>F144</sup>Information to be given to customers about overall performance.

- (1) Each [<sup>F145</sup>gas supplier] shall, in such form and manner and with such frequency as the Director may direct, take steps to inform his customers of—

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- (a) the standards of overall performance determined under section 33B above which are applicable to that supplier; and
  - (b) that supplier's level of performance as respects each of those standards.
- (2) In giving any such direction, the Director shall not specify a frequency of less than once in every period of twelve months.
- [<sup>F146</sup>(3) Where the standards of performance mentioned in subsection (1) above relate to the provision of gas supply services to customers of a particular class or description, the reference in that subsection to the supplier's customers shall be construed as a reference to such of his customers as are of that class or description.]

#### Textual Amendments

- F144** S. 33D inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 13](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.
- F145** Words in s. 33D(1) substituted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 38\(1\)](#); S.I. 1996/218, [art. 2](#)
- F146** S. 33D(3) inserted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 38\(2\)](#); S.I. 1996/218, [art. 2](#)

VALID FROM 07/11/2000

#### [<sup>F147</sup>~~33D~~ **Publication of statistical information about standards of performance.**

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate in relation to—
- (a) the levels of performance achieved by gas suppliers and gas transporters in respect of—
    - (i) standards of performance prescribed or determined under sections 33A, 33AA, 33B and 33BA; and
    - (ii) energy efficiency obligations imposed by order under section 33BC; and
  - (b) complaints made by consumers about any matter relating to the activities of such suppliers or transporters and the handling of such complaints.
- (2) In subsection (1)(b) “complaints” includes complaints made directly to gas suppliers and gas transporters (or anyone carrying on activities on their behalf) and complaints to the Authority or the Council.]

#### Textual Amendments

- F147** S. 33DA inserted (7.11.2000 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 20\(5\)](#); S.I. 2000/2974, [art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-12](#)); S.I. 2001/3266, [arts. 1\(2\), 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

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**[33E]** <sup>F148</sup> **Procedures for dealing with complaints.**

- (1) Each [<sup>F149</sup>gas supplier who is authorised to supply gas to domestic customers and whose licence incorporates the standard conditions]] shall establish a procedure for dealing with complaints made by his [<sup>F150</sup>domestic customers or potential domestic customers] in connection with the provision of gas supply services.
- (2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—
  - (a) the [<sup>F151</sup>gas supplier] has consulted the Council; and
  - (b) the proposed procedure or modification has been approved by the Director.
- (3) The [<sup>F151</sup>gas supplier] shall—
  - (a) publicise the procedure in such manner as may be approved by the Director; and
  - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Director may give a direction to a [<sup>F151</sup>gas supplier] requiring the supplier to review his procedure or the manner in which it operates.
- (5) A direction under subsection (4) above—
  - (a) may specify the manner in which the review is to be conducted; and
  - (b) shall require a written report of the review to be made to the Director.
- (6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the [<sup>F151</sup>gas supplier], direct him to make such modifications of—
  - (a) the procedure; or
  - (b) the manner in which the procedure operates,as may be specified in the direction.
- (7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.

**Textual Amendments**

**F148** S. 33E inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 14; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.

**F149** Words in s. 33E(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 39(1)(a); S.I. 1996/218, art. 2

**F150** Words in s. 33E(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 39(1)(b); S.I. 1996/218, art. 2

**F151** Words in s. 33E(2)-(4)(6) substituted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 39(2); S.I. 1996/218, art. 2

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VALID FROM 01/10/2001

## *F152 Service standards and remuneration*

### **Textual Amendments**

**F152** S. 33F and cross heading inserted (1.10.2001) by 2000 c. 27, s. 97; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

### **33F** <sup>F153</sup> **Remuneration and service standards.**

- (1) This section applies to any company which is authorised by a licence to carry on activities subject to price regulation.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
  - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3); and
  - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to levels of performance as respects service standards in connection with activities subject to price regulation.
- (4) A description under subsection (2)(b) must include in particular—
  - (a) a statement of when the arrangements were made;
  - (b) a description of the service standards in question;
  - (c) an explanation of the means by which the levels of performance as respects those service standards are assessed; and
  - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) must also state—
  - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3); or
  - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,
 and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.
- (6) A description under subsection (5) must—
  - (a) include in particular the matters listed in subsection (4)(a), (b) and (c); and
  - (b) where the arrangements described are different from any arrangements described under subsection (2)(b), state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by subsection (2)—



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- (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
  - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—
- “activities subject to price regulation”, in relation to any company, are activities for which—
    - (a) a maximum price which may be charged by the company, or a method for calculating such a maximum price; or
    - (b) a maximum revenue which may be received by the company, or a method for calculating such a maximum revenue,
- is determined by or under the licence granted under this Part;
- “company” means a company within the meaning of the <sup>M21</sup>Companies Act 1985 which is limited by shares;
- “remuneration” in relation to a director of a company—
  - (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
  - (b) includes remuneration in respect of any of his services while a director of the company;
- “service standards” in relation to any company, means standards relating to the quality of service received by customers or potential customers of the company, including any such standards which are—
  - (a) set by or under any conditions included in a licence granted under this Part;
  - (b) prescribed by the Authority in regulations made under section 33A and 33AA;
  - (c) determined by the Authority under section 33B or 33BA; or
  - (d) set or agreed to by the company.]

#### Textual Amendments

**F153** S. 33F and cross heading inserted (1.10.2001) by 2000 c. 27, s. 97; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M21** 1985 c. 6.

### *Other functions of Director*

#### 34 General functions.

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time, to keep under review the carrying on both within and outside Great Britain of
- [<sup>F154</sup>(a) such activities as are mentioned in section 5(1) above; and

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- (b) activities ancillary to such activities (including in particular the storage of gas, the provision and reading of meters and the provision of pre-payment facilities).]
- (2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time, to collect information with respect to
- [<sup>F155</sup>(a) the carrying on of such activities as are mentioned in subsection (1) above; and  
(b) the persons by whom such activities are carried on,]
- with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which his functions are exercisable.
- (3) The Secretary of State may give general directions indicating—
- (a) considerations to which the Director should have particular regard in determining the priority in which matters are to be brought under review in the performance of his duty under subsection (1) or (2) above; and
- (b) considerations to which, in cases where it appears to the Director that any of his functions are exercisable, he should have particular regard in determining whether to exercise those functions.
- (4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or the Director General of Fair Trading to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter in respect of which any function of the Director [<sup>F156</sup>or the Secretary of State.] is exercisable.
- [<sup>F157</sup>(5) The Director shall have power to make agreements with the Health and Safety Commission for the Director to perform on behalf of that Commission or the Health and Safety Executive (with or without payment) any of the functions of that Commission or, as the case may be, that Executive.]

#### Textual Amendments

**F154** S. 34(1)(a)(b) substituted for words in s. 34(1) (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 40(1)**; S.I. 1996/218, **art. 2**

**F155** S. 34(2)(a)(b) substituted for words in s. 34(2) (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 40(2)**; S.I. 1996/218, **art. 2**

**F156** Words in s. 34(4) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 40(3)**; S.I. 1996/218, **art. 2**

**F157** S. 34(5) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 40(4)**; S.I. 1996/218, **art. 2**

### 35 Publication of information and advice.

- (1) The Director may arrange for the publication, in such form and in such manner as he may consider appropriate, of such information and advice as it may appear to him to be expedient to give to [<sup>F158</sup>customers and potential customers of gas suppliers].
- (2) In arranging for the publication of any such information or advice, the Director shall have regard to the need for excluding, so far as that is practicable—
- (a) any matter which relates to the affairs of an individual, where the publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter

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would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.

#### Textual Amendments

**F158** Words in s. 35(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 41**; S.I. 1996/218, **art. 2**

### 36 Keeping of register.

- [<sup>F159</sup>(1) The Director shall keep a register of notifications and directions under [<sup>F160</sup>paragraph 5 of Schedule 2A to this Act], exemptions granted under section 6A above to particular persons, [<sup>F161</sup>licences under section 7 or 7A] above and final and provisional orders at such premises and in such form as he may determine.
- (2) Subject to any direction given under subsection (3) below, the Director shall cause to be entered in the register the provisions of—
- (a) every notification or direction under [<sup>F162</sup>paragraph 5 of Schedule 2A to this Act];
  - (b) every exemption granted under section 6A above to a particular person and every revocation of such exemption;
  - (c) every revocation made otherwise than by order of an exemption granted under that section to persons of a particular class [<sup>F163</sup>and every direction under subsection (5) of that section];
  - (d) every [<sup>F164</sup>licence under section 7 or 7A] above and every modification or revocation of, and every direction or consent given or determination made under, [<sup>F165</sup>such a licence]; and
  - (e) every final or provisional order, every revocation of such an order and every notice under section 28(6) above.]
- (3) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Director not to enter that provision in the register.
- (4) The register shall be open to public inspection during such hours and subject to payment of such fee as may be prescribed by an order made by the Secretary of State.
- (5) Any person may, on payment of such fee as may be prescribed by an order so made, require the Director to supply to him a copy of or extract from any part of the register, certified by the Director to be a true copy or extract.
- (6) Any sums received by the Director under this section shall be paid into the Consolidated Fund.
- (7) In this section “final order” and “provisional order” have the same meanings as in section 28 above.

#### Textual Amendments

**F159** S. 36(1)(2) substituted (31.10.1994) by 1993 c. 1, s. 3; S.I. 1994/2568, **art. 2**

**F160** Words in s. 36(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 42(1)(a)**; S.I. 1996/218, **art. 2**

**F161** Words in s. 36(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 42(1)(b)**; S.I. 1996/218, **art. 2**

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- F162** Words in s. 36(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 42(2)(a)**; S.I. 1996/218, **art. 2**
- F163** Words in s. 36(2) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 42(2)(b)**; S.I. 1996/218, **art. 2**
- F164** Words in s. 36(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 42(2)(c)**; S.I. 1996/218, **art. 2**
- F165** Words in s. 36(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 42(2)(d)**; S.I. 1996/218, **art. 2**

**[36A** <sup>F166</sup> **Functions with respect to competition.** **E+W+S**

- (1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the <sup>M22</sup>Fair Trading Act 1973 (“the 1973 Act”) so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of gas conveyed through pipes, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.
- (2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—
- (a) the functions of that Director under sections 44 and 45 of the 1973 Act;
  - (b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act; and
  - (c) the functions of that Director under sections 56A to 56G of that Act, so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the carrying on of activities to which this subsection applies; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.
- <sup>F167</sup>[ The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
  - (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to the carrying on of activities to which this subsection applies.
- (3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]]
- (4) Subsections (2) and (3) above apply to—
- (a) such activities as are mentioned in section 5(1) above; and
  - (b) activities ancillary to such activities as are so mentioned (including in particular the storage of gas, the provision and reading of meters and the provision of pre-payment facilities).
- (5) Before either Director first exercises in relation to any matter functions [<sup>F168</sup>mentioned in] any of the following provisions, namely—

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- (a) paragraph (a) of subsection (2) above;
- (b) paragraph (b) of that subsection; [<sup>F169</sup>and]
- (c) paragraph (c) of that subsection; <sup>F170</sup> . . .
- <sup>F170</sup>(d) . . . . .

he shall consult the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions [<sup>F168</sup>mentioned in] that provision have been exercised in relation to that matter by the other Director.

- (6) It shall be the duty of the Director, for the purpose of assisting the [<sup>F171</sup>Competition Commission] in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) <sup>F172</sup> . . . above, 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—
  - (i) is requested by the Commission for that purpose; or
  - (ii) 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 shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

- (7) If any question arises as to whether subsection (2) or (3) above applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

- (a) Part IV or section 86 or 88 of the 1973 Act; or
- <sup>F173</sup>(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),] by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.

- (8) Section 93B of the 1973 Act (offences of supplying false or misleading information to the Secretary of State, the Director General of Fair Trading or the [<sup>F171</sup>Competition Commission] in connection with their functions under Parts IV, V, VI or VIII of the 1973 Act <sup>F174</sup> . . .) shall have effect, so far as relating to functions exercisable by the Director by virtue of subsection (2) [<sup>F175</sup>above and paragraph 1 of Schedule 10 to the Competition Act 1998], as if the reference in subsection (1)(a) of that section to the Director of Fair Trading included a reference to the Director.

- (9) Expressions used in this section which are also used in the 1973 Act <sup>F176</sup> . . . have the same meanings as in that Act.

- (10) Any reference in this Part to functions of the Director under this Part, or to functions assigned to him by or under this Part, includes a reference to functions [<sup>F177</sup>mentioned in subsection (2) or (3) above.].

**Textual Amendments**

**F166** S. 36A inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**

**F167** S. 36A(3)(3A) substituted for s. 36A(3) (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 3(5)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**

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- F168** Words in s. 36A(5) substituted (26.11.1998 in accordance with art. 2 of the commencing S.I. and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 3(6)(a)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**
- F169** Word in s. 36A(5) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 3(6)(b)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**
- F170** S. 36A(5)(d) and word preceding it repealed (26.11.1998 in accordance with art. 2 of the commencing S.I. and otherwise 1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), **Sch. 10 Pt. II para. 3(6)(c)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**
- F171** Words in s. 36A(6)(8) substituted (1.4.1999) by S.I. 1999/506, **art. 20(b)**
- F172** Words in s. 36A(6) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), **Sch. 10 Pt. II para. 3(7)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**
- F173** S. 36A(7)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 3(8)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**
- F174** Words in s. 36A(8) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), **Sch. 10 Pt. II para. 3(9)(a)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**
- F175** Words in s. 36A(8) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 3(9)(b)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**
- F176** Words in s. 36A(9) repealed (26.11.1998 in accordance with art. 2 of the commencing S.I. and otherwise 1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), **Sch. 10 Pt. II para. 3(10)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**
- F177** Words in s. 36A(10) substituted (26.11.1998 for certain purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 3(11)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**

#### Modifications etc. (not altering text)

- C26** S. 36A(3) restricted (26.11.1998 for specified purposes, otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 3(1)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2 Sch.**

#### Marginal Citations

- M22** 1973 c. 41.

### [<sup>F246</sup>36A Functions with respect to competition. **E+W+S**

- (1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the <sup>M46</sup>Fair Trading Act 1973 (“the 1973 Act”) so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of gas conveyed through pipes, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.
- (2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—
  - (a) the functions of that Director under sections 44 and 45 of the 1973 Act;
  - (b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act; and
  - (c) the functions of that Director under sections 56A to 56G of that Act,
 so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the carrying on of activities to which this

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subsection applies; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.

[ The Director shall be entitled to exercise, concurrently with the Director General  
F247(3) of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to the carrying on of activities to which this subsection applies.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

(4) Subsections (2) and (3) above apply to—

- (a) such activities as are mentioned in section 5(1) above; and
- (b) activities ancillary to such activities as are so mentioned (including in particular the storage of gas, the provision and reading of meters and the provision of pre-payment facilities).

(5) Before either Director first exercises in relation to any matter functions [F248 mentioned in] any of the following provisions, namely—

- (a) paragraph (a) of subsection (2) above;
- (b) paragraph (b) of that subsection; [F249 and]
- (c) paragraph (c) of that subsection; [F250 and]
- (d) subsection (3) above,]

he shall consult the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions [F248 mentioned in] that provision have been exercised in relation to that matter by the other Director.

(6) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) [F251 or (3)] above, 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—
  - (i) is requested by the Commission for that purpose; or
  - (ii) 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 shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

(7) If any question arises as to whether subsection (2) or (3) above applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

- (a) Part IV or section 86 or 88 of the 1973 Act; or

[ Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),]  
F252(b)

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by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.

- (8) Section 93B of the 1973 Act (offences of supplying false or misleading information to the Secretary of State, the Director General of Fair Trading or the Monopolies Commission in connection with their functions under Parts IV, V, VI or VIII of the 1973 Act [<sup>F253</sup>or under the 1980 Act]) shall have effect, so far as relating to functions exercisable by the Director by virtue of subsection (2) [<sup>F254</sup>above and paragraph 1 of Schedule 10 to the Competition Act 1998], as if the reference in subsection (1)(a) of that section to the Director of Fair Trading included a reference to the Director.
- (9) Expressions used in this section which are also used in the 1973 Act [<sup>F255</sup>or the 1980 Act] have the same meanings as in that Act.
- (10) Any reference in this Part to functions of the Director under this Part, or to functions assigned to him by or under this Part, includes a reference to functions [<sup>F256</sup>mentioned in subsection (2) or (3) above.].]

#### Textual Amendments

- F246** S. 36A inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**
- F247** S. 36A(3)(3A) substituted for s. 36A(3) (26.11.1998 for specified purposes and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 76(2)(3), **Sch. 10 Pt. II para. 3(5)** (with s. 73); S.I. 1998/2750, **art. 2**
- F248** Words in s. 36A(5) substituted (26.11.1998 in accordance with art. 2 of the commencing S.I. and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 76(2)(3), **Sch. 10 Pt. II para. 3(6)(a)** (with s. 73); S.I. 1998/2750, **art. 2**
- F249** Word in s. 36A(5) inserted (26.11.1998 for specified purposes and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 76(2)(3), **Sch. 10 Pt. II para. 3(6)(b)** (with s. 73); S.I. 1998/2750, **art. 2**
- F250** S. 36A(5)(d) and word preceding it repealed (26.11.1998 in accordance with art. 2 of the commencing S.I. and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 74(3), 76(2)(3), **Sch. 10 Pt. II para. 3(6)(c)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2**
- F251** Words in s. 36A(6) repealed (26.11.1998 for specified purposes and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 74(3), 76(2)(3), **Sch. 10 Pt. II para. 3(7)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2**
- F252** S. 36A(7)(b) substituted (26.11.1998 for specified purposes and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 76(2)(3), **Sch. 10 Pt. II para. 3(8)** (with s. 73); S.I. 1998/2750, **art. 2**
- F253** Words in s. 36A(8) repealed (26.11.1998 for specified purposes and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 74(3), 76(2)(3), **Sch. 10 Pt. II para. 3(9)(a)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2**
- F254** Words in s. 36A(8) substituted (26.11.1998 for specified purposes and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 76(2)(3), **Sch. 10 Pt. II para. 3(9)(b)** (with s. 73); S.I. 1998/2750, **art. 2**
- F255** Words in s. 36A(9) repealed (26.11.1998 in accordance with art. 2 of the commencing S.I. and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 74(3), 76(2)(3), **Sch. 10 Pt. II para. 3(10)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2**
- F256** Words in s. 36A(10) substituted (26.11.1998 for certain purposes and otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 76(2)(3), **Sch. 10 Pt. II para. 3(11)** (with s. 73); S.I. 1998/2750, **art. 2**

#### Modifications etc. (not altering text)

- C30** S. 36A(3) restricted (26.11.1998 for specified purposes, otherwise<sup>prosp.</sup>) by 1998 c. 41, ss. 66(5), 76(2)(3), **Sch. 10 Pt. II para. 3(1)** (with s. 73); S.I. 1998/2750, **art. 2**

#### Marginal Citations

- M46** 1973 c. 41.



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**[<sup>F178</sup>36B Functions with respect to gas measuring equipment etc.**

- (1) If and to the extent that the Secretary of State so directs, the functions of the Secretary of State under section 6 of the <sup>M23</sup>Weights and Measures Act 1985 (testing of standards and equipment) so far as relating to—
- (a) any article used or proposed to be used as a standard of a unit of measurement in relation to gas;
  - (b) any measuring equipment, or other metrological equipment, for use in relation to gas; or
  - (c) any article for use in connection with any such equipment,
- shall be exercisable by the Director concurrently with the Secretary of State; and references in that section to the Secretary of State shall be construed accordingly.
- (2) Any sums received by the Director by virtue of this section shall be paid into the Consolidated Fund.]

**Textual Amendments**

**F178** S. 36B inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 44**; S.I. 1996/218, **art. 2**

**Marginal Citations**

**M23** 1985 c.72.

**[<sup>F179</sup>37 Maximum prices for reselling gas.**

- (1) The Director shall from time to time direct that the maximum prices at which gas supplied by gas suppliers may be resold—
- (a) shall be such as may be specified in the direction; or
  - (b) shall be calculated by such method and by reference to such matters as may be so specified,
- and shall publish directions under this section in such manner as in his opinion will secure adequate publicity for them.
- (2) A direction under this section may—
- (a) require any person who resells gas supplied by a gas supplier to furnish the purchaser with such information as may be specified or described in the direction; and
  - (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction, or shall be reduced by such amount or such percentage as may be so specified.
- (3) Different directions may be given under this section as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances.
- (4) If any person resells any gas supplied by a gas supplier at a price exceeding the maximum price determined by or under a direction under this section and applicable to the resale—
- (a) the amount of the excess; and
  - (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,
- shall be recoverable by the purchaser.

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- (5) Nothing in this section shall apply in relation to the resale of gas for use in a motor vehicle which is constructed or adapted to use gas as fuel for its propulsion.]

#### Textual Amendments

**F179** S. 37 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 45**; S.I. 1996/218, **art. 2**

### 38 Power to require information etc.

- (1) Where it appears to the Director that a [<sup>F180</sup>licence holder] may be contravening, or may have contravened, any relevant condition or requirement, the Director may, for any purpose connected with the exercise of his functions under section 28 [<sup>F181</sup>31 or 33E] above in relation to that matter, by notice signed by him—
- (a) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
  - (b) require any person carrying on any business to furnish to the Director such information as may be specified or described in the notice, and specify the time, the manner and the form in which any such information is to be furnished;

<sup>F182</sup> . . .

- [<sup>F183</sup>(1A) Where a licence has been or is to be revoked or suspended, or has expired or is about to expire by effluxion of time, and it appears to the Director, having regard to the duties imposed by section 4 or 4A above, to be requisite or expedient to do so for any purpose connected with the revocation, suspension or expiry, the Director may, with the consent of the Secretary of State, by notice signed by him—
- (a) require the licence holder to produce, at a time and place specified in the notice, to the Director, or to any person so specified, any records which are specified or described in the notice and are in the licence holder's custody or under his control; or
  - (b) require the licence holder to furnish to the Director, or to any person specified in the notice, such information as may be specified or described in the notice, and specify the time, the manner and the form in which any such information is to be furnished.
- (1B) No person shall be compelled for any such purpose as is mentioned in subsection (1) or (1A) above to produce any documents or records which he could not be compelled to produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.]
- (2) A person who without reasonable excuse fails to do anything duly required of him by a notice under subsection (1) [<sup>F184</sup>or (1A)]above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A person who intentionally alters, suppresses or destroys any document which he has been required by any such notice to produce shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

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- (4) If a person makes default in complying with a notice under subsection (1) [<sup>F184</sup>or (1A)]above, the court may, on the application of the Director, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (5) In this section—
- “relevant condition” and “relevant requirement” have the same meanings as in section 28 above;
- “the court” has the same meaning as in section 30 above.

#### Textual Amendments

**F180** Words in s. 38(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 46(1)(a)**; S.I. 1996/218, **art. 2**

**F181** Words in s. 38(1) substituted (1.7.1992) by **Competition and Service (Utilities) Act 1992 (c. 43)**, s. 56(6), **Sch. 1 para. 7**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.

**F182** Words in s. 38(1) repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), **Sch. 3 para. 46(1)(b)**, **Sch. 6**; S.I. 1996/218, **art. 2**

**F183** **S. 36(1A)(1B)** inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 46(2)**; S.I. 1996/218, **art. 2**

**F184** Words in s. 38(2)(4) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 46(3)**; S.I. 1996/218, **art. 2**

#### [<sup>F185</sup>38A Duty to consider representations and give reasons.

- (1) The Secretary of State may by order exercise any one or more of the powers conferred by subsections (2) to (4) below.
- (2) This subsection confers power to provide that, before the Director makes a specified decision in relation to a licence holder, the Director—
- (a) shall give to the licence holder a written notice stating—
- (i) that he is considering making the decision and the reasons why he is considering doing so; and
- (ii) that the licence holder may, within a period specified in the notice, make written representations to him or, if the licence holder so requests, make oral representations to a person appointed by him for the purpose; and
- (b) shall consider any representations which are duly made and not withdrawn.
- (3) This subsection confers power to provide that, where the Director makes a specified decision in relation to a licence holder, the Director shall as soon as practicable give to the licence holder a written notice explaining why it appeared to him to be appropriate to make the decision.
- (4) This subsection confers power to provide that, where a specified decision made or proposed to be made in relation to a licence holder will or may materially affect any specified person, any provision made by virtue of subsection (2) or (3) above shall, with any specified modifications, apply in relation to that person.
- (5) Nothing in any order made under this section shall require the Director to disclose any information the disclosure of which he considers would or might seriously and

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prejudicially affect the interests of a particular individual or body of persons, whether corporate or unincorporate.

- (6) An order under this section—
- (a) may make different provision in relation to different cases or different circumstances; and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (7) In this section—
- “decision” means any decision under this Part, or under a condition of a licence, other than a decision to make a provisional order under section 28 above;
- “specified”, in relation to an order under this section, means specified in the order or of a description so specified;
- and references to a licence holder include references to an applicant for a licence.]

#### Textual Amendments

**F185** S. 38A inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 47; S.I. 1996/218, art. 2

### 39 Annual and other reports.

- (1) The Director shall, as soon as practicable after the end of the year 1986 and of each subsequent calendar year, make to the Secretary of State a report on—
  - (a) his activities during that year; and
  - (b) the Monopolies Commission’s activities during that year so far as relating to references made by him.
- (2) Every such report shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director’s functions and shall set out any general directions given to the Director during that year under section 34(3) above.

- [<sup>F186</sup>(2A) Every such report shall also include—
- (a) a general statement as to the extent to which, during the year to which it relates, there has been effective competition in the carrying on of activities the carrying on of which is required to be licensed under section 7A above; and
  - (b) a general survey of developments during that year in respect of such competition.]

- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) above before each House of Parliament, shall send a copy of every such report to the Council and shall arrange for copies of every such report to be published in such a manner as he may consider appropriate.
- (4) The Director may also prepare such other reports as appear to him to be expedient with respect to such matters as are mentioned in subsection (2) above.
- (5) The Director shall send a copy of any report prepared under subsection (4) above to the Council and may arrange for copies of any such report to be published in such manner as he may consider appropriate.

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- (6) In making or preparing any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 35(2)(a) and (b) above.

#### Textual Amendments

**F186** S. 39(2A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 48; S.I. 1996/218, art. 2

### *Other functions of Council*

#### **40 General duty to advise Director.**

It shall be the duty of the Council to advise the Director on any matter which—

- (a) appears to the Council to be a matter <sup>F187</sup> . . . in respect of which any of the Director's functions are or may be exercisable; and
- (b) is referred to it by the Director or is a matter on which it considers it should offer advice.

#### Textual Amendments

**F187** Words in s. 40 repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 49, Sch. 6; S.I. 1996/218, art. 2

#### **41 Annual reports.**

- (1) The Council shall, as soon as practicable after the end of the year 1986 and of each subsequent calendar year, make to the Director and to the Secretary of State a report on its activities during that year.
- (2) Every such report shall include a statement of the matters on which, during the year to which it relates, the Council has advised the Director under section 40 above.
- (3) The Council shall arrange for every such report to be published in such manner as it considers appropriate.
- (4) In making any such report, the Council shall have regard to the need for excluding, so far as that is practicable—
  - (a) any matter which relates to the affairs of an individual, where the publication of that matter would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that body.

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VALID FROM 01/10/2001

*[<sup>F188</sup> Adjustment of charges]*

**Textual Amendments**

**F188** Ss. 41A, 41B and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 98; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

**[<sup>F189</sup> 41A Adjustment of charges to help disadvantaged groups of customers.**

- (1) If the Secretary of State considers that members of any group (a “disadvantaged group”) of customers of authorised suppliers are treated less favourably than other customers of theirs as respects charges for gas, he may make an order containing a scheme for the adjustment of charges for gas with a view to eliminating or reducing the less favourable treatment.
- (2) The scheme may include—
  - (a) provision for the adjustment of charges by authorised shippers or authorised transporters (as well as by suppliers); and
  - (b) in relation to charges payable to suppliers, provision for the adjustment of charges payable by customers who are not members of the disadvantaged group (as well as by persons who are).
- (3) The scheme shall—
  - (a) describe the disadvantaged group;
  - (b) specify the persons whose charges are covered by the scheme; and
  - (c) set out the basis of the adjustment of the charges.
- (4) If the scheme does not relate to the whole of Great Britain, it shall specify the area or areas to which it relates.
- (5) The scheme may—
  - (a) require authorised suppliers, authorised shippers or authorised transporters to supply information of any specified description, in any specified form, to any other such persons; and
  - (b) provide for the modification of conditions of licences, for the purpose of facilitating the implementation of the scheme.
- (6) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.]

**Textual Amendments**

**F189** Ss. 41A, 41B and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 98; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

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## <sup>F190</sup> 41B Orders: supplementary.

- (1) Before making an order under section 41A, the Secretary of State shall give notice—
  - (a) stating that he proposes to make an order and setting out its effect;
  - (b) stating the reasons why he proposes to make the order; 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 order may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given—
  - (a) by serving a copy of it on the persons whose charges are covered by the proposed order; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing the proposed order to the attention of other persons likely to be affected by it.
- (3) An order under section 41A shall continue in force for such period not exceeding three years as is specified in the order; but that does not prevent the making of another order to come into force at the end of that period.
- (4) The Secretary of State may by order require authorised suppliers, authorised shippers or authorised transporters to supply information of any specified description, in any specified form, to any other such persons for the purpose of enabling the making of an order under section 41A.
- (5) The Authority—
  - (a) shall monitor the effect of orders under section 41A and report its findings to the Secretary of State whenever he directs it to do so; and
  - (b) may require authorised suppliers, authorised shippers or authorised transporters to supply to the Authority, in any specified form, such information as it requires for carrying out that duty.
- (6) In section 41A references to customers do not include customers of a description excluded by an order made by the Secretary of State.
- (7) In this section and section 41A “authorised shipper” means a person authorised by a licence or exemption to arrange with any gas transporter for gas to be introduced into, conveyed by means of, or taken out of a pipe-line system operated by that transporter.]

### Textual Amendments

**F190** Ss. 41A, 41B and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 98; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

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VALID FROM 20/12/2000

*[<sup>F191</sup> Alteration of activities requiring licence]*

**Textual Amendments**

**F191** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 01/10/2001

**41C** [<sup>F192</sup> **Power to alter activities requiring licence.**]

- (1) The Secretary of State may by order provide—
  - (a) that specified activities are to become licensable activities; or
  - (b) that specified activities are to cease to be licensable activities.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 5(1).
- (3) An order under this section may make consequential, transitional, incidental or supplementary provision including—
  - (a) amendments (or repeals) in any provision of this Act or any other enactment; and
  - (b) provision modifying any standard conditions of licences or (in the case of an order under subsection (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.
- (4) An order under this section may only provide for activities to become licensable activities if they are activities connected with—
  - (a) the conveyance of gas through pipes to premises or to pipe-line systems operated by gas transporters;
  - (b) the supply to premises of gas conveyed through pipes; or
  - (c) arranging with gas transporters for gas to be introduced into, conveyed by means of or taken out of pipe-line systems operated by the gas transporters.
- (5) An order under this section providing for activities to become licensable activities may only be made on the application of the Authority made in accordance with section 41D.
- (6) An order under this section providing for activities to cease to be licensable activities may be made either—
  - (a) on the application of the Authority made in accordance with section 41G; or
  - (b) following consultation by the Secretary of State in accordance with section 41H.



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- (7) An order under this section may provide that it is to remain in force only for a period specified in the order.
- (8) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

#### Textual Amendments

**F192** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 01/10/2001

#### <sup>F193</sup> 41D Application by Authority for order including new activities.

- (1) If the Authority proposes to make an application for an order providing for activities to become licensable activities, it shall give notice—
  - (a) stating that it proposes to make an application for an order providing for the activities to become licensable activities;
  - (b) setting out the conditions which it would expect such an order to determine to be standard conditions for the purposes of licences authorising the undertaking of the activities and any other conditions which it would expect to be included in such licences; and
  - (c) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given by serving a copy on the Council and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of—
  - (a) persons appearing to it to be carrying on, or be intending to carry on, the activities; and
  - (b) any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities.
- (3) If an objection has been duly made (and not withdrawn) by a person who is carrying on or intends to carry on the activities, the Authority shall make a reference to the Competition Commission under section 41E before making the application.
- (4) In any other case where the Authority considers it appropriate to make a reference to the Commission under section 41E before making the application, the Authority may make such a reference.
- (5) If a reference is made to the Commission, the application shall not be made unless the Commission has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest.

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- (6) The application shall set out—
- (a) the activities which the Authority considers should become licensable activities; and
  - (b) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question and any other conditions which the Authority would expect to be included in such licences.]

#### Textual Amendments

**F193** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

VALID FROM 01/10/2001

#### [<sup>F194</sup>41E References to Competition Commission.

- (1) A reference to the Competition Commission under this section shall require the Commission to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Authority may, at any time, by notice given to the Commission vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the Commission shall give effect to the variation.
- (3) The Authority shall specify in the reference, or a variation of the reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
  - (a) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities specified in the reference and any other conditions which the Authority would expect to be included in such licences; and
  - (b) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have.
- (4) As soon as practicable after making the reference, or a variation of the reference, the Authority shall serve a copy of it on the Council and publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of—
  - (a) persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it; and
  - (b) any other persons appearing to the Authority to be likely to be affected by it.
- (5) The Authority shall, for the purpose of assisting the Commission in carrying out the investigation on the reference, give to the Commission—
  - (a) any information which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested

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- by the Commission for that purpose or is information which in its 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 its power to give, in relation to any such matters,
- and the Commission shall take account of the information for the purpose of carrying out the investigation.
- (6) In determining for the purposes of this section whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the Commission shall have regard to—
- (a) the matters referred to in section 4AA;
- (b) any social or environmental policies set out or referred to in guidance issued under section 4AB; and
- (c) any advice given by the Health and Safety Commission under section 4A (advice about health and safety in relation to gas).
- (7) The provisions mentioned in subsection (8) are to 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 <sup>M24</sup>Fair Trading Act 1973;
- (b) the expression “merger reference” included a reference under this section;
- (c) in section 70 of the <sup>M25</sup>Fair Trading Act 1973—
- (i) references to the Secretary of State were references to the Authority; and
- (ii) the reference to three months were a reference to six months.
- (8) The provisions are—
- (a) sections 70 (time limit for report on merger), 85 (attendance of witnesses and production of documents) and 93B (false or misleading information) of the <sup>M26</sup>Fair Trading Act 1973;
- (b) Part II of Schedule 7 to the <sup>M27</sup>Competition Act 1998 (performance of the Commission’s general functions); and
- (c) section 24 of the <sup>M28</sup>Competition Act 1980 (modification of provisions about performance of such functions).]

### Textual Amendments

**F194** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

### Marginal Citations

**M24** 1973 c. 41.

**M25** 1973 c. 41.

**M26** 1973 c. 41.

**M27** 1998 c. 41.

**M28** 1980 c. 21.

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VALID FROM 20/06/2003

**[<sup>F195</sup> 41E] References under section 41E: time limits**

- (1) Every reference under section 41E above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 41E above shall not have effect (in particular for the purposes of section 41D(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.]

**Textual Amendments**

**F195** S. 41EA inserted (*prosp.*) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 15(12)

VALID FROM 20/06/2003

**[<sup>F196</sup> 41E] References under section 41E: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 41E above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

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- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 41E above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.]

#### Textual Amendments

**F196** S. 41EB inserted (*prosp.*) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 15(12)

VALID FROM 01/10/2001

#### [<sup>F197</sup> 41F Reports on references.

- (1) In making a report on a reference under section 41E, the Competition Commission shall include in the report definite conclusions on whether the fact that the activities specified in the reference (or the reference as varied) are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Commission shall also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions.
- (3) Where the Commission concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it shall specify in the report—
  - (a) the effects adverse to the public interest which that fact has or may be expected to have; and
  - (b) any modifications to the conditions specified in the reference in accordance with section 41E(3)(a) which they consider appropriate.

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- (4) Section 82 of the <sup>M29</sup>Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the Commission on references under section 41E as it applies to reports of the Commission under that Act.
- (5) A report of the Commission on a reference under section 41E shall be made to the Authority.
- (6) On receiving the report, the Authority shall send a copy of it to the Secretary of State.
- (7) Subject to subsection (8), the Authority shall, not less than 14 days after the copy is received by the Secretary of State, send another copy to the Council and publish that other copy in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (8) If it appears to the Secretary of State that the publication of any matter in the 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 (7), direct the Authority to exclude that matter from the copy of the report to be sent to the Council and published under that subsection.]

#### Textual Amendments

**F197** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M29** 1973 c. 41.

VALID FROM 01/10/2001

#### [<sup>F198</sup> **41G Application by Authority for order excluding activities.**

- (1) Before making an application for an order providing for activities to cease to be licensable activities the Authority shall give notice—
  - (a) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
 and shall consider any representations or objections duly made and not withdrawn.
- (2) The notice shall be given—
  - (a) by serving a copy on the Secretary of State, the Health and Safety Executive and the Council; and
  - (b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by such an order.
- (3) An application under this section shall set out—

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- (a) the activities which the Authority considers should cease to be licensable activities; and
- (b) the Authority’s reasons for proposing that the order be made.]

#### Textual Amendments

**F198** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 01/10/2001

#### [<sup>F199</sup> 41H Consultation by Secretary of State about order excluding activities.

- (1) If the Secretary of State proposes to make an order providing for activities to cease to be licensable activities (otherwise than on an application by the Authority under section 41G), he shall give notice—
- (a) stating that he proposes to make an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
- and shall consider any representations or objections duly made (and not withdrawn).
- (2) The notice shall be given—
- (a) by serving a copy on the Authority, the Health and Safety Executive and the Council; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by such an order.]

#### Textual Amendments

**F199** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F200</sup> 41I Service by Authority of certain notices on Council.

Where the Authority is required by any provision of this Part to publish a notice or any other document, the Authority shall send a copy of the document to the Council.]

#### Textual Amendments

**F200** S. 41I inserted (20.12.2000) by 2000 c. 27, s. 18(5); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15)

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### Miscellaneous

#### 42 General restrictions on disclosure of information.

(1) Subject to the following provisions of this section, no information with respect to any particular business which—

- (a) has been obtained under or by virtue of the provisions of this Part; and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

[<sup>F201</sup>(1A) Subsection (1) above does not apply to any disclosure of information if—

- (a) the disclosure is required by a notice under subsection (1) or (1A) of section 38 above;
- (b) the information has been obtained in pursuance of a notice under subsection (1A) of that section; or
- (c) the disclosure is made by one licence holder to another and is required either by a condition of the disclosing licence holder’s licence, or by the other licence holder for purposes connected with the carrying on of relevant activities.

(1B) In subsection (1A) above “relevant activities”, in relation to a licence holder, means—

- (a) activities which he is authorised by his licence to carry on; and
- (b) in the case of a public gas transporter, such activities as are mentioned in section 7(1)(b) and (c) above.]

(2) Subsection (1) above does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the performance of any functions assigned to the Secretary of State, the Director or the Monopolies Commission by or under this Part;
- (b) for the purpose of facilitating the performance of any functions of any Minister of the Crown, the Director General of Fair Trading [<sup>F202</sup>the Director General of Water Services][<sup>F203</sup>the Director General of Electricity Supply][<sup>F204</sup>the Rail Regulator] or a local weights and measures authority in Great Britain under any of the enactments [<sup>F205</sup>or subordinate legislation] specified in subsection (3) below;
- (c) for the purpose of facilitating the performance of any functions of the Health and Safety Executive under any enactment; [<sup>F206</sup>(cc) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;]
- (d) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (e) for the purposes of any civil proceedings brought under or by virtue of this Part or any of the enactments [<sup>F207</sup>or subordinate legislation] specified in subsection (3) below; or
- (f) in pursuance of a Community obligation.

(3) The enactments [<sup>F208</sup>and subordinate legislation] referred to in subsection (2) above are—

- (a) ..... <sup>F209</sup>
- (b) the <sup>M30</sup>Trade Descriptions Act 1968;



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- (c) the <sup>M31</sup>Fair Trading Act 1973;
  - (d) the <sup>M32</sup>Consumer Credit Act 1974;
  - (e) the <sup>M33</sup>Restrictive Trade Practices Act 1976;
  - (f) the <sup>M34</sup>Resale Prices Act 1976;
  - (g) ..... <sup>F209</sup>
  - (h) the <sup>M35</sup>Estate Agents Act 1979; <sup>F210</sup>
  - (i) the <sup>M36</sup>Competition Act 1980.
  - [<sup>F211</sup>(j) the <sup>M37</sup>Consumer Protection Act 1987.]
  - [<sup>F212</sup>(k) the <sup>M38</sup>Control of Misleading Advertisements Regulations 1988]
  - [<sup>F213</sup>(l) the <sup>M39</sup>Water Act 1989 [<sup>F214</sup>the <sup>M40</sup>Water Industry Act 1991 or any of the other consolidation Acts (within the meaning of section 206 of that Act of 1991)].]
  - [<sup>F215</sup>(m) the <sup>M41</sup>Electricity Act 1989.]
  - [<sup>F216</sup>(n) the Railways Act 1993]
- [<sup>F217</sup>(3A) The Secretary of State may by order provide that any of subsections (1A) to (3) above shall have effect subject to such modifications as are specified in the order.]
- (4) Nothing in subsection (1) above shall be construed—
    - (a) as limiting the matters which may be published under section [<sup>F218</sup>33C or] 35 above or may be included in, or made public as part of, a report of the Director, the Council or the Monopolies Commission under any provision of this Part other than section 33(3) above; or
    - (b) as applying to any information which has been so published or has been made public as part of such a report.
  - (5) Any person who discloses any information in contravention of this section shall be guilty of an offence and liable—
    - (a) on summary conviction, to a fine not exceeding the statutory maximum;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
  - [<sup>F219</sup>(6) In relation to the Consumer Protection Act 1987 the reference in subsection (2)(b) above to a weights and measures authority shall include a reference to any person on whom functions under that Act are conferred by regulations under section 27(2) of that Act.]

#### Textual Amendments

- F201** S. 42(1A)(1B) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 50(1)**; S.I. 1996/218, **art. 2**
- F202** Words inserted (E.W.) by **Water Act 1989 (c. 15, SIF 130)**, s. 190(1), **Sch. 25 para. 77(a)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F203** Words inserted by **Electricity Act 1989 (c. 29, SIF 44:1)**, s. 112(1)(3), Sch. 16 para. 34(a), **Sch. 17 para. 35(1)**
- F204** Words in s. 42(2)(b) inserted (6.1.1994) by 1993 c. 43, s. 152(1), **Sch. 12 para. 24(1)**; S.I. 1993/3237, **art. 2(2)**.
- F205** Words inserted by S.I. 1988/915, **reg. 7(6)(h)(i)**
- F206** S. 42(2)(cc) inserted (1.7.1992) by **Competition and Service (Utilities) Act 1992 (c. 43)**, s. 56(6), **Sch. 1 para 8(a)**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.
- F207** Words inserted by S.I. 1988/915, **reg. 7(6)(h)(i)**
- F208** Words inserted by S.I. 1988/915, **reg. 7(6)(h)(ii)**

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- F209** S. 42(3)(a)(g) repealed by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 41(2), 47(1)(2), 48(3), **Sch. 5**
- F210** Word repealed by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 41(2), 47(1)(2), 48(3), **Sch. 5**
- F211** S. 42(3)(j) inserted by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 41(2), 47(1)(2), 48(1), **Sch. 4 para. 11(a)**
- F212** S. 42(3)(k) inserted by S.I. 1988/915, **reg. 7(6)(h)(ii)**
- F213** S. 42(3)(l) inserted (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 77(b)**, (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F214** Words in s. 42(3)(l) inserted (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 45**
- F215** S. 42(3)(m) inserted by Electricity Act 1989 (c. 29, SIF 44:1), **s. 112(1)**, (3). Sch. 16 para. 34(b), Sch. 17 para. 35(1)
- F216** S. 42(3)(n) added (6.1.1994) by 1993 c. 43, s. 152(1), **Sch. 12 para. 24(2)**; S.I. 1993/3237, **art. 2(2)**.
- F217** S. 42(3A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 50(2)**; S.I. 1996/218, **art. 2**
- F218** Words in s. 42(4)(a) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), S. 56(6), **Sch. 1 para 8(b)**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.
- F219** S. 42(6) inserted by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 41(2), 47(1)(2), 48(1), **Sch. 4 para. 11(b)**

#### Marginal Citations

- M30** 1968 c. 29  
**M31** 1973 c. 41  
**M32** 1974 c. 39  
**M33** 1976 c. 34  
**M34** 1976 c. 53  
**M35** 1979 c. 38  
**M36** 1980 c. 21  
**M37** 1987 c. 43  
**M38** S.I. 1988/915.  
**M39** 1989 c. 15  
**M40** 1991 c. 56  
**M41** 1989 c. 29

## 43 Making of false statements etc.

(1) If any person, in giving any information or making any application for the purposes of any provision of this Part, or of any regulation made under any provision of this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

[<sup>F220</sup>(1A) Any person who with intent to deceive—

- (a) impersonates an officer of a public gas transporter, gas supplier or gas shipper for the purpose of obtaining entry to any premises; or
- (b) for that purpose makes any statement or does any act calculated falsely to suggest that he is an officer, or an authorised officer, of such a transporter, supplier or shipper,

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shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

- (2) Proceedings for an offence under subsection (1) above shall not in England and Wales be instituted except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

#### Textual Amendments

**F220** S. 43(1A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 51**; S.I. 1996/218, **art. 2**

#### 44 Compensation to chairmen and officers of Consumers' Councils.

- (1) The Secretary of State may pay—
- (a) to the person who immediately before the appointed day is the chairman of the National Gas Consumers' Council; and
  - (b) to the persons who immediately before that day are the chairmen of the Regional Gas Consumers' Councils,
- such sums by way of compensation for loss of office or loss or diminution of pension rights as the Secretary of State may with the approval of the Treasury determine.
- (2) The Secretary of State may also pay to persons who immediately before the appointed day were officers of any of the Councils mentioned in subsection (1) above such sums by way of compensation for loss of employment, or loss or diminution of remuneration or pension rights, as the Secretary of State may with the approval of the Treasury determine.
- (3) Any sums required by the Secretary of State for the purposes of this section shall be paid out of money provided by Parliament.

#### *Supplemental*

#### 45 Offences by bodies corporate.

- (1) Where a body corporate is guilty of an offence under this Part and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### 46 Service of notices etc.

- (1) <sup>F221</sup> . . . Any notice or other document required or authorised to be given, delivered or served under this Part or regulations made under this Part may be given, delivered or served either—

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- (a) by delivering it to the person to whom it is to be given or delivered or on whom it is to be served;
  - (b) by leaving it at the usual or last known place of abode of that person;
  - (c) by sending it in a prepaid letter addressed to that person at his usual or last known place of abode;
  - (d) in the case of a body corporate, by delivering it to the secretary or clerk of the body at their registered or principal office, or sending it in a prepaid letter addressed to the secretary or clerk of the body at that office; or
  - (e) if it is not practicable after reasonable inquiry to ascertain the name or address of a person to whom it should be given or delivered, or on whom it should be served, as being a person having any interest in premises, by addressing it to him by the description of the person having that interest in the premises (naming them) to which it relates and delivering it to some responsible person on the premises, or affixing it or a copy of it to some conspicuous part of the premises.
- [<sup>F222</sup>(2) Without prejudice to subsection (1) above, where this subsection applies in relation to a public gas transporter or gas supplier, any notice to be given to or served on the transporter or supplier under—
- (a) any condition of his licence;
  - (b) any provision of Schedule 2B to this Act; or
  - (c) in the case of a transporter, section 10 above,
- may be given or served by delivering it at, or sending it in a prepaid letter to, an appropriate office of the transporter or supplier.
- (3) Subsection (2) above applies in relation to a public gas transporter if he divides his authorised area into such areas as he thinks fit and—
- (a) in the case of each area, fixes offices of his which are to be appropriate offices in relation to notices relating to matters arising in that area; and
  - (b) publishes in each area, in such manner as he considers adequate, the addresses of the offices fixed by him for that area.
- (4) Subsection (2) above applies in relation to a gas supplier if he divides the premises specified in his licence into such areas as he thinks fit and—
- (a) in the case of each area, fixes offices of his which are to be appropriate offices in relation to notices relating to matters arising in that area;
  - (b) publishes in each area, in such manner as he considers adequate, the addresses of the offices fixed by him for that area; and
  - (c) endorses on every demand note for gas charges payable to him the addresses of the offices fixed for the area in question.
- (5) In this section references to premises specified in a licence include references to premises of a description, or situated in an area, so specified.]

#### Textual Amendments

**F221** Words in s. 46(1) repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 52(1), Sch. 6; S.I. 1996/218, art. 2

**F222** S. 46(2)-(5) substituted for s. 46(2)(3) (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 52(2); S.I. 1996/218, art. 2

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**Modifications etc. (not altering text)**

**C27** S. 46 applied (29.9.2000) by 2000 c. 27, s. 106(4); S.I. 2000/2412, art. 2, Sch. (subject to transitional provisions in art. 3(2))

**47 Provisions as to regulations.**

- (1) Regulations made under any provision of this Part may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—
  - (a) as to the mode of proof of any matter;
  - (b) as to parties and their representation;
  - (c) for the right to appear [<sup>F223</sup>before and be heard by] the Secretary of State, the Director and other authorities; and
  - (d) as to awarding costs [<sup>F224</sup>or expenses] of proceedings for the determination of such questions, determining the amount thereof and the enforcement of awards thereof.
- (2) Regulations made under any provision of this Part which prescribe a period within which things are to be done may provide for extending the period so prescribed.
- (3) Regulations made under any provision of this Part may—
  - [<sup>F225</sup>(aa) provide for anything falling to be determined under the regulations to be determined—
    - (i) by the Director or by such other person as may be prescribed by the regulations; and
    - (ii) in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be so prescribed;]
    - (a) make different provision for different areas or in relation to different cases or different circumstances; and
    - (b) provide for such exceptions, limitations and conditions, and make such supplementary, incidental or transitional provision, as the Secretary of State [<sup>F226</sup>or, as the case may be, the Director] considers necessary or expedient.
- (4) Regulations made under any provision of this Part may provide that any person contravening the regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- [<sup>F227</sup>(5) Proceedings for an offence under any regulations made under any provision of this Part shall not in England and Wales be instituted except by or with the consent of the Secretary of State [<sup>F228</sup>, the Director]] or the Director of Public Prosecutions.
- (6) In any proceedings against any person for an offence under any regulations made under any provision of this Part, it shall be a defence for that person to show—
  - (a) that he was prevented from complying with the regulations by circumstances not within his control; or
  - (b) that circumstances existed by reason of which compliance with the regulations would or might have involved danger to the public and that he took all such steps as it was reasonable for him to take both to prevent the circumstances from occurring and to prevent them from having that effect.

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[<sup>F229</sup>(7) Any power to make regulations conferred by this Part on the Secretary of State or the Director shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament; and the <sup>M42</sup>Statutory Instruments Act 1946 shall apply to any such power so conferred on the Director as if he were a Minister of the Crown.]

#### Textual Amendments

- F223** Words in s. 47(1)(c) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para. 9\(2\)\(a\)](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.
- F224** Words in s. 47(1)(d) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para. 9\(2\)\(b\)](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.
- F225** S. 47(3)(aa) substituted (1.3.1996) by [1995 c. 45](#), s. 10(1), [Sch. 3 para. 53\(1\)\(a\)](#); S.I. 1996/218, [art. 2](#)
- F226** Words in s. 47(3)(b) inserted (1.3.1996) by [1995 c. 45](#), s. 10(1), [Sch. 3 para. 53\(1\)\(b\)](#); S.I. 1996/218, [art. 2](#)
- F227** S. 47(5) repealed (1.3.1996) so far as relating to proceedings for offences created by regulations made or having effect under section 16 of this Act so far as relating to standards affecting safety by [Offshore Safety Act 1992 \(c. 15\)](#), s. 3(3)(b), [Sch. 2](#); S.I. 1996/487, [art. 2](#)
- F228** Words in s. 47(5) substituted (1.3.1996) by [1995 c. 45](#), s. 10(1), [Sch. 3 para. 53\(2\)](#); S.I. 1996/218, [art. 2](#)
- F229** S. 47(7) substituted (1.3.1996) by [1995 c. 45](#), s. 10(1), [Sch. 3 para. 53\(3\)](#); S.I. 1996/218, [art. 2](#)

#### Modifications etc. (not altering text)

- C28** Power to repeal or modify s. 47(3)(4) conferred by Health and Safety at [Work etc. Act 1974 \(c. 37\)](#), s. 15 (as amended (1.3.1996) by [Offshore Safety Act 1992 \(c. 15\)](#), s. 2(3)(b); S.I. 1996/487, [art. 2](#))

#### Marginal Citations

- M42** [1946 c.36](#).

## 48 Interpretation of Part I and savings.

(1) In this Part, unless the context otherwise requires—

“authorised area”, in relation to a public gas [<sup>F230</sup>transporter], has the meaning given by section 7(2) above;

“calorific value” has the meaning given by section 12(2) above;

“the Council” means the Gas Consumers’ Council;

“declared calorific value” has the meaning given by section 12(2) above;

“distribution main”, in relation to a public gas [<sup>F231</sup>transporter], means any main of the [<sup>F231</sup>transporter] through which the [<sup>F231</sup>transporter] is for the time being distributing gas and which is not being used only for the purpose of conveying gas in bulk;

[<sup>F232</sup>“domestic customer” has the meaning given by section 15A(10) above;]

“gas” means—

(a) any substance in a gaseous state which consists wholly or mainly of—

(i) methane, ethane, propane, butane, hydrogen or carbon monoxide;

(ii) a mixture of two or more of those gases; or

(iii) a combustible mixture of one or more of those gases and air; and

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- (b) any other substance in a gaseous state which is gaseous at a temperature of 15°C and a pressure of 1013·25 millibars and is specified in an order made by the Secretary of State;

“gas fittings” means gas pipes and meters, and fittings, apparatus and appliances designed for use by consumers of gas for heating, lighting, motive power and other purposes for which gas can be used;

[<sup>F233</sup>“gas supplier” and “gas shipper” have the meanings given by section 7A(11) above;]

“holding company” [<sup>F234</sup>has the meaning given by section 736 of] the <sup>M43</sup>Companies Act 1985;

“information” includes accounts, estimates and returns;

[<sup>F235</sup>“kilowatt hour” means 3.6 megajoules;]

[<sup>F236</sup>“licence” and “licence holder” have the meanings given by section 4(5) above;]

“the Monopolies Commission” means the Monopolies and Mergers Commission;

“notice” means notice in writing;

[<sup>F237</sup>“officer”, in relation to any person, includes any servant or agent of that person, and any officer or servant of such an agent;

“owner”, in relation to any premises or other property, includes a lessee, and cognate expressions shall be construed accordingly;]

“prescribed” means prescribed by regulations [<sup>F238</sup>made, unless the context otherwise requires, by the Secretary of State];

[<sup>F239</sup>“public gas transporter” has the meaning given by section 7(1) above;]

<sup>F240</sup>  
.

[<sup>F241</sup>“service pipe” means a pipe, other than a distribution main of a public gas transporter, which is used for the purpose of conveying gas from such a main to any premises, and includes part of any such pipe;

“storage”, in relation to gas, means storage in, or in a facility which is connected (directly or indirectly) to, a pipe-line system operated by a public gas transporter;]

“subsidiary” [<sup>F234</sup>has the meaning given by section 736 of] the Companies Act 1985;

<sup>F242</sup>  
.

“therm” means 105.506 megajoules.

[<sup>F243</sup>(1A) In this Part any reference to an officer authorised by any person includes, in relation to an officer who is an officer or servant of an agent of that person, an officer who, in accordance with the terms of any written authority given by that person to the agent, is authorised by the agent on behalf of that person.]

(2) In this Part, except in section 18, references to the supply of gas do not include references [<sup>F244</sup>to the supply of gas (directly or indirectly) to a public gas transporter, gas supplier or gas shipper].

[<sup>F245</sup>(2A) In relation to any time after 31st December 1999—

- (a) references in this Part to 2,500, 75,000 and 2 million therms shall be construed as references to 73,200, 2,196,000 and 58 million kilowatt hours respectively; and

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- (b) other references in this Part to therms, and references in this Part to therms or kilowatt hours, shall be construed as references to kilowatt hours.
- (2B) A person is of pensionable age for the purposes of this Part if—
- (a) he has attained pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 4 to the <sup>M44</sup>Pensions Act 1995); or
- (b) in the case of a man born before 6th April 1955, he is the same age as a woman who has attained pensionable age (within the meaning so given).
- (3) Nothing in this Part relating to the modification of a licence shall authorise the inclusion in a licence of any condition other than one such as is mentioned in section 7B above or, in the case of a modification under section 27 above, as would be so mentioned if the references to the Director in subsection (4)(a), (b) and (d) of section 7B were references to the Secretary of State.]
- (4) Nothing in this Part and nothing done under it shall prejudice or affect the operation of any of the relevant statutory provisions (whenever made) as defined in Part I of the <sup>M45</sup>Health and Safety at Work etc. Act 1974.

#### Textual Amendments

- F230** Word in s. 48(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(1)(a)**; S.I. 1996/218, **art. 2**
- F231** Words in s. 48(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(1)(b)**; S.I. 1996/218, **art. 2**
- F232** Definition in s. 48(1) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(1)(c)**; S.I. 1996/218, **art. 2**
- F233** Definition in s. 48(1) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(1)(d)**; S.I. 1996/218, **art. 2**
- F234** Words substituted by **Companies Act 1989** (c. 40, SIF 27), s. 144(4), **Sch. 18 para. 44(a)** (subject to the transitional provisions referred to in S.I. 1990/1392**art. 2(d)**)
- F235** Definition in s. 48(1) inserted (1.4.1992) by S.I. 1992/450, **reg. 3(2)**.
- F236** Definition in s. 48(1) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(1)(e)**; S.I. 1996/218, **art. 2**
- F237** Definitions in s. 48(1) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(1)(f)**; S.I. 1996/218, **art. 2**
- F238** Words in definition in s. 48(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(1)(g)**; S.I. 1996/218, **art. 2**
- F239** Definition in s. 48(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(1)(h)**; S.I. 1996/218, **art. 2**
- F240** Definition in s. 48(1) repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 54(1)(i), **Sch. 6**; S.I. 1996/218, **art. 2**
- F241** Definitions in s. 48(1) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(1)(j)**; S.I. 1996/218, **art. 2**
- F242** Definition in s. 48(1) repealed (1.3.1996) by 1995 c. 45, ss. 10(1), 17(5), Sch. 3 para. 54(1)(k), **Sch. 6**; S.I. 1996/218, **art. 2**
- F243** S. 48(1A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(2)**; S.I. 1996/218, **art. 2**
- F244** Words in s. 48(2) substituted (1.3.1996) for s. 48(a)(b) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(3)**; S.I. 1996/218, **art. 2**
- F245** S. 48(2A)-(3) substituted for s. 48(3) (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 54(4)**; S.I. 1996/218, **art. 2**



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**Modifications etc. (not altering text)**

**C29** S. 48(1) amended (temp. until 31.12.1999) (1.4.1992) by S.I. 1992/450, **reg. 3(4)(b)**.

**Marginal Citations**

**M43** 1985 c. 6.

**M44** 1995 c.26.

**M45** 1974 c. 37.

**Status:**

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