



# 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*

**F1** .....

##### Textual Amendments

- F1** S. 1 repealed (7.11.2000) by [2000 c. 27, s. 108, Sch. 8](#); [S.I. 2000/2974, art. 2](#), **Sch.** (subject to transitional provisions in [arts. 3-12](#))

**F2** .....

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**Textual Amendments**

**F2** S. 2 repealed (7.11.2000) by 2000 c. 27, s. 108, Sch. 8; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

**F3** .....

**Textual Amendments**

**F3** S. 3 repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 8; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

**[<sup>F4</sup>4AA The principal objective and general duties of the Secretary of State and the Authority.**

(1) The principal objective of the Secretary of State and the Gas and Electricity Markets Authority (in this Act referred to as “the Authority”) in carrying out their respective functions under this Part is to protect the interests of [<sup>F5</sup>existing and future] consumers in relation to gas conveyed through pipes<sup>F6</sup>....

[ Those interests of existing and future consumers are their interests taken as a whole, <sup>F7</sup>(1A) including—

- (a) their interests in the reduction of gas-supply emissions of targeted greenhouse gases; <sup>F8</sup> ...
- (b) their interests in the security of the supply of gas to them [<sup>F9</sup>; and
- (c) their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Great Britain, of the objectives set out in Article 40(a) to (h) of the Gas Directive.]

(1B) The Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which the Secretary of State or the Authority (as the case may be) considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes.

(1C) Before deciding to carry out functions under this Part in a particular manner with a view to promoting competition as mentioned in subsection (1B), the Secretary of State or the Authority shall consider—

- (a) to what extent the interests referred to in subsection (1) of consumers would be protected by that manner of carrying out those functions; and
- (b) whether there is any other manner (whether or not it would promote competition as mentioned in subsection (1B)) in which the Secretary of State or the Authority (as the case may be) could carry out those functions which would better protect those interests.]

(2) [<sup>F10</sup>In performing the duties under subsections (1B) and (1C), the Secretary of State or the Authority shall have regard to]—

- (a) the need 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; and

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- (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under this Part<sup>F11</sup>, the Utilities Act 2000 <sup>F12</sup>, Part 5 of the Energy Act 2008 or section 4, Part 2, or sections 26 to 29 of the Energy Act 2010<sup>F13</sup>; and
  - (c) the need to contribute to the achievement of sustainable development.]
- (3) In performing <sup>F14</sup>the duties under subsections (1B), (1C) and (2)], the Secretary of State or the Authority shall have regard to the interests of—
- (a) individuals who are disabled or chronically sick;
  - (b) individuals of pensionable age;
  - (c) individuals with low incomes; and
  - (d) individuals residing in rural areas;
- but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.
- (4) The Secretary of State and the Authority may, in carrying out any function under this Part, have regard to—
- (a) the interests of consumers in relation to electricity conveyed by distribution systems <sup>F15</sup>or transmission systems] (within the meaning of the <sup>M1</sup>Electricity Act 1989); and
  - (b) any interests of consumers in relation to—
    - <sup>F16</sup>(i) communications services and electronic communications apparatus, or]
    - (ii) water services or sewerage services (within the meaning of the <sup>M2</sup>Water Industry Act 1991),which are affected by the carrying out of that function.
- (5) Subject to <sup>F17</sup>subsections (1B) and] (2) <sup>F18</sup>and to section 132(2) of the Energy Act 2013 (duty to carry out functions in manner best calculated to further delivery of policy outcomes)], the Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which he or it considers is best calculated—
- (a) to promote efficiency and economy on the part of persons authorised by licences or exemptions to carry on any activity, and the efficient use of gas conveyed through pipes;
  - (b) to protect the public from dangers arising from the conveyance of gas through pipes or from the use of gas conveyed through pipes <sup>F19</sup>or the provision of a smart meter communication service];
  - <sup>F20</sup>(ba) .....
  - (c) to secure a diverse and viable long-term energy supply,
- <sup>F21</sup>and <sup>F22</sup>... shall] have regard, in carrying out those functions, to the effect on the environment of activities connected with the conveyance of gas through pipes <sup>F23</sup>or the provision of a smart meter communication service] .
- <sup>F24</sup>(5A) [ In carrying out their respective functions under this Part in accordance with the preceding provisions of this section the Secretary of State and the Authority must each have regard to—
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - (b) any other principles appearing to him or, as the case may be, it to represent the best regulatory practice.]

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- [ In subsection (1A)—
- <sup>F25</sup>(5B) “emissions” has the same meaning as in the Climate Change Act 2008 (see section 97 of that Act);
- “gas-supply emissions” in relation to emissions of a targeted greenhouse gas, means any such emissions (wherever their source) that are wholly or partly attributable to, or to commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes;
- “targeted greenhouse gases” has the same meaning as in Part 1 of the Climate Change Act 2008 (see section 24 of that Act).]
- (6) In [<sup>F26</sup>subsections [<sup>F27</sup>(1C),] (3) and (4) references to consumers include] both existing and future consumers.
- (7) In this section and sections 4AB and 4A, references to functions of the Secretary of State or the Authority under this Part include a reference to functions under the Utilities Act 2000 which relate to gas conveyed through pipes.
- (8) In this Part, unless the context otherwise requires,—
- “exemption” means an exemption granted under section 6A;
- “licence” means a licence under section 7 [<sup>F28</sup>, 7ZA][<sup>F29</sup>, 7A or 7AB] and “licence holder” shall be construed accordingly.]

#### Textual Amendments

- F4** S. 4AA substituted (20.12.2000) for s. 4 by 2000 c. 27, s. 9; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15)
- F5** Words in s. 4AA(1) inserted (26.1.2009) by Energy Act 2008 (c. 32), ss. 83(1)(a), 110(2); S.I. 2009/45, art. 2(d)(i)
- F6** Words in s. 4AA(1) omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), ss. 16(2), 38(3)
- F7** Ss. 4AA(1A)-(1C) inserted (8.6.2010) by Energy Act 2010 (c. 27), ss. 16(3), 38(3)
- F8** Word in s. 4AA(1A) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 26(1)(a)
- F9** S. 4AA(1A)(c) and word inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 26(1)(b)
- F10** Words in s. 4AA(2) substituted (8.6.2010) by Energy Act 2010 (c. 27), ss. 16(4)(a), 38(3)
- F11** Words in s. 4AA(2)(b) substituted (26.11.2008) by Energy Act 2008 (c. 32), ss. 102(3), 110(2)
- F12** Words in s. 4AA(2)(b) substituted (8.6.2010) by Energy Act 2010 (c. 27), ss. 16(4)(b), 38(3)
- F13** S. 4AA(2)(c) and preceding word inserted (26.1.2009) by Energy Act 2008 (c. 32), ss. 83(1)(b), 110(2); S.I. 2009/45, art. 2(d)(i)
- F14** Words in s. 4AA(3) substituted (8.6.2010) by Energy Act 2010 (c. 27), ss. 16(5), 38(3)
- F15** Words in s. 4AA(4)(a) inserted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by Energy Act 2004 (c. 20), ss. 179(2)(3)(d), 198(2); S.I. 2005/2965, art. 3
- F16** S. 4AA(4)(b)(i) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 17 para. 81 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F17** Words in s. 4AA(5) substituted (8.6.2010) by Energy Act 2010 (c. 27), ss. 16(6)(a), 38(3)
- F18** Words in s. 4AA(5) inserted (18.2.2014) by Energy Act 2013 (c. 32), ss. 138(2), 156(2)
- F19** Words in s. 4AA(5)(b) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 18(2)(a)
- F20** S. 4AA(5)(ba) repealed (26.1.2009) by Energy Act 2008 (c. 32), ss. 83(1)(c), 110(2), Sch. 6; S.I. 2009/45, art. 2(d)(aa)(e)(vi)(i)

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- F21** Words in s. 4AA(5) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. **83(b)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F22** Words in s. 4AA(5) omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), ss. **16(6)(b)**, 38(3)
- F23** Words in s. 4AA(5) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **18(2)(b)**
- F24** S. 4AA(5A) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. **178**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F25** S. 4AA(5B) inserted (8.6.2010) by Energy Act 2010 (c. 27), ss. **16(7)**, 38(3)
- F26** Words in s. 4AA(6) substituted (26.1.2009) by Energy Act 2008 (c. 32), ss. **83(1)(d)**, 110(2); S.I. 2009/45, art. 2(d)(i)
- F27** Word in s. 4AA(6) inserted (8.6.2010) by Energy Act 2010 (c. 27), ss. **16(8)**, 38(3)
- F28** Words in s. 4AA(8) inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. **149(8)(a)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F29** Words in s. 4AA(8) substituted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **18(3)**

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

- C2** S. 4AA extended by 2000 c. 27, s. **5A(11)**, (as inserted (30.12.2003) by Sustainable Energy Act 2003 (c. 30), ss. **6**, 9(8))
- C3** Ss. 4AA-4B applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), ss. **190(1)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
- C4** Ss. 4AA-4B applied (26.11.2008) by Energy Act 2008 (c. 32), ss. **102(1)**, 110(2)
- C5** Ss. 4AA-4A excluded (26.1.2009) (with application in accordance with s. 90 of the amending Act) by Counter-Terrorism Act 2008 (c. 28), ss. **89(3)**, 100(3) (with s. 101(2))
- C6** Ss. 4AA-4B applied (8.4.2010) by Energy Act 2010 (c. 27), ss. **30(1)**, 38(1)
- C7** Ss. 4AA-4B applied (18.12.2011) by Energy Act 2011 (c. 16), ss. **98(13)**, 121(3)
- C8** Ss. 4AA-4B applied (18.12.2011) by Energy Act 2011 (c. 16), ss. **78(1)**, 121(3)
- C9** Ss. 4AA-4B applied (21.3.2012) by Energy Act 2011 (c. 16), ss. **22(9)**, 121(1); S.I. 2012/873, art. 2(a)(v)
- C10** Ss. 4AA-4B applied (18.2.2014) by Energy Act 2013 (c. 32), ss. **136(1)**, 156(2)
- C11** Ss. 4AA-4B applied (18.2.2014) by Energy Act 2013 (c. 32), ss. **141(1)**, 156(2)
- C12** S. 4AA(2)(b) amended (*temp.* from 19.12.2000) by S.I. 2000/3343, art. **5** (subject to transitional provisions in arts. 3-15)

#### **Marginal Citations**

- M1** 1989 c. 29.
- M2** 1991 c. 56.

#### **[<sup>F30</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;
  - [<sup>F31</sup>(b) Citizens Advice;
  - (ba) Citizens Advice Scotland;]

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- (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

- F30** 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)
- F31** S. 4AB(3)(b)(ba) substituted for s. 4AB(3)(b) (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(2) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

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

- C3** Ss. 4AA-4B applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), ss. 190(1), 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
- C4** Ss. 4AA-4B applied (26.11.2008) by Energy Act 2008 (c. 32), ss. 102(1), 110(2)
- C5** Ss. 4AA-4A excluded (26.1.2009) (with application in accordance with s. 90 of the amending Act) by Counter-Terrorism Act 2008 (c. 28), ss. 89(3), 100(3) (with s. 101(2))
- C6** Ss. 4AA-4B applied (8.4.2010) by Energy Act 2010 (c. 27), ss. 30(1), 38(1)
- C7** Ss. 4AA-4B applied (18.12.2011) by Energy Act 2011 (c. 16), ss. 98(13), 121(3)
- C8** Ss. 4AA-4B applied (18.12.2011) by Energy Act 2011 (c. 16), ss. 78(1), 121(3)
- C9** Ss. 4AA-4B applied (21.3.2012) by Energy Act 2011 (c. 16), ss. 22(9), 121(1); S.I. 2012/873, art. 2(a) (v)
- C10** Ss. 4AA-4B applied (18.2.2014) by Energy Act 2013 (c. 32), ss. 136(1), 156(2)
- C11** Ss. 4AA-4B applied (18.2.2014) by Energy Act 2013 (c. 32), ss. 141(1), 156(2)
- C13** S. 4AB extended by 2000 c. 27, s. 5A(11) (as inserted (30.12.2003) by Sustainable Energy Act 2003 (c. 30), ss. 6, 9(8))

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#### [<sup>F32</sup>4A Health and safety.

- (1) The Secretary of State and the Authority shall consult [<sup>F33</sup>the Health and Safety Executive] about all gas safety issues which may be relevant to the carrying out of any of their respective functions under this Part.
- (2) The Secretary of State and the Authority shall, in carrying out their respective functions under this Part, take into account any advice given by [<sup>F33</sup>the Health and Safety Executive] about any gas safety issue (whether or not in response to consultation under subsection (1)).
- (3) For the purposes of this section a gas safety issue is anything concerning the conveyance of gas through pipes, or the use of gas conveyed through pipes, which may affect the health and safety of—
  - (a) members of the public; or
  - (b) persons employed in connection with the conveyance of gas through pipes or the supply of gas conveyed through pipes.]

#### Textual Amendments

- F32** S. 4A substituted (20.12.2000) by [2000 c. 27, s. 11](#); [S.I. 2000/3343, art. 2, Sch.](#)(subject to transitional provisions in arts. 3-15)
- F33** Words in s. 4A(1)(2) substituted (1.4.2008) by [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\), art. 1, Sch. 3](#) (with [art. 21, Sch. 2](#))

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

- C3** Ss. 4AA-4B applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by [Energy Act 2004 \(c. 20\), ss. 190\(1\), 198\(2\)](#); [S.I. 2004/2184, art. 2\(1\), Sch. 1](#); [S.I. 2004/2575, art. 2\(1\), Sch. 1](#)
- C4** Ss. 4AA-4B applied (26.11.2008) by [Energy Act 2008 \(c. 32\), ss. 102\(1\), 110\(2\)](#)
- C5** Ss. 4AA-4A excluded (26.1.2009) (with application in accordance with s. 90 of the amending Act) by [Counter-Terrorism Act 2008 \(c. 28\), ss. 89\(3\), 100\(3\)](#) (with s. 101(2))
- C6** Ss. 4AA-4B applied (8.4.2010) by [Energy Act 2010 \(c. 27\), ss. 30\(1\), 38\(1\)](#)
- C7** Ss. 4AA-4B applied (18.12.2011) by [Energy Act 2011 \(c. 16\), ss. 98\(13\), 121\(3\)](#)
- C8** Ss. 4AA-4B applied (18.12.2011) by [Energy Act 2011 \(c. 16\), ss. 78\(1\), 121\(3\)](#)
- C9** Ss. 4AA-4B applied (21.3.2012) by [Energy Act 2011 \(c. 16\), ss. 22\(9\), 121\(1\)](#); [S.I. 2012/873, art. 2\(a\)\(v\)](#)
- C10** Ss. 4AA-4B applied (18.2.2014) by [Energy Act 2013 \(c. 32\), ss. 136\(1\), 156\(2\)](#)
- C11** Ss. 4AA-4B applied (18.2.2014) by [Energy Act 2013 \(c. 32\), ss. 141\(1\), 156\(2\)](#)
- C14** S. 4A extended by [2000 c. 27, s. 5A\(11\)](#) (as inserted (30.12.2003) by [Sustainable Energy Act 2003 \(c. 30\), ss. 6, 9\(8\)](#))

#### [<sup>F34</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).

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- (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 [<sup>F35</sup>the CMA] could have regard when exercising that function.
- (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 [<sup>F36</sup>EU] obligation or otherwise.)]

#### Textual Amendments

- F34** 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)
- F35** Words in s. 4B(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 45 (with art. 3)
- F36** Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

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

- C3** Ss. 4AA-4B applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), ss. 190(1), 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
- C4** Ss. 4AA-4B applied (26.11.2008) by Energy Act 2008 (c. 32), ss. 102(1), 110(2)
- C6** Ss. 4AA-4B applied (8.4.2010) by Energy Act 2010 (c. 27), ss. 30(1), 38(1)
- C7** Ss. 4AA-4B applied (18.12.2011) by Energy Act 2011 (c. 16), ss. 98(13), 121(3)
- C8** Ss. 4AA-4B applied (18.12.2011) by Energy Act 2011 (c. 16), ss. 78(1), 121(3)
- C9** Ss. 4AA-4B applied (21.3.2012) by Energy Act 2011 (c. 16), ss. 22(9), 121(1); S.I. 2012/873, art. 2(a)(v)
- C10** Ss. 4AA-4B applied (18.2.2014) by Energy Act 2013 (c. 32), ss. 136(1), 156(2)
- C11** Ss. 4AA-4B applied (18.2.2014) by Energy Act 2013 (c. 32), ss. 141(1), 156(2)
- C15** 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>F37</sup>4C] **Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission**

The Authority must carry out its functions under this Part in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Gas Directive, the Gas Regulation or the Agency Regulation in relation to gas.]

#### Textual Amendments

- F37** S. 4C inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 32



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**[<sup>F38</sup>4D Authority to consult and cooperate with other authorities**

- (1) When carrying out its functions as designated regulatory authority for Great Britain, the Authority must, wherever it thinks fit—
- (a) consult and cooperate with the Agency and the designated regulatory authorities for Northern Ireland and other Member States;
  - (b) provide the Agency and the designated regulatory authorities for Northern Ireland and other Member States with information they may require in order to carry out their functions under the Gas Directive, the Gas Regulation or the Agency Regulation as it applies in relation to gas; and
  - (c) consult relevant national authorities.
- (2) In exercising functions in accordance with subsection (1), the Authority must, wherever it thinks fit, cooperate with the designated regulatory authorities for Northern Ireland and other Member States within a region which includes Great Britain with a view, within that region, to—
- (a) the integration of national markets;
  - (b) the promotion and facilitation of cooperation between transmission system operators;
  - (c) the optimal management of gas networks;
  - (d) the promotion of jointly managed cross-border trade in gas and the allocation of cross-border capacity;
  - (e) ensuring an adequate level of interconnection capacity;
  - (f) the coordination of the development of network codes; and
  - (g) the coordination of the regulation of gas markets, including rules concerning the management of congestion of gas networks.
- (3) In this section—
- “network code” means a network code developed under Article 6 of the Gas Regulation and adopted by the European Commission;
  - “region” includes a geographical area defined in accordance with Article 12(3) of the Gas Regulation; and
  - “relevant national authority” means any of the following—
- (a) <sup>F39</sup> ...
  - (b) the Office of Communications;
  - (c) [<sup>F40</sup>the CMA] ;
  - (d) the Water Services Regulation Authority.]

**Textual Amendments**

- F38** S. 4D inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), [34](#)
- F39** Words in s. 4D(3) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 46\(a\)](#) (with art. 3)
- F40** Words in s. 4D(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 46\(b\)](#) (with art. 3)

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*[<sup>F41</sup> Licensing of activities relating to gas]*

**Textual Amendments**

**F41** 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>F42</sup>**[Prohibition on unlicensed activities]**

- (1) Subject to section 6A below and Schedule 2A to this Act, a person who—
- (a) [<sup>F43</sup>otherwise than by means of a gas interconnector] conveys gas through pipes to any premises, or to a pipe-line system operated by a [<sup>F44</sup>gas transporter];
  - <sup>F45</sup>(aa) participates in the operation of a gas interconnector;
  - (b) supplies to any premises gas which has been conveyed to those premises through pipes; <sup>F46</sup>...
  - (c) arranges with a [<sup>F44</sup>gas transporter] for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter [<sup>F47</sup>; or
  - (d) provides a smart meter communication service,]
- 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—
- (a) on summary conviction to a fine not exceeding the statutory maximum;
  - (b) 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.
- <sup>F48</sup>(6) A reference in this Part to participating in the operation of a gas interconnector is a reference to—
- (a) co-ordinating and directing the conveyance of gas into or through a gas interconnector; or
  - (b) making such an interconnector available for use for the conveyance of gas.
- (7) For the purposes of subsection (6)(b) a person shall not be regarded as making something available just because he consents to its being made available by another.
- (8) In this Part “gas interconnector” means so much of any pipeline system as—
- (a) is situated at a place within the jurisdiction of Great Britain; and
  - (b) subsists wholly or primarily for the purposes of the conveyance of gas (whether in both directions or in only one) between Great Britain and another country or territory.

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- (9) For the purposes of this section a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964.
- (10) In this section “pipe-line system” includes the pipes and any associated apparatus comprised in that system.]
- [<sup>F49</sup>(11) A reference in this Part to providing a smart meter communication service is a reference to making arrangements with each domestic supplier to provide a service, for such suppliers, of communicating relevant information to and from smart meters through which gas is supplied to domestic premises.
- (12) In this section—
- “domestic supplier” means a gas supplier—
    - (a) who is authorised, in accordance with the conditions of a licence, to supply gas to domestic premises; and
    - (b) who supplies gas to domestic premises in accordance with that licence;
  - “external electronic communications network” means a network which—
    - (a) is an electronic communications network, within the meaning of section 32 of the Communications Act 2003; and
    - (b) does not form part of a smart meter;
  - “relevant information” means information relating to the supply of gas; and
  - “smart meter” means—
    - (a) a gas meter which can send and receive information using an external electronic communications network; or
    - (b) a gas meter and a device which is associated with or ancillary to that meter and which enables information to be sent to and received by the meter using an external electronic communications network.]

#### Textual Amendments

- F42** S. 5 and cross-heading substituted (1.3.1996) by 1995 c. 45, s. 3; S.I. 1996/218, art. 2
- F43** Words in s. 5(1)(a) inserted (14.8.2006) by Energy Act 2004 (c. 20), ss. 149(2)(a), 198(2); S.I. 2006/1964, art. 2, Sch.
- F44** Words in s. 5(1)(a)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6, Pt. I para. 3; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F45** S. 5(1)(aa) inserted (14.8.2006) by Energy Act 2004 (c. 20), ss. 149(2)(b), 198(2); S.I. 2006/1964, art. 2, Sch.
- F46** Word in s. 5(1) omitted (19.9.2012) by virtue of The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 19(2)(a) (with art. 38(1)(4)(5))
- F47** S. 5(1)(d) and word inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 19(2)(b) (with art. 38(1)(4)(5))
- F48** S. 5(6)-(10) inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. 149(3), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F49** S. 5(11)(12) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 19(3)

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

- C16** 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

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- 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)**
- C17** 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)**
- C18** S. 5(1)(a) excluded (1.12.1996) by S.I. 1996/2795, **arts. 3, 4**
- C19** S. 5(1)(a) restricted (conditional) (12.8.2013) by The Gas Act 1986 (Exemption) (Onshore Gas) Order 2013 (S.I. 2013/1726), **arts. 1, 3, 4**
- C20** 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)**
- C21** S. 5(1)(c) modified (8.11.1995) by 1995 c. 45, s. 17(1), **Sch. 5 Pt. II paras. 18(1)**

**F50**6 .....

**Textual Amendments**

**F50** S. 6 repealed (1.3.1996) by 1995 c. 45, ss. 3(3), 17(5), **Sch. 6**; S.I. 1996/218, **art. 2**

**[<sup>F51</sup>6A Exemptions from prohibition.**

- (1) The Secretary of State may, <sup>F52</sup>... by order grant exemption from paragraph (a) [<sup>F53</sup>, (aa)], (b) [<sup>F54</sup>, (c) or (d)] 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.

- [ Before making an order under subsection (1) the Secretary of State shall give notice—
  - <sup>F55</sup>(1A) (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
  - (b) stating the reasons why he proposes to make the order in the terms proposed; 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,

and shall consider any representations which are duly made in respect of the proposals and not withdrawn.

- (1B) The notice required by subsection (1A) shall be given—
  - (a) by serving a copy of it on the Authority [<sup>F56</sup>, Citizens Advice and Citizens Advice Scotland] ; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.]

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- [ Notice of an exemption granted to a person shall be given—
- <sup>F57</sup>(2) (a) by serving a copy of the exemption on him; and
- (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (2A) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
- (a) persons of that class; and
- (b) other persons who may be affected by it.
- (3) An exemption may be granted—
- (a) indefinitely; or
- (b) for a period 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
- (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.
- [ The Secretary of State may by order revoke an order by which an exemption was
- <sup>F58</sup>(5) granted to a person or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) at the person's request;
- (b) in accordance with any provision of the order by which the exemption was granted; or
- (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (6) The Secretary of State may by order revoke an order by which an exemption was granted to persons of a class or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) in accordance with any provision of the order by which the exemption was granted; or
- (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (7) The Secretary of State may by direction withdraw an exemption granted to persons of a class from any person of that class—
- (a) at the person's request;
- (b) in accordance with any provision of the order by which the exemption was granted; or

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- (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (8) Before—
- (a) making an order under subsection (5)(b) or (c) or (6); or
  - (b) giving a direction under subsection (7)(b) or (c),
- the Secretary of State shall consult the Authority and give notice of his proposal to do so (with reasons) and of a period within which representations may be made to him.
- (9) The notice under subsection (8) shall be given—
- (a) where the Secretary of State is proposing to make an order under subsection (5)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;
  - (b) where he is proposing to make an order under subsection (6), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and
  - (c) where he is proposing to give a direction under subsection (7)(b) or (c), by serving a copy of it on the person from whom he proposes to withdraw the exemption.]]

#### Textual Amendments

- F51** S. 6A substituted (1.3.1996) by 1995 c. 45, s. 4; S.I. 1996/218, art. 2
- F52** Words in s. 6A(1) repealed (1.10.2001) by 2000 c. 27, ss. 86(1), 108, Sch. 8; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F53** Words in s. 6A(1) inserted (14.8.2006) by Energy Act 2004 (c. 20), ss. 149(4), 198(2); S.I. 2006/1964, art. 2, Sch.
- F54** Words in s. 6A(1) substituted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 20
- F55** S. 6A(1A)(1B) inserted (1.10.2001) by 2000 c. 27, s. 86(2); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F56** Words in s. 6A(1B)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(3) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F57** S. 6A(2)(2A)(3) substituted (1.10.2001) for s. 6A(2)(3) by 2000 c. 27, s. 86(3); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F58** S. 6A(5)-(9) substituted (1.10.2001) for s. 6A(5) by 2000 c. 27, s. 86(4); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F59</sup>6B Duties of distribution exemption holders

Schedule 2AA (which relates to the duties of distribution exemption holders) has effect.

#### Textual Amendments

- F59** Ss. 6B, 6C inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 20(2)

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## 6C Duties of supply exemption holders

Schedule 2AB (which relates to the duties of supply exemption holders) has effect.]

### Textual Amendments

**F59** Ss. 6B, 6C inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **20(2)**

## [<sup>F607</sup> Licensing of public gas transporters.

- (1) In this Part “[<sup>F61</sup>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 [<sup>F62</sup>subsections (3) and (3A)] 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, [<sup>F63</sup>any area specified in the licence as it has effect for the time being;]
  - (b) to convey gas through pipes either to any pipe-line system operated by another [<sup>F64</sup>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 [<sup>F65</sup>7ZA or] 7A below.

[ A licence authorising the conveyance of gas through pipes to any premises must not <sup>F66</sup>(3A) be granted under this section to a person who is a gas producer unless it is a condition of the licence that the person must not convey gas through pipes to 100,000 or more sets of premises.]

- (4) [<sup>F67</sup>Subject to subsection (3A), 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
  - (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.

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[ The Authority may, with the consent of the licence holder, direct that any licence under <sup>F68</sup>(4A) this section shall have effect as if any area or pipe-line system 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.]

- (5) Before granting a licence <sup>F69</sup> . . . under this section, the Director shall give notice—
- (a) stating that he proposes to grant the licence <sup>F69</sup> . . . ;
  - (b) stating the reasons why he proposes to grant the licence <sup>F69</sup> . . . ; and
  - (c) specifying the time from the date of publication of the notice (not being less than two months <sup>F69</sup> . . . ) within which representations or objections with respect to the proposed licence <sup>F69</sup> . . . 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 <sup>F69</sup> . . . ; and
  - (b) by sending a copy of the notice to the Secretary of State, to the Health and Safety Executive and to any [<sup>F64</sup>gas transporter] whose area includes the whole or any part of the area proposed to be specified in the licence <sup>F69</sup> . . .

<sup>F70</sup>(7) . . . . .

<sup>F70</sup>(8) . . . . .

- (9) As soon as practicable after the granting of a licence under this section, the [<sup>F64</sup>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
  - (b) explaining that, as a result, it might be necessary for those persons to be licensed under section 7A below.

(10) In this section—

- [ “gas producer” means a person who—
- <sup>F71</sup>(za) (i) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain; or
- (ii) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7;]
- (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.



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F<sup>72</sup>(11) . . . . . ]

#### Textual Amendments

- F60 S. 7 substituted (1.3.1996) by 1995 c. 45, s. 5; S.I. 1996/218, art. 2
- F61 Words in s. 7(1) substituted (1.10.2001) by 2000 c. 27, s. 76(2); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F62 Words in s. 7(2) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 18(2)
- F63 Words in s. 7(2)(a) and word “and” preceding para. (b) substituted (1.10.2001) by 2000 c. 27, s. 76(3); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F64 Words in s. 7(2)(b)(6)(b)(9) substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6, Pt. I para. 4; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F65 Words in s. 7(3) inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. 149(5), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F66 S. 7(3A) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 18(3)
- F67 Words in s. 7(4) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 18(4)
- F68 S. 7(4A) inserted (1.10.2001) by 2000 c. 27, s. 76(4); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F69 Words in s. 7(5)(6) repealed (1.10.2001) by 2000 c. 27, ss. 76(5), 108, Sch. 8; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F70 S. 7(7)(8) repealed (1.10.2001) by 2000 c. 27, ss. 76(6), 108, Sch. 8; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F71 S. 7(10)(za) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 18(5)
- F72 S. 7(11) repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 8; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

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

- C22 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)  
S. 7 amended (1.10.2001) by 2000 c. 27, s. 76(1); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- C23 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
- C24 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>F73</sup>7ZA Licences for operation of gas interconnectors

- (1) Subject to subsection (2), the Authority may grant a licence authorising any person to participate in the operation of a gas interconnector.
- (2) A licence shall not be granted under this section to a person who is the holder of a licence under section 7 or 7A.
- (3) A licence under this section—
  - (a) must specify the interconnector or interconnectors in relation to which participation is authorised; and

*Status: Point in time view as at 30/11/2016.*

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- (b) may limit the forms of participation in the operation of an interconnector which are authorised by the licence.]

#### Textual Amendments

**F73** S. 7ZA inserted (1.12.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 149(6)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

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

**C25** S. 7ZA modified (1.12.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 152(2)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

### [<sup>F74</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 [<sup>F75</sup>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 [<sup>F76</sup>or 7ZA] 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,
 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 [<sup>F75</sup>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.

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- (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.]

#### Textual Amendments

- F74** S. 7A inserted (1.3.1996) by 1995 c. 45, s. 6; S.I. 1996/218, art. 2
- F75** Words in S. 7A(2)(5) substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. I para. 2(1); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F76** Words in s. 7A(3) inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. 149(7), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

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

- C26** 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)
- C27** 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
- C28** S. 7A(1)(2) amended (1.10.2001) by 2000 c. 27, s. 81(1); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

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**C29** 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>F77</sup>7AB. Licensing of a person providing a smart meter communication service**

- (1) Subject to subsections (4) and (5), the Authority may grant a licence authorising a person to provide a smart meter communication service (“a smart meter communication licence”).
- (2) Subject to subsections (3) and (5), the Secretary of State may grant a smart meter communication licence.
- (3) The Secretary of State may not grant a smart meter communication licence after 1 November 2018.
- (4) The first smart meter communication licence may only be granted by the Secretary of State.
- (5) A person may not be granted a smart meter communication licence unless the same person is at the same time granted a licence under section 6(1)(f) of the Electricity Act 1989.]

**Textual Amendments**

**F77** S. 7AB inserted (19.9.2012) by **The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400)**, arts. 1, **21**

**[<sup>F78</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 [<sup>F79</sup>gas transporters] whose authorised area includes the whole or any part of the area to which the application relates.

[ Where the Authority proposes to refuse the application, it shall give to the applicant <sup>F80</sup>(2A) a notice—

- (a) stating that it proposes to refuse the application;
- (b) stating the reasons why it proposes to refuse the application; and
- (c) specifying the time within which representations with respect to the proposed refusal may be made,

and shall consider any representations which are duly made and not withdrawn.]

[ At any time when regulations made under section 41HC are in force, subsections (1) <sup>F81</sup>(2B) to (2A) do not apply to an application for a smart meter communication licence.]

- (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

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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 [<sup>F82</sup>grantor] to be requisite or expedient having regard to the duties imposed by [<sup>F83</sup>sections 4AA, 4AB and 4A];
- <sup>F84</sup>(b) .....
- (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; <sup>F85</sup> . . .
- <sup>F85</sup>(d) .....

<sup>F86</sup>[ Without prejudice to the generality of paragraph (a) of subsection (4), conditions (4A) included in a licence under section 7 by virtue of that paragraph—

- (a) may require the licence holder to enter into agreements with other persons for the use of any pipe-line system of his (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions;
- (b) may include provision for determining the terms on which such agreements are to be entered into.]

(5) Without prejudice to the generality of paragraph (a) of subsection (4) above—

- (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 [<sup>F87</sup>referred to] 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 <sup>F88</sup>...[<sup>F89</sup>or 7AB] above as may be so determined.

<sup>F90</sup>[ Without prejudice to the generality of paragraph (a) of subsection (4), conditions (5A) which are described in subsection (5B) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where a person holds such a licence (the “licence holder”), and another person has applied or is considering whether to apply for a smart meter communication licence (“the applicant”).

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- (5B) The conditions in this subsection are conditions which require the licence holder to comply with a direction given by the Secretary of State or the Authority requiring the licence holder to provide to the applicant—
- (a) information in relation to the activities authorised by the licence; or
  - (b) such other assistance as may be reasonably required by the applicant, including access to any facilities or equipment being used in connection with the activities authorised by the licence, in order that the applicant can—
    - (i) determine whether to apply for a licence; or
    - (ii) take part in a competition for a licence.
- (5C) Subject to subsection (5E) and without prejudice to the generality of paragraph (a) of subsection (4), conditions which are described in subsection (5D) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where such a licence held by a person (the “first licensee”) will cease to have effect, and another such licence is to be granted or has been granted to a different person (the “second licensee”).
- (5D) The conditions in this subsection are conditions which require compliance with a direction given by the Secretary of State or the Authority requiring—
- (a) the transfer of property, rights or liabilities from the first licensee to the second licensee;
  - (b) the creation of rights in relation to property, rights or liabilities in favour of the second licensee;
  - (c) the creation of other rights and liabilities as between the first and second licensee;
  - (d) the first or second licensee to enter into a written agreement with each other, or the first licensee to execute an instrument of another kind in favour of the second licensee;
  - (e) the first or second licensee to pay compensation to the other, or to any third party who is affected by any of the matters referred to in paragraphs (a) to (d).
- (5E) Conditions included in a licence by virtue of subsection (5C) must provide that the licensee does not have a duty to comply with a direction of the kind referred to in subsection (5D) unless, in relation to that direction, the following conditions have been satisfied prior to it being given—
- (a) the Secretary of State or the Authority (as appropriate) has given written notice to the first licensee, the second licensee and any other person who would potentially be affected by the direction, including a copy of the proposed direction and inviting them to submit written representations, giving a minimum period of 21 days in which those representations can be made; and
  - (b) after the end of the period set out in the notice under paragraph (a), the Secretary of State or the Authority (as appropriate) has considered those representations and determined that—
    - (i) it is appropriate in all the circumstances that the proposed direction is given; and
    - (ii) the arrangements of a type referred to in paragraphs (a) to (d) of subsection (5D) in the direction are necessary or expedient for the operational purposes of the second licensee, or are agreed by the first licensee and the second licensee to be necessary or expedient for those purposes.

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- (5F) For the purposes of subsection (5E), the operational purposes of the second licensee are the purposes of performing any functions which the second licensee has, or will have—
- (a) under or by virtue of the smart meter communication licence which has been, or is to be, granted; or
  - (b) under or by virtue of any enactment, in the second licensee’s capacity as holder of that licence.]
- (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 <sup>F91</sup>. . .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; <sup>F92</sup>. . .
  - (b) in the case of a licence [<sup>F93</sup>, extension or restriction] under section 7 above, to any public gas transporter whose authorised area [<sup>F94</sup>includes] the whole or any part of the area specified in the licence [<sup>F93</sup>, extension or restriction][<sup>F95</sup>; and
  - (c) to any other person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant.]
- (10) Any sums received by the Director under or by virtue of this section shall be paid into the Consolidated Fund.]

[<sup>F96</sup>(11) In this section “prescribed” means prescribed in regulations made by the Authority.]

#### Textual Amendments

- F78** S. 7B inserted (1.3.1996) by 1995 c. 45, s. 7; S.I. 1996/218, art. 2
- F79** Words in s. 7B(2)(b)(9)(b) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. I para. 2(1); 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)
- F80** S. 7B(2A) inserted (1.10.2001) by 2000 c. 27, s. 74(2); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F81** S. 7B(2B) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 22(2)
- F82** Word in s. 7B(4)(a) substituted (19.9.2012) by virtue of The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 22(3)

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- F83** Words in s. 7B(4)(a) substituted (20.12.2000) by 2000 c. 27, s. 74(3)(a); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15)
- F84** S. 7B(4)(b) omitted (20.12.2000) by virtue of 2000 c. 27, s. 74(3)(b); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) and repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 8; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F85** S. 7B(4)(d) and word “and” preceding it repealed (7.11.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. I para. 5, Sch. 8; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)
- F86** S. 7B(4A) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 74(4); 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)
- F87** Words s. 7B(5)(a)(iii) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 74(5); 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)
- F88** Words in s. 7B(5)(b)(ii) omitted (25.4.2013) by virtue of Growth and Infrastructure Act 2013 (c. 27), ss. 19(b), 35(2)
- F89** Words in s. 7B(5)(b)(ii) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 22(4)
- F90** S. 7B(5A)-(5F) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 22(5)
- F91** Words in s. 7B(6) shall cease to have effect (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 74(6); 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) and are repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 8; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F92** S. 7B(9): word “and” preceding para. (b) repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F93** Words in s. 7B(9)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6, Pt. I para. 6(a)(i); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F94** Word in s. 7B(9)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. I para. 6(a)(ii); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F95** S. 7B(9)(c) and the word “and” immediately preceding (1.10.2001) by 2000 c. 27, s. 108, Sch. 6, Pt. I para. 6(b); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F96** S. 7B(10) inserted (16.5.2001 for certain purposes, otherwise 1.10.2001) by 2000 c. 27, s. 74(7); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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

- C30** S. 7B applied (with modifications) (1.3.1996) by S.I. 1996/399, art. 2(2)
- C31** 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
- C32** S. 7B applied (with modifications) (1.12.2004) by Energy Act 2004 (c. 20), ss. 152(3), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

#### [<sup>F978</sup> Standard conditions of licences.

- (1) Subject to subsections (2) and (3) <sup>F98</sup>..., each condition which by virtue of [<sup>F99</sup>section 81(2) of the Utilities Act 2000][<sup>F100</sup>or section 150 of the Energy Act 2004] is a standard condition for the purposes of—
- (a) licences under section 7 above;
- [ licences under section 7ZA above;]
- <sup>F101</sup>(aa)
- (b) licences under subsection (1) of section 7A above; or



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- (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 <sup>F102</sup>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 <sup>F103</sup>, to Citizens Advice and to Citizens Advice Scotland] .
- (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.
- [ The Authority shall not make any modifications under subsection (3) above of
- <sup>F104</sup>(6A) a condition of a licence under section 7ZA unless it is of the opinion that the modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with one or more other holders of licences under that section; and
  - (b) no other holder of a licence under that section would be unduly disadvantaged in competing with the holder of the licence to be modified or with any one or more other holders of licences under that section.]
- (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
- <sup>F105</sup>(a) [ the licence holder would not be unduly disadvantaged in competing with other holders of a licence under that subsection; and
  - (b)] 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 <sup>F105</sup>being modified])

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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

- F97** S. 8 substituted (1.3.1996) by 1995 c. 45, s. 8(1); S.I. 1996/218, art. 2
- F98** Words in s. 8(1) repealed (1.10.2001) by 2000 c. 27, ss. 81(3)(a), 108, Sch. 8; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F99** Words in s. 8(1) substituted (1.10.2001) by 2000 c. 27, s. 81(3)(b); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F100** Words in s. 8(1) inserted (1.4.2005) by Energy Act 2004 (c. 20), ss. 150(6)(a), 198(2); S.I. 2005/877, art. 2(1), Sch. 1
- F101** S. 8(1)(aa) inserted (1.4.2005) by Energy Act 2004 (c. 20), ss. 150(6)(b), 198(2); S.I. 2005/877, art. 2(1), Sch. 1
- F102** Words in s. 8 substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. I para. 2(1); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F103** Words in s. 8(5)(b) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(4) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F104** S. 8(6A) inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. 150(7), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F105** Words in s. 8(7) inserted (1.10.2001) by 2000 c. 27, s. 82(1); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

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

- C33** S. 8 applied (with modifications) (1.12.2004) by Energy Act 2004 (c. 20), ss. 152(3), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

#### [<sup>F106</sup>8AA Transfer of licences.

- (1) A licence—
- (a) shall be capable of being transferred by the licence holder, with the consent of the Authority, in accordance with this section and subject to any term of the licence relating to its transfer;
  - (b) may include conditions which must be complied with before the licence can be transferred.
- (2) A transfer may relate to the whole or any part of the licence.
- (3) The reference in subsection (2) to part of a licence is a reference to a part of the activities authorised by the licence (whether described by reference to activities being carried on by the licence holder or to activities which he is authorised to carry on).
- (4) Such consent may be given subject to compliance with such modification or other conditions as the Authority considers necessary or expedient.
- (5) In the case of a partial transfer, conditions imposed under subsection (4) may make as respects so much of the licence as is proposed to be retained by the transferor

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provision different from that made as respects so much of the licence as is proposed to be transferred.

- (6) In deciding whether to give its consent to a proposed transfer, the Authority shall apply the same criteria as it would apply if the Authority were deciding whether—
- (a) in the case of a general transfer, to grant a corresponding licence to the transferee; or
  - (b) in the case of a partial transfer—
    - (i) to grant to the transferee a licence corresponding to so much of the licence as is proposed to be transferred; and
    - (ii) to grant to the transferor a licence corresponding to so much of the licence as is proposed to be retained.
- (7) The Authority shall—
- (a) give the Health and Safety Executive not less than 28 days' notice of any proposal to consent to any proposed transfer; and
  - (b) give that Executive and the Secretary of State not less than 28 days' notice of any proposal to impose a modification condition.
- (8) If, before the expiry of the time specified in a notice given to the Secretary of State under subsection (7)(b), the Secretary of State directs the Authority not to impose the condition, the Authority shall comply with the direction.
- (9) Before giving consent to the transfer of a licence, the Authority shall give notice—
- (a) stating that it proposes to grant consent to the transfer;
  - (b) stating the reasons why it proposes to give consent; and
  - (c) specifying the time from the date of publication of the notice (not being less than two months) within which representations or objections with respect to the transfer may be made,
- and shall consider any representations or objections that are duly made and not withdrawn.
- (10) A notice under subsection (9) shall be given by publishing the notice in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the transfer.
- [ Subject to subsection (10C), the Authority shall, following consideration of any
- <sup>F107</sup>(10A) representations or objections under subsection (9), give the Secretary of State not less than 28 days' notice of any proposal to give consent to the transfer of the whole or any part of a smart meter communication licence.
- (10B) If, before the expiry of the time specified in a notice under subsection (10A), the Secretary of State directs the Authority not to give consent, the Authority shall comply with that direction.
- (10C) Where the Secretary of State does not give a direction under subsection (10B), the Authority may give consent to the transfer of the licence after—
- (a) the expiry of the time specified in the notice under subsection (10A); or
  - (b) if earlier than the time in paragraph (a), the time at which the Secretary of State informs the Authority that no direction will be given under subsection (10B) in relation to the notice.
- (10D) Subsections (10A) to (10C) do not apply after 1 November 2018.]

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(11) A purported transfer of a licence shall be void—

- (a) if the licence is not capable of transfer or the Authority has not given its consent;
- (b) if the purported transfer is in breach of a condition of the licence; or
- (c) if there has, before the purported transfer, been a contravention of a condition subject to compliance with which the Authority’s consent is given.

<sup>F108</sup> [ A smart meter communication licence may not be transferred to a person unless a (11A) licence granted under section 6(1)(f) of the Electricity Act 1989 is also transferred to the same person at the same time.]

(12) In this section—

“transfer” includes any form of transfer or assignment or, in Scotland, assignation;

“modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence.]

**Textual Amendments**

**F106** S. 8AA substituted (1.10.2001) by 2000 c. 27, s. 85; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

**F107** Ss. 8AA(10A)-(10D) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 23(2)

**F108** S. 8AA(11A) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 23(3)

**[8A <sup>F109</sup>Modification or removal of the 25,000 therm limits.**

(1) The Secretary of State may by order amend [<sup>F110</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>F111</sup>(3) .....

<sup>F111</sup>(4) ..... ]

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#### Textual Amendments

- F109** 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.
- F110** 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](#)
- F111** 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>F112</sup> The gas code]*

#### Textual Amendments

- F112** S. 8B and cross-heading inserted (1.3.1996) by [1995 c. 45, s. 9](#); S.I. 1996/218, [art. 2](#)

### **8B** *[<sup>F113</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

- F113** S. 8B and cross-heading inserted (1.3.1996) by [1995 c. 45, s. 9\(1\)](#); S.I. 1996/218, [art. 2](#)

*[<sup>F114</sup> Gas transmission and the operation of gas interconnectors: independence*

#### Textual Amendments

- F114** Ss. 8C-8Q and cross-heading inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), [regs. 1\(1\), 4](#)

### **8C Requirement for certain gas transporters and operators of gas interconnectors to be certified as independent**

- (1) A person who, for any period on or after the relevant date, holds a licence under section 7 and carries out transmission of gas must ensure that the person is certified by the Authority under section 8F throughout that period.
- (2) A person who, for any period on or after the relevant date, holds a licence under section 7ZA and participates in the operation of a gas interconnector must ensure that the person is certified by the Authority under section 8F throughout that period.
- (3) In subsections (1) and (2) the “relevant date” in respect of a person is 3 March 2012 or any later date before 4 March 2013 which the Authority specifies under subsection (4) or (5) in respect of the person.
- (4) The Authority may specify a later date in respect of a person if—
  - (a) the person has asked the Authority to specify a later date;

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- (b) the person is not, and is not part of, a vertically integrated undertaking; and
  - (c) no senior officer of the person is also a senior officer of a relevant producer or supplier.
- (5) The Authority may also specify a later date in respect of a person if the Authority thinks that, for reasons beyond its and the person's control, the Authority will not reasonably be able to make a final decision before 3 March 2012 as to whether to certify the person.
- (6) In this section—
- (a) “transmission” has the meaning given by Article 2(3) of the Gas Directive; and
  - (b) “vertically integrated undertaking” has the meaning given by Article 2(20) of that Directive.

## **8D Application for certification**

- (1) Any person may apply for certification.
- (2) An application for certification—
- (a) must be made in writing to the Authority; and
  - (b) must be made in such form and contain such information as the Authority may specify.
- (3) If the application is made on or after 3 March 2013 and the applicant is a person from a third country or a person controlled by a person from a third country, the Authority must, as soon as is reasonably practicable after receiving the application—
- (a) notify the Secretary of State and the European Commission that an application has been made by such a person; and
  - (b) enclose with the notification to the Secretary of State any information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.
- (4) The Authority may ask an applicant for certification for any further information the Authority thinks is relevant to the application, and the applicant must supply that information if—
- (a) it is in the applicant's possession; or
  - (b) it is information which the applicant could reasonably be expected to obtain.
- (5) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to an application for certification, and the relevant producer or supplier must supply that information if—
- (a) it is in the relevant producer or supplier's possession; or
  - (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.
- (6) A person required to supply information under subsection (4) or (5) must do so by any deadline specified by the Authority.

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## **8E Report where applicant connected with a country outside the European Economic Area**

- (1) This section applies if the Secretary of State is notified by the Authority under section 8D(3) that an application has been made by a person from a third country or a person controlled by a person from a third country.
- (2) The Secretary of State must prepare a report on whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.
- (3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification under section 8D(3) is received.
- (4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 8D(4) or (5) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.
- (5) In preparing the report, the Secretary of State must take into account—
  - (a) any relevant international law; and
  - (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

## **8F Certification**

- (1) Where the Authority receives an application for certification, it must make a preliminary decision by the relevant deadline as to whether it should certify the applicant.
- (2) The relevant deadline is the end of the 4 months beginning with the day on which the Authority receives the application; but this is subject to any extension under subsection (3).
- (3) If, before the deadline mentioned in subsection (2) (or before that deadline as previously extended under this subsection), the Authority asks the applicant or a relevant producer or supplier for information under section 8D(4) or (5), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.
- (4) As soon as is reasonably practicable after making the preliminary decision the Authority must notify the decision and the reasons for it to—
  - (a) the applicant;
  - (b) the Secretary of State; and
  - (c) the European Commission.
- (5) The Authority must enclose with the notification under subsection (4)(c) a copy of any report—
  - (a) which the Secretary of State has prepared under section 8E in respect of the applicant; and
  - (b) which the Authority receives before giving the notification.
- (6) Subsections (7) and (8) apply in relation to the Authority's final decision under Article 3 of the Gas Regulation as to whether to certify the applicant.

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- (7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—
- (a) the applicant;
  - (b) the Secretary of State; and
  - (c) the European Commission.
- (8) If the final decision is to certify the applicant the applicant is to be taken as certified by the Authority under this section.

## **8G Grounds for certification**

- (1) This section applies to—
- (a) a preliminary decision under section 8F as to whether an applicant should be certified;
  - (b) a final decision under Article 3 of the Gas Regulation as to whether to certify an applicant.
- (2) The Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following six grounds (“the certification grounds”) applies.
- (3) The first certification ground is that the applicant meets the ownership unbundling requirement in section 8H.
- (4) The second certification ground is that the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraph (9) of Article 9 of the Gas Directive (alternative arrangements for independence), and the Authority thinks the requirements of that paragraph are met.
- (5) The third certification ground is that—
- (a) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 14 of the Gas Directive (independent system operator);
  - (b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and
  - (c) the Authority—
    - (i) thinks that the requirements of those paragraphs are met, and
    - (ii) is minded to designate the nominated independent system operator.
- (6) The fourth certification ground is that—
- (a) the applicant holds a licence under section 7ZA;
  - (b) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the ground that it meets the requirements of Chapter 4 of the Gas Directive (independent transmission operator), in accordance with Articles 9(8)(b) and 18(10) of that Directive; and
  - (c) the Authority thinks that the applicant meets the requirements of that Chapter, in accordance with those Articles.
- (7) The fifth certification ground is that—
- (a) the applicant holds a licence under section 7ZA; and
  - (b) in accordance with the conditions of that licence, the applicant has been granted an exemption from the ownership unbundling requirement in



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accordance with Article 36 of the Gas Directive (new infrastructure) and remains entitled to the benefit of it.

- (8) The sixth certification ground is that—
- (a) the applicant holds a licence under section 7ZA; and
  - (b) either—
    - (i) the applicant has, in accordance with the conditions of that licence, been granted an exemption in accordance with Article 22 of Directive [2003/55/EC](#) of the European Parliament and of the Council of 26 June 2003 on common rules for the internal market in natural gas (new infrastructure) and remains entitled to the benefit of it; or
    - (ii) another person benefits from such an exemption, and the applicant is in a position which is substantially similar to the position of that person.
- (9) But, regardless of whether a certification ground applies, the Authority—
- (a) may, in particular, decide that the applicant should not be certified, or decide not to certify the applicant, if, on the basis of an opinion expressed by the European Commission under Article 11 of the Gas Directive (certification in relation to persons from countries outside the European Economic Area), the Authority thinks that the certification of the applicant would put at risk the security of gas supplies in any EEA state;
  - (b) must not decide that the applicant should be certified, and must not decide to certify the applicant, if a report prepared by the Secretary of State under section 8E states that the certification of the applicant would put at risk the security of gas supplies in the United Kingdom or any other EEA state;
  - (c) must not decide to certify the applicant on the second certification ground if the European Commission has not verified, in accordance with paragraph (10) of Article 9 of the Gas Directive (verification of independence under alternative arrangements), that the requirement in that paragraph as to arrangements for effective independence is met.

## **8H The ownership unbundling requirement**

- (1) In section 8G(3) the ownership unbundling requirement is met by an applicant for certification if <sup>F115</sup>in relation to each of the five tests below—
- (a) the Authority thinks that it is passed, or
  - (b) it is treated as passed by virtue of subsection (7), (9) or (9A).]
- (2) The first test is that the applicant—
- (a) does not control a relevant producer or supplier;
  - (b) does not have a majority shareholding in a relevant producer or supplier; and
  - (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.
- (3) For the purposes of subsection (2)(c), the Authority is entitled to think that the applicant will not exercise shareholder rights if the applicant has given an undertaking not to exercise those shareholder rights.
- (4) The second test is that, where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—
- (a) controls a gas undertaking which is a relevant producer or supplier; or

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- (b) has a majority shareholding in a gas undertaking which is a relevant producer or supplier.
- (5) The third test is that, where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of a gas undertaking which is a relevant producer or supplier.
- (6) The fourth test is that the applicant is not controlled by a person who controls a relevant producer or supplier.
- (7) But even where the fourth test is not passed, the Authority may treat it as passed if—
  - (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant’s business; or
  - (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (8) The fifth test is that the applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.
- (9) But even where the fifth test is not passed, the Authority may treat it as passed if—
  - (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant’s business; or
  - (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- [ The Authority may treat one or more of the five tests in this section as passed if—
  - <sup>F116</sup>(9A) (a) the test or tests are not passed in relation to a relevant producer or supplier,
  - (b) the applicant has demonstrated to the Authority’s satisfaction that the applicant does not have a relationship with the relevant producer or supplier which might lead the applicant to discriminate in favour of the relevant producer or supplier, and
  - (c) the Authority thinks it appropriate to treat the test or tests as passed.]
- (10) In subsection (2)(c) “relevant date” means the relevant date for the purposes of section 8C(1) or (2).

#### Textual Amendments

**F115** Words in s. 8H(1) substituted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), 2(2) (with reg. 4)

**F116** S. 8H(9A) inserted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), 2(3) (with reg. 4)

## 8I The ownership unbundling requirement: supplementary

- (1) Subsections (2) and (3) apply where—
  - (a) by virtue of subsection (7) or (9) of section 8H, the Authority treats the fourth or fifth test under section 8H as passed in relation to a person; and

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- (b) the person is certified in reliance on that treatment.
- (2) The Authority must by notice to the certified person specify a period of time at the end of which the Authority will cease to treat that test as passed by virtue of that subsection.
- (3) The Authority may by notice to the certified person extend that period if the Authority thinks it necessary or expedient to do so.
- (4) In deciding whether to treat a test as passed by virtue of section 8H(7) or (9), and in determining any period or extension under subsection (2) or (3), the Authority—
  - (a) must take into account—
    - (i) the period of time for which the test is likely to continue not to be passed, and
    - (ii) whether the relationship (direct or indirect) between the applicant and the relevant producer or supplier has led or might lead the applicant to discriminate in favour of the relevant producer or supplier; and
  - (b) may, in particular, take into account any information or undertaking given to the Authority by the applicant, the relevant producer or supplier or the person who controls the applicant and controls or has a majority shareholding in the relevant producer or supplier.
- (5) The information and undertakings that may be taken into account under subsection (4) (b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the applicant and the business of the relevant producer or supplier.

## **8J Designation for the purposes of EU gas legislation**

- (1) This section applies in relation to any period for which a person—
  - (a) holds a licence under section 7 or 7ZA; and
  - (b) is certified.
- (2) If the person is certified on the first, second, fourth, fifth or sixth certification ground in section 8G, the person is designated as a gas transmission system operator for the purposes of Article 10(2) of the Gas Directive (designation of transmission system operators).
- (3) If the person is certified on the third certification ground in section 8G, the independent system operator nominated in the application for certification is designated as a gas transmission system operator for the purposes of that Article.
- (4) As soon as is reasonably practicable after a person is designated by virtue of this section, the Authority must notify the designation to—
  - (a) the person designated;
  - (b) the Secretary of State; and
  - (c) the European Commission.

## **8K Monitoring and review of certification**

- (1) The Authority must monitor, in respect of each certified person, whether the basis on which the Authority decided to certify the person, including the certification ground on which the person was certified, (the “certification basis”) continues to apply.

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- (2) If, on or after 3 March 2013, as result of information it has received or obtained, the Authority thinks that a person from a third country has taken or may take control of a certified person, the Authority must, as soon as is reasonably practicable—
- (a) notify the information to the Secretary of State and the European Commission; and
  - (b) enclose with the notification to the Secretary of State any further information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.
- (3) The Authority must review whether the certification basis in respect of a certified person continues to apply if the European Commission asks it to do so.
- (4) A review under subsection (3) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.
- (5) The Authority may also review whether the certification basis in respect of a certified person continues to apply if—
- (a) the certified person notifies it of any event or circumstance which may affect that basis; or
  - (b) the Authority thinks that the basis may no longer apply.
- (6) A review under subsection (5) is to be carried out within the 4 months beginning with—
- (a) if paragraph (a) of subsection (5) applies, the day on which the Authority receives the notification under that paragraph;
  - (b) otherwise, the first day on which the Authority thinks that the certification basis may no longer apply.
- (7) Subsection (8) applies where—
- (a) by virtue of section 8H(7) or (9), the Authority has treated the fourth or fifth test under section 8H as passed;
  - (b) a person is certified in reliance on that treatment; and
  - (c) the period specified under section 8I as the period at the end of which that treatment will cease comes to an end.
- (8) Where this subsection applies, the Authority must review whether that test is now passed.
- (9) A review under subsection (8) is to be carried out within the 4 months beginning with the end of the period mentioned in subsection (7)(c).
- [ If, before any of the deadlines mentioned in subsection (4), (6) or (9) (or before such
- <sup>F117</sup>(10) deadline as previously extended under this subsection), the Authority asks the certified person or a relevant producer or supplier for information under section 8L(2) or (3), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.]

*Status: Point in time view as at 30/11/2016.*

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### Textual Amendments

F117 S. 8K(10) inserted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014](#) (S.I. 2014/3333), regs. 1(1), 2(4) (with reg. 4)

## 8L Review of certification: requirement to provide information etc

- (1) As soon as is reasonably practicable after beginning a review under section 8K, the Authority must notify the certified person that the review is being carried out and of the reasons for it.
- (2) The Authority may ask that person for any information the Authority thinks is relevant to the review, and the person must supply the information if—
  - (a) it is in the person's possession; or
  - (b) it is information which the person could reasonably be expected to obtain.
- (3) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to a review under section 8K, and the relevant producer or supplier must supply that information if—
  - (a) it is in the relevant producer or supplier's possession; or
  - (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.
- (4) A person required to supply information under subsection (2) or (3) must do so by any deadline specified by the Authority.

## 8M Report as to any connection of certified person with a country outside the European Economic Area

- (1) This section applies if the Authority notifies information to the Secretary of State under section 8K(2) in respect of a certified person.
- (2) The Secretary of State must prepare a report on whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.
- (3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.
- (4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 8L(2) or (3) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.
- (5) In preparing the report, the Secretary of State must take into account—
  - (a) any relevant international law; and
  - (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

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## **8N Continuation or withdrawal of certification**

- (1) Where the Authority reviews under section 8K(3) or (5) whether the certification basis in respect of a certified person continues to apply, it may, within the 4 months mentioned in section 8K(4) or (6) [<sup>F118</sup>or where relevant the 4 months mentioned in section 8K(10),] either—
  - (a) make a preliminary decision that the certification should be continued on the certification ground mentioned in section 8K(1); or
  - (b) make a preliminary decision that the certification should be withdrawn.
- (2) If the Authority does not make a decision under subsection (1) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the certification ground mentioned in section 8K(1).
- (3) Where the Authority reviews under section 8K(8) whether the fourth or fifth test under section 8H is now passed, it may, within the 4 months mentioned in section 8K(9) [<sup>F119</sup>or where relevant the 4 months mentioned in section 8K(10)] , either—
  - (a) make a preliminary decision that the certification should be continued on the basis that the test is now passed; or
  - (b) make a preliminary decision that the certification should be withdrawn.
- (4) If the Authority does not make a decision under subsection (3) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the basis that the test is now passed.
- (5) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this section, the Authority must—
  - (a) notify the decision to the certified person and the Secretary of State; and
  - (b) notify the decision to the European Commission, enclosing the information it considers relevant to the decision.
- (6) Subsections (7) to (9) apply in relation to the Authority’s final decision under Article 3 of the Gas Regulation whether to confirm the certification.
- (7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—
  - (a) the person in relation to whom the review was carried out;
  - (b) the Secretary of State; and
  - (c) the European Commission.
- (8) If the final decision is to continue the certification the person is to be taken as continuing to be certified by the Authority under section 8F.
- (9) Otherwise, the person is to be taken as no longer certified.
- (10) Section 8G(9)(a) and (b) applies in relation to a decision mentioned in this section as it applies in relation to a decision mentioned in section 8G(1), but as if—
  - (a) the references in section 8G(9)(a) and (b) to the certification of the applicant were references to the continued certification of the person certified; and
  - (b) the reference in section 8G(9)(b) to a report prepared under section 8E were a reference to a report prepared under section 8M.

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### Textual Amendments

- F118** Words in s. 8N(1) inserted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), **2(5)** (with reg. 4)
- F119** Words in s. 8N(3) inserted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), **2(6)** (with reg. 4)

## 8O Prohibition on the exercise of certain shareholder rights and rights of appointment

- (1) A person must not exercise a shareholder right or a right of appointment if—
- the right falls within subsection (2), (3), (4) or (5);
  - the relevant date in respect of the certified person mentioned in that subsection has been reached;
  - the exercise of the right would or might lead the certified person to discriminate in favour of the relevant producer or supplier mentioned in that subsection; and
  - the relevant producer or supplier is a person to whom subsection (6) applies.
- (2) A right falls within this subsection if—
- it is a shareholder right;
  - it is held by a person who controls a person certified on the certification ground in section 8G(3); and
  - it is exercisable in relation to a relevant producer or supplier.
- (3) A right falls within this subsection if—
- it is a shareholder right;
  - it is exercisable in relation to a person certified on the certification ground in section 8G(3); and
  - it is held by a person who controls a relevant producer or supplier.
- (4) A right falls within this subsection if—
- it is a shareholder right;
  - the person who holds it appointed a senior officer of a person certified on the certification ground in section 8G(3);
  - the person appointed continues to hold that office; and
  - the right is exercisable in relation to a gas undertaking which is a relevant producer or supplier.
- (5) A right falls within this subsection if—
- it is a right to appoint a senior officer of a person certified on the certification ground in section 8G(3); and
  - the person who holds it has, within the immediately preceding period of 3 years, exercised a shareholder right in relation to a gas undertaking which is a relevant producer or supplier.
- (6) This subsection applies to a person if, in order to carry out some or all of the activity by virtue of which the person is a relevant producer or supplier, the person—

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- (a) requires a licence under section 7A of this Act, section 6 of the Electricity Act 1989 (licences authorising supply, etc), or section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum); or
  - (b) would require such a licence if carrying out the activity in Great Britain.
- (7) In this section—
- (a) “exercise” means exercise directly or indirectly, and “exercisable” is to be interpreted accordingly; and
  - (b) “relevant date” means the relevant date for the purposes of section 8C(1) or (2).

## **8P Validity of acts infringing section 8O**

- (1) The following are voidable on an application to the court—
  - (a) the exercise of a shareholder right in breach of section 8O;
  - (b) the appointment of a senior officer in breach of that section.
- (2) Any person may make an application under subsection (1).
- (3) Such an application may not be made after the end of the 5 years beginning with the day on which the shareholder right was exercised or the appointment made.
- (4) If, by virtue of this section, the court declares the exercise of a shareholder right or an appointment to be void, it may make an order as to the consequences of its declaration.
- (5) 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.

## **8Q Interpretation**

- (1) In sections 8C to 8P and this section—
  - “control”, in relation to one person having control over another, has the meaning given by Article 2(36) of the Gas Directive (but in determining whether one person (“person A”) has control over another (“person B”) no account is to be taken of any unexercised contractual or other right which would, if exercised, give person A control over person B and which was conferred as a condition of the provision of either financial support or a guarantee (or both), by person A in relation to the business of person B); and references to one person controlling another are to be interpreted accordingly;
  - “certified” means taken in accordance with section 8F(8) or 8N(8) to be certified (or as continuing to be certified) by the Authority under section 8F; and “certify” and “certification” are to be interpreted accordingly;
  - “certification grounds” has the meaning given by section 8G(2);
  - “person from a third country” means a person the Authority thinks is from a third country;
  - “shareholder right” means a right, conferred by the holding of a share in the company’s share capital—
    - (a) to vote at general meetings of the company; or
    - (b) to appoint or remove a member of the company’s board of directors;
  - “third country” means a country that is not, and is not part of, an EEA state.



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- (2) In this Part “gas undertaking” means a person who—
- (a) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain;
  - (b) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7;
  - (c) supplies to any premises gas which has been conveyed to those premises through pipes;
  - (d) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or
  - (e) otherwise sells gas.
- (3) In this Part “relevant producer or supplier”, in relation to an applicant for certification or a certified person, means a person who falls within each of subsections (4) and (5).
- (4) A person falls within this subsection if the person—
- (a) is a gas undertaking;
  - (b) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
  - (c) supplies electricity to any premises; or
  - (d) otherwise generates or sells electricity,
- and terms used in paragraphs (b) and (c) of this subsection have the same meanings in those paragraphs as in Part 1 of the Electricity Act 1989.
- (5) A person falls within this subsection if the person carries out in an EEA state some or all of the activity by virtue of which the person falls within subsection (4) and—
- (a) requires a licence under section 7A of this Act or section 6 of the Electricity Act 1989 (licences authorising supply, etc) to do so;
  - (b) would, in the Authority’s opinion, require such a licence if carrying out the activity in Great Britain; or
  - (c) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of the person.]

*[<sup>F120</sup>Storage facilities: independence*

#### **Textual Amendments**

**F120** Ss. 8R, 8S and cross-heading inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), 6

## **8R Independence of storage facilities**

- (1) This section applies to a storage facility unless a minor facility exemption is in force in respect of that facility under section 8S.

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- (2) The owner of a storage facility to which this section applies must, notwithstanding any licence held by the owner, refrain from producing gas in an EEA state.
- (3) The owner must also, notwithstanding any licence held by the owner, refrain from carrying out any of the following activities in an EEA state except to the extent that the activity is necessary for the efficient operation of the storage facility or of another facility used by the owner to store gas—
  - (a) the supply to any premises of gas which has been conveyed to those premises through pipes;
  - (b) the making of an arrangement with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that gas transporter;
  - (c) any other sale of gas.
- (4) If an affiliate of the owner carries out in an EEA state an activity which, under subsection (2) or (3), the owner must refrain from carrying out, the owner must operate the storage facility independently of the interests of that affiliate and must, in particular, ensure that—
  - (a) no senior officer or manager of the owner is a senior officer or manager of the affiliate;
  - (b) if a senior officer or manager of the owner has an interest in the affiliate that conflicts, or is likely to conflict, with the interests of the storage facility, the owner maintains procedures to ensure that the storage facility is operated independently of that interest in the affiliate;
  - (c) the owner is entitled to take decisions without the consent of that affiliate in respect of any assets necessary to operate, maintain or develop the storage facility; and
  - (d) the owner does not take instructions from the affiliate regarding day to day operations or individual decisions concerning the construction or upgrading of the storage facility.
- (5) Subsection (4)(c) and (d) does not prevent a parent undertaking of the owner from requiring the owner—
  - (a) to obtain the parent undertaking's approval of the owner's annual financial planning;
  - (b) to comply with restrictions on the owner's overall indebtedness.
- (6) The owner must establish a programme (the "independence programme") in relation to the owner's senior officers, other officers, managers and employees for the purpose of ensuring that they do not cause the owner to—
  - (a) discriminate against persons who are not affiliates of the owner; or
  - (b) breach any of the owner's obligations under section 11C regarding the disclosure or use of information.
- (7) The owner must—
  - (a) ensure that compliance with the independence programme is monitored; and
  - (b) each year, publish a report setting out the measures taken in accordance with the independence programme and send a copy to the Authority.
- (8) For the purposes of this section a person produces gas if the person—
  - (a) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under

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section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain; or

- (b) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7.

(9) In this section—

“affiliate”, in relation to a person (“person A”), means—

- (a) a person who has control of person A; or
- (b) a person who is under the control of the same person as person A;

“control” has the meaning given by section 8Q(1);

“manager”, in relation to the owner of a storage facility or an affiliate of the owner, means a natural person who is responsible, directly or indirectly, for the day to day management of the owner or the affiliate;

“parent undertaking” has the meaning given by section 1162 of the Companies Act 2006.

- (10) The reference in subsection (4)(b) to a conflict of interests includes a conflict of interest and duty and a conflict of duties.

## **8S Independence of storage facilities and duty to allow others to use them: exemptions for minor facilities**

- (1) A person who is or expects to be an owner of a storage facility may apply in writing to the Authority for an exemption from the requirements of sections 8R and 19B in respect of that facility (a “minor facility exemption”).
- (2) The Authority must give a minor facility exemption in respect of a facility where it is satisfied that use of the facility by other persons is not technically or economically necessary for the operation of an efficient gas market.
- (3) A minor facility exemption—
  - (a) must be in writing;
  - (b) may be given—
    - (i) for an indefinite period or for a period determined under the exemption;
    - (ii) unconditionally or subject to such conditions as the Authority considers appropriate.
- (4) The Authority must publish its decision to give or refuse to give a minor facility exemption together with the reasons for the decision.
- (5) A minor facility exemption may be revoked—
  - (a) in accordance with provisions contained in it;
  - (b) at any other time, if the Authority considers that the condition in subsection (2) is no longer met.
- (6) The Authority must from time to time publish a document setting out how it will determine whether the use of a facility by other persons is technically or economically necessary for the operation of an efficient gas market, including the matters it will take into account when determining this.

*Status: Point in time view as at 30/11/2016.*

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- (7) Publication under subsection (4) or (6) must be in such manner as the Authority considers appropriate.
- (8) Before publishing a document under subsection (6) the Authority must consult—
- (a) the Secretary of State; and
  - (b) such other persons as the Authority considers appropriate.]

*[<sup>F121</sup> Powers and duties of public gas transporters]*

**Textual Amendments**

**F121** Cross-heading substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 3**; S.I. 1996/218, **art. 2**

**9** [<sup>F122</sup> **General powers and duties.**]

- (1) It shall be the duty of a [<sup>F123</sup> 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 [<sup>F124</sup>—
    - (i)]  
to connect to that system, and convey gas by means of that system to, any premises [<sup>F125</sup>; or.
    - (ii) to connect to that system a pipe-line system operated by an authorised transporter.]
- [<sup>F126</sup>(1A) It shall also be the duty of a gas transporter to facilitate competition in the supply of gas.]
- (2) It shall also be the duty of a [<sup>F123</sup> gas transporter] to avoid any undue preference or undue discrimination—
- (a) in the connection of premises [<sup>F127</sup>, or a pipe-line system operated by an authorised transporter,] 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 [<sup>F123</sup> gas transporters]); and
  - (b) Schedule 4 to this Act (which relates to the breaking up of streets and bridges by such transporters).

**Textual Amendments**

**F122** S. 9 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 3**; S.I. 1996/218, **art. 2**

**F123** Words in s. 9(1)(2)(3)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 2(1)**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

**F124** S. 9(1)(b): “-(i)” inserted (1.10.2001) by 2000 c. 27, **s. 79(2)(a)**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

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- F125** S. 9(1)(b)(ii) and the word “or” immediately preceding it inserted (1.10.2001) by 2000 c. 27, s. 79(2)(b); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F126** S. 9(1A) inserted (1.10.2001) by 2000 c. 27, s. 79(3); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F127** Words in s. 9(2)(a) inserted (1.10.2001) by 2000 c. 27, s. 79(4); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

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

- C34** S. 9(1)(b) applied (with modifications) (1.3.1996) by S.I. 1996/399, art. 3(1)
- C35** 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>F128</sup>10 Duty to connect certain premises.**

- (1) Subsection (2) below applies to any premises in an authorised area of a [<sup>F129</sup>gas transporter] which—
- are situated within 23 metres from a relevant main of the transporter; or
  - 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 [<sup>F129</sup>gas transporter] shall, on being required to do so by the owner or occupier of any premises to which this subsection applies—
- 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
  - 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 [<sup>F129</sup>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 [<sup>F129</sup>gas transporter] shall maintain the connection until such time as it is no longer required by the owner or occupier of the premises.

[ A gas transporter may require any person who requires a connection under <sup>F130</sup>(3A) subsection (2)(b) to accept any terms—

- indemnifying the transporter in respect of any liability connected with the laying of the pipe;
  - which it is reasonable in all the circumstances for that person to be required to accept.]
- (4) Where any person requires a connection in pursuance of subsection (2) above, he shall serve on the [<sup>F129</sup>gas transporter] a notice specifying—
- the premises in respect of which the connection is required; and
  - the day (not being earlier than a reasonable time after the service of the notice) upon which the connection is required to be made.

*Status: Point in time view as at 30/11/2016.*

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- (5) Where any pipe is supplied and laid by a [<sup>F129</sup>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.
- [ Where in pursuance of subsection (2)(b) a gas transporter connects any premises to a  
<sup>F131</sup>(5A) relevant main by a pipe supplied and laid by the owner or occupier of the premises, the cost of making the connection shall, if and to the extent that the transporter so requires and the conditions of his licence so allow, be defrayed by the person supplying and laying the pipe.]
- (6) Where at any time a [<sup>F129</sup>gas transporter] connects any premises under subsection (2) (b) above—
- (a) the pipe supplied and laid by the owner or occupier of the premises; and
  - (b) any rights [<sup>F132</sup>or liabilities] 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 [<sup>F133</sup>, rights or liabilities] of the transporter.
- (7) The Director may, with the consent of the Secretary of State, make provision by regulations for entitling a [<sup>F129</sup>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 [<sup>F129</sup>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 [<sup>F129</sup>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;

*Status: Point in time view as at 30/11/2016.*

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- (b) the making or maintenance of the connection would involve a new or increased supply of gas to the premises in question;
- (c) the [<sup>F129</sup>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 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 [<sup>F129</sup>gas transporter], means any distribution main in [<sup>F134</sup>an authorised area of his] 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 [<sup>F129</sup>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 [<sup>F129</sup>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

**F128** S. 10 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 4**; S.I. 1996/218, **art. 2**

*Status: Point in time view as at 30/11/2016.*

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- F129** Words in s. 10(1)-(10)(12)-(13) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F130** S. 10(3A) inserted (1.10.2001) by 2000 c. 27, s. 80(2); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F131** S. 10(5A) inserted (1.10.2001) by 2000 c. 27, s. 80(3); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F132** Words in s. 10(6)(b) inserted (1.10.2001) by 2000 c. 27, s. 80(4); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F133** Words in s. 10(6) substituted (1.10.2001) by 2000 c. 27, s. 80(5); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F134** Words in s. 10(12) substituted (1.10.2001) by 2000 c. 27, s. 80(6); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[<sup>F135</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”),
- 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**

**F135** 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>F136</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 [<sup>F137</sup>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



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- (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 [<sup>F137</sup>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

**F136** S. 11 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 5**; S.I. 1996/218, **art. 2**

**F137** Words in s. 11(1)(2) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 2(1)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in arts. 3-20)

#### <sup>F138</sup>*Duties of facility owners and prospective facility owners*

#### Textual Amendments

**F138** Ss. 11A-11C and cross-heading inserted (10.11.2011) by **The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704)**, regs. 1(1), 7(2)

### 11A General duties of facility owners

- (1) This section applies to—
- (a) a storage facility;
  - (b) an LNG import or export facility.
- (2) The owner of a facility to which this section applies must—
- (a) operate, maintain and develop the facility, so far as it is economical to do so, in a manner calculated to ensure that the facility is secure, reliable and efficient;
  - (b) take any steps required by the Authority to ensure that the owner maintains sufficient financial resources to enable the owner to comply with the owner’s obligations under this Act and under the Gas Regulation.

### 11B Duty of current and prospective LNG import or export facility owners to provide information

A person who is or expects to be the owner of an LNG import or export facility must provide the Authority with such information in such manner and at such times as the Authority may reasonably require to facilitate the performance of its functions under this Act.

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## 11C Restrictions on disclosure of information by facility owners

- (1) The owner of a storage facility or LNG import or export facility must take all reasonable steps to ensure that commercially sensitive information relating to the operation of the facility is not disclosed—
  - (a) to a person in a way that discriminates against any other person or description of persons;
  - (b) to an associated undertaking unless the disclosure is necessary in order to enable a transaction with that associated undertaking to take place.
- (2) Information which is obtained by the owner of a storage facility or LNG import or export facility from an associated undertaking for the purpose of, or in the course of, a transaction with that undertaking must not be used by the owner for any other purpose.]

*[<sup>F139</sup> Gas conveyed by Public Gas Transporters]*

### Textual Amendments

**F139** 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**

## 12 [<sup>F140</sup> Methods of calculating therms.]

- (1) Except in prescribed cases, the number of therms or kilowatt hours conveyed by a [<sup>F141</sup> gas transporter] to premises, or to pipe-line systems operated by other [<sup>F141</sup> 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 [<sup>F141</sup> 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 [<sup>F141</sup> gas transporter], means a calorific value declared by the transporter in accordance with regulations under this section, or so declared by another [<sup>F141</sup> gas transporter] and adopted by the transporter in accordance with such regulations.

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- (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 [<sup>F141</sup>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;
  - (d) for requiring such premises, apparatus and equipment as the Director may direct to be provided and maintained by [<sup>F141</sup>gas transporters] for the purpose of making such determinations;
  - (e) for requiring [<sup>F141</sup>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 [<sup>F141</sup>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 [<sup>F141</sup>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 [<sup>F141</sup>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 [<sup>F141</sup>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.

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- (7) A <sup>F141</sup>[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

**F140** 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**

**F141** Words in s. 12 substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. 1 para. 2(1)**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

#### <sup>F142</sup>13 Calorific values: tests of apparatus etc.

- (1) The Director shall appoint competent and impartial persons—
  - (a) to carry out tests of apparatus and equipment provided and maintained by <sup>F143</sup>[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 <sup>F143</sup>[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 <sup>F143</sup>[gas transporters] for the purpose of carrying out such tests;
  - (c) for requiring samples of gas to be taken by <sup>F143</sup>[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 <sup>F143</sup>[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 <sup>F143</sup>[gas transporters] for the purpose of carrying out such tests and otherwise for the purposes of this section or section 12 above.

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- (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 [<sup>F143</sup>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.
- (6) Any sums received by the Director under this section shall be paid into the Consolidated Fund.]

**Textual Amendments**

**F142** S. 13 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 7**; S.I. 1996/218, **art. 2**

**F143** Words in s. 13 substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 2(1)**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

<sup>F144</sup>**14** .....

**Textual Amendments**

**F144** 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**

<sup>F145</sup>**14A** .....

**Textual Amendments**

**F145** 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**

<sup>F146</sup>**15** .....

**Textual Amendments**

**F146** S. 15 repealed (1.3.1996) by 1995 c. 45, ss. 9(3), 17(5), **Sch. 6**; S.I. 1996/218, **art. 2**

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**[<sup>F147</sup>16 Standards of gas quality.**

- (1) The Authority may, with the consent of the Secretary of State, prescribe—
  - (a) standards of pressure and purity to be complied with by gas transporters in conveying gas to premises or to pipe-line systems operated by other gas transporters; and
  - (b) other standards with respect to the properties, condition and composition of gas so conveyed.
- (2) Before making any regulations under this section the Authority shall consult such persons and organisations as it considers appropriate and such gas transporters as appear to it to be affected by the regulations.
- (3) The Authority shall appoint competent and impartial persons for the purpose of—
  - (a) carrying out tests of gas, apparatus or equipment in accordance with regulations under this section; and
  - (b) assisting the Authority in exercising functions under this section and regulations made under it.
- (4) Regulations under this section may make provision—
  - (a) for requiring tests of gas conveyed by gas transporters to be carried out by persons appointed under subsection (3) or by gas transporters for the purpose of ascertaining whether the gas conforms with the standards prescribed by the regulations;
  - (b) for requiring such tests to be carried out on the basis of samples taken by persons appointed under subsection (3) or by gas transporters; and
  - (c) for requiring samples of gas taken under paragraph (b) to be provided by gas transporters for the purpose of carrying out such tests.
- (5) Regulations under this section may make provision—
  - (a) for requiring such premises, apparatus and equipment as the Authority may direct to be provided and maintained by gas transporters for the purpose of carrying out tests required under subsection (4)(a);
  - (b) for requiring tests of apparatus and equipment so provided to be carried out by persons appointed under subsection (3); and
  - (c) for requiring gas transporters to carry out tests of apparatus and equipment so provided and maintained by them.
- (6) Regulations under this section may make provision—
  - (a) as to the places or premises and the times at which, and the manner in which—
    - (i) tests under this section are to be carried out;
    - (ii) samples of gas are to be taken and provided under this section; and
    - (iii) results of tests under this section are to be notified or made available;
  - (b) for the Authority to require by direction any matter which may be required by regulations by virtue of paragraph (a);
  - (c) for persons representing the gas transporter concerned to be present during the carrying out of any tests carried out by persons appointed under subsection (3);
  - (d) for the results of tests under this section to be made available to other licence holders and to the public;
  - (e) for requiring gas transporters to notify the results of such tests carried out by them to the Authority or to any person appointed under subsection (3);

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- (f) for conferring powers of entry on property owned or occupied by gas transporters for the purpose of carrying out tests under this section and otherwise for the purposes of the regulations.
- (7) Subject to subsection (8), the Authority may by notice in writing require a gas transporter to give to the Authority, or to any person appointed by it for the purpose, within such time and at such place as may be specified in the notice, such information as the Authority may reasonably require for the purpose of making regulations under this section or of giving directions under such regulations.
- (8) A gas transporter shall not be required under subsection (7) to give any information which he could not be compelled to give in evidence in civil proceedings before the High Court or, in Scotland, the Court of Session.
- (9) Every person who is a gas transporter during any period shall pay to the Authority such proportion as the Authority may determine of such part of its expenses for that period as the Authority may determine to be attributable to its functions in connection with the testing of gas for the purposes of this section.
- (10) It shall be the duty of every gas transporter to conduct his business in such a way as can reasonably be expected to secure compliance with the standards set under subsection (1).]

**Textual Amendments**

**F147** S. 16 inserted (1.10.2001) by [2000 c. 27, s. 101](#); [S.I. 2001/3266, arts. 1\(2\), 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

<sup>F148</sup>**15B** .....

**Textual Amendments**

**F148** 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>F149</sup> Gas conveyed by public gas transporters and others]*

**Textual Amendments**

**F149** 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](#)

<sup>F150</sup>**16** .....

**Textual Amendments**

**F150** S. 16 repealed (1.4.1996) by [S.I. 1996/551, reg. 12\(1\)](#)

*Status: Point in time view as at 30/11/2016.*

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**[<sup>F151</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 [<sup>F152</sup>employed in the civil service of the State], 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 [<sup>F153</sup>employed in the civil service of the State] 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.
- <sup>F154</sup>(7A) [ The Secretary of State may pay, out of money provided by Parliament, to meter examiners who are not employed in the civil service of the State or to any employer of such examiners—
- (a) sums in connection with the performance by such examiners of functions conferred by or under this section or gas meter regulations (within the meaning of section 92 of the Energy Act 2008), and
  - (b) sums in respect of any pension payable to or in respect of such examiners.]
- (8) All fees payable to meter examiners who are [<sup>F155</sup>employed in the civil service of the State] 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.



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- (9) Regulations under this section, which shall be made by the Director <sup>F156</sup>... , may make provision—
- (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 [<sup>F157</sup>employed in the civil service of the State] 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

**F151** S. 17 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 13**; S.I. 1996/218, **art. 2**

**F152** Words in s. 17(2) substituted (1.4.2009) by **Energy Act 2008 (c. 32), ss. 93(2)**, 110(2); S.I. 2009/45, **art. 3(b)(i)**

**F153** Words in s. 17(7) substituted (1.4.2009) by **Energy Act 2008 (c. 32), ss. 93(3)**, 110(2); S.I. 2009/45, **art. 3(b)(i)**

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- F154** S. 17(7A) inserted (1.4.2009) by Energy Act 2008 (c. 32), ss. 93(4), 110(2); S.I. 2009/45, art. 3(b)(i)
- F155** Words in s. 17(8) substituted (1.4.2009) by Energy Act 2008 (c. 32), ss. 93(3), 110(2); S.I. 2009/45, art. 3(b)(i)
- F156** Words in s. 17(9) repealed (1.4.2009) by Energy Act 2008 (c. 32), ss. 93(5), 110(2), Sch. 6; S.I. 2009/45, art. 3(b)(i)
- F157** Words in s. 17(10) substituted (1.4.2009) by Energy Act 2008 (c. 32), ss. 93(3), 110(2); S.I. 2009/45, art. 3(b)(i)

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

- C36** S. 17 modified (30.10.2006) by The Measuring Instruments (Gas Meters) Regulations 2006 (S.I. 2006/2647), regs. 1(2), 28(1)-(4) (with reg. 27(1)(2))
- C37** S. 17 modified (1.4.2009) by Energy Act 2008 (c. 32), ss. 92(2)(5), 110(2); S.I. 2009/45, art. 3(b)(i)

**18 Safety regulations.**

<sup>F158</sup>(1) .....

- (2) The Secretary of State may by regulations make provision for empowering any officer authorised by the relevant authority—
- (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>F159</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>F159</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>F160</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—

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- (a) reconnecting any gas fitting or [<sup>F161</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>F162</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>F163</sup>conveyed] to any premises where in pursuance of the regulations the refusal of the relevant authority to [<sup>F164</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.
- (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>F165</sup>any reference to a gas operator were a reference to the relevant authority].
- [<sup>F166</sup>(9) In this section “the relevant authority”—
  - (a) in relation to dangers arising from the conveyance of gas by a [<sup>F167</sup>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 [<sup>F167</sup>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 [<sup>F167</sup>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 [<sup>F167</sup>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.]

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### Textual Amendments

- F158** S. 18(1) repealed (6.3.1992) by [Offshore Safety Act 1992 \(c. 15\)](#), ss. 3(3)(a), 7(2), [Sch. 2](#).
- F159** 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](#).
- F160** 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](#).
- F161** 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](#).
- F162** 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](#).
- F163** 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](#).
- F164** 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](#).
- F165** 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](#).
- F166** 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](#).
- F167** Words in s. 18 substituted (1.10.2001) by [2000 c. 27, s. 108](#), [Sch. 6 Pt. I para. 2\(1\)](#); S.I. 2001/3266, [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### Marginal Citations

- M4** [1954 c. 21](#).

## [<sup>F168</sup>18A Gas escape regulations.

- (1) The Secretary of State may by regulations make provision—
- (a) for empowering any officer authorised by a [<sup>F169</sup>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;

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- (b) any reference to the relevant authority were a reference to a [<sup>F169</sup>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 [<sup>F169</sup>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

**F168** S. 18A inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 15**; S.I. 1996/218, **art. 2**

**F169** Words in s. 18A substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 2(1)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M5** 1954 c.21.

*[<sup>F170</sup>Pipe-line systems, storage facilities and LNG import or export facilities: rights of use etc]*

#### Textual Amendments

**F170** S. 19 cross-heading substituted (10.11.2011) by **The Electricity and Gas (Internal Markets) Regulations 2011** (S.I. 2011/2704), regs. 1(1), **8(1)**

## 19 [<sup>F171</sup>Acquisition of rights to use pipe-line systems.]

- (1) In the case of a pipe-line system operated by a [<sup>F172</sup>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

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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 [<sup>F172</sup>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 [<sup>F172</sup>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 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 [<sup>F172</sup>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 [<sup>F172</sup>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.

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- (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

**F171** 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**

**F172** Words in s. 19 substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 2(1)(2)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

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

**C38** S. 19 applied (with modifications) (1.3.1996) by S.I. 1996/399, **art. 4(2)**

**C39** S. 19(2)(c) applied (with modifications) (1.3.1996) by S.I. 1996/399, **art. 4(4)(c)**

### [<sup>F173</sup>19A Application of section 19B to storage facilities.

[<sup>F174</sup>(1) Section 19B applies to a storage facility, except as provided in subsections (1A) and (1B).

(1A) Section 19B does not apply to a storage facility if it is subject to a minor facility exemption under section 8S.

(1B) Section 19B does not apply to a storage facility if, or to the extent that, it is exempt under this section.

(1C) The Authority must maintain on its website a list of the facilities to which section 19B applies.

(1D) If only part of the capacity of a storage facility is exempt under this section, the list under subsection (1C) must specify the extent to which section 19B applies to the facility.]

(2) [<sup>F175</sup>A person who is or expects to be an owner] of a storage facility may apply in writing to the Director for an exemption [<sup>F176</sup>under this section][<sup>F177</sup>with respect to the facility].

[ An application under subsection (2) must relate to—

<sup>F178</sup>(2A) (a) a storage facility (or proposed storage facility) which is not yet operational; or  
(b) a modification (or proposed modification) which falls within subsection (2B) and is not yet operational.

(2B) A modification (or proposed modification) falls within this subsection if it is—

- (a) a modification of a storage facility to provide for a significant increase in the capacity of the facility; or  
(b) a modification of a storage facility to enable the development of new sources of gas supply.

(2C) The Authority must send to the European Commission a copy of an application under subsection (2) as soon as is reasonably practicable following its receipt.]

[<sup>F179</sup>(3) An exemption under this section must be given in writing and on the following terms—

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- (a) a term specifying the period of the exemption, or specifying how that period is to be determined;
- (b) a term as to whether the exemption applies to all of the capacity of the facility or part of that capacity only;
- (c) a term that the owner must comply with the capacity allocation mechanism approved in accordance with section 19DB; and
- (d) such other terms regarding non-discriminatory access to the facility or any other matter as the Authority considers appropriate.

(3A) When determining a term under subsection (3) the Authority must take into account—

- (a) the capacity of the facility or (as the case may be) the increase in capacity of the facility;
- (b) the length of time required to recover the investment in the facility or (as the case may be) the investment in the modification;
- (c) the implications of the exemption for the operation of the gas market in Great Britain.]

<sup>F180</sup>(4) .....

<sup>F180</sup>[<sup>F181</sup>(5) .....

(6) [<sup>F182</sup>Where the Authority receives an application under subsection (2) in relation to a facility or modification, it must give an exemption if it is satisfied that] —

- <sup>F183</sup>(a) .....
- (b) the requirements of subsection (8) are met.

[<sup>F184</sup>(6A) An exemption given in accordance with subsection (6) may apply to all of the capacity of the facility concerned or to part of that capacity only, regardless of the extent of the exemption applied for; but this is subject to subsection (7).]

(7) In respect of a facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of subsection (6)(b) may only be given in relation to that increase in its capacity [<sup>F185</sup>or part of that increase in its capacity] .

[<sup>F186</sup>(7A) When deciding whether the requirements of subsection (8)(a), (d) and (e) are met, the Authority must take into account the way in which capacity is to be allocated under the capacity allocation mechanism approved in accordance with section 19DB.]

(8) The requirements of this subsection are that—

- (a) the facility or (as the case may be) the [<sup>F187</sup>modification] will promote security of supply;
- (b) the level of risk is such that the investment to construct the facility or (as the case may be) to modify the facility <sup>F188</sup>... would not be or would not have been made without the exemption;
- (c) the facility is or is to be owned by a person other than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility;
- (d) charges will be levied on users of the facility or (as the case may) the increase in its capacity; [<sup>F189</sup>and]
- (e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; <sup>F190</sup> ...

<sup>F190</sup>(f) .....



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- (9) Subject to <sup>F191</sup>subsections (9A) and (10) , an exemption may not be given by virtue of subsection (6)(b) more than once in respect of the same facility.
- <sup>F192</sup>(9A) Subsection (9) does not prevent a further exemption being given by virtue of subsection (6)(b) in respect of a facility if the previous exemption given by virtue of that provision in respect of the facility has been revoked under section 19AA(5).]
- (10) Subsection (9) does not prevent a further exemption being given by virtue of subsection (6)(b) in respect of a facility if—
- the facility is or is to be modified to provide for a significant increase in its capacity <sup>F193</sup>or to enable the development of new sources of gas supply] ;
  - the exemption has effect only in relation to <sup>F194</sup>that modification] ; and
  - no previous exemption has been given by virtue of subsection (6)(b) in relation to <sup>F194</sup>that modification] .
- (11) The Authority shall publish its decision to give or refuse to give an exemption <sup>F195</sup>under this section, together with the reasons for its decision,] in such manner as it considers appropriate.]]

#### Textual Amendments

- F173** Ss. 19A-19E inserted (10.8.2000) by [S.I. 2000/1937](#), reg. 2(2), **Sch. 2 para. 1**
- F174** Ss. 19A(1)-(1D) substituted for s. 19A(1) (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(3)**
- F175** Words in s. 19A(2) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 1(b)**
- F176** Words in s. 19A(2) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(4)**
- F177** Words in s. 19A(2) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 1(c)**
- F178** Ss. 19A(2A)-(2C) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(5)**
- F179** S. 19A(3)(3A) substituted for s. 19A(3) (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(6)**
- F180** S. 19A(4)(5) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(7)**
- F181** Ss. 19A(5)-(11) substituted for s.19(5) (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 1(f)**
- F182** Words in s. 19A(6) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(8)(a)**
- F183** S. 19A(6)(a) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(8)(b)**
- F184** S. 19A(6A) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(9)**
- F185** Words in s. 19A(7) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(10)**
- F186** S. 19A(7A) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(11)**
- F187** Word in s. 19A(8)(a) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(12)(a)**
- F188** Words in s. 19A(8)(b) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(12)(b)**

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- F189** Word in s. 19A(8)(d) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(12)(c)**
- F190** S. 19A(8)(f) and preceding word omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(12)(d)**
- F191** Words in s. 19A(9) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(13)**
- F192** S. 19A(9A) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(14)**
- F193** Words in s. 19A(10) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(15)(a)**
- F194** Words in s. 19A(10) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(15)(b)**
- F195** Words in s. 19A(11) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(16)**

## <sup>F196</sup> **19A Review and revocation of exemptions under section 19A**

- (1) If the Authority gives, or refuses to give, an exemption under section 19A it must send the following to the European Commission as soon as is reasonably practicable—
  - (a) if the exemption was given, a copy of the exemption and of the terms on which it has been given;
  - (b) the Authority’s reasons for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Gas Directive;
  - (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—
    - (i) relevant financial information;
    - (ii) analysis of the likely effect of the exemption on competition and on the effective functioning of the EU market for natural gas;
  - (d) if the exemption was given, the basis on which the Authority determined—
    - (i) the period of the exemption or how that period is to be determined; and
    - (ii) the capacity to which the exemption applies;
  - (e) any contribution by the storage facility to the diversification of the supply of gas; and
  - (f) any other information requested by the European Commission.
- (2) If, in accordance with Article 36(9) of the Gas Directive, the European Commission requires the Authority to revoke an exemption given under section 19A, or to modify the terms on which it is given, the Authority must—
  - (a) comply with that request within the period of 1 month beginning with the day on which it receives the request; and
  - (b) inform the European Commission when it has done so.
- (3) The Authority must revoke an exemption given under section 19A in respect of a facility—
  - (a) if the construction of the facility, or (as the case may be) the making of the modification to which the exemption relates, has not been started within the 2 years beginning with the relevant date; or
  - (b) if the facility, or (as the case may be) the modification to which the exemption relates, is not operational within the 5 years beginning with the relevant date.

*Status: Point in time view as at 30/11/2016.*

*Changes to legislation: Gas Act 1986, Part I is up to date with all changes known to be in force on or before 22 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)*

- (4) In subsection (3) “relevant date” means—
- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under subsection (1), the date of that notification;
  - (b) if, in accordance with Article 36(9) of the Gas Directive, the European Commission required the Authority to modify the terms, the date of that requirement;
  - (c) otherwise, the date 4 months after the Authority sent the Commission a copy of the exemption and terms under subsection (1).
- (5) The Authority may at any other time revoke an exemption given under section 19A, or modify the terms on which such an exemption is given, in respect of a facility—
- (a) in accordance with the provisions of the exemption; or
  - (b) by giving the owner of the facility a notice of revocation at least 4 months before the revocation takes effect.]

#### Textual Amendments

**F196** S. 19AA inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), 9

#### [<sup>F197</sup>19B 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 [<sup>F198</sup>or liquid 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 [<sup>F198</sup>or liquid gas] stored in the facility.
- [ At least 2 months before publishing the main commercial conditions, or any changes to
- <sup>F199</sup>(3A) the published conditions, under subsection (1), the owner of a relevant facility must—
- (a) publish a draft of the proposed conditions or changes; and
  - (b) inform any person who has a right to have gas stored in the facility that the draft has been published.
- (3B) When finalising conditions or changes under subsection (1), the owner of a relevant facility must take into account any representations it has received about the proposed conditions or changes.]
- (4) Any person who seeks a right to have gas [<sup>F198</sup>or liquid 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.

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- (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 [<sup>F198</sup>or liquid gas] is to be stored in the facility;
  - (b) the kind of gas [<sup>F198</sup>or liquid 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 [<sup>F198</sup>or liquid 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 [<sup>F198</sup>or liquid 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 [<sup>F198</sup>or liquid 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 [<sup>F198</sup>or liquid gas] which any person who has a right to have gas [<sup>F198</sup>or liquid 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 [<sup>F198</sup>or liquid 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 storage of gas [<sup>F198</sup>or liquid gas] by virtue of that right;

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- (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

**F197** Ss. 19A-19E inserted (10.8.2000) by [S.I. 2000/1937, reg. 2\(2\), Sch. 2 para. 1](#)

**F198** Words in s. 19B inserted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\), reg. 1, Sch. 2 para. 2](#)

**F199** S. 19B(3A)(3B) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\), regs. 1\(1\), 10](#)

#### [<sup>F200</sup>19C Application of section 19D to LNG facilities.

[<sup>F201</sup>(1) Section 19D applies to an LNG import or export facility, except as provided in subsections (1A) and (1B).

(1A) Section 19D does not apply to an LNG import or export facility if, or to the extent that, it is exempt under this section.

(1B) Section 19D does not apply to an LNG import or export facility if it is exempt under section 19DZA.]

(2) [<sup>F202</sup>A person who is or expects to be an owner of an [<sup>F203</sup>LNG import or export facility]] may apply in writing to the Director for an exemption [<sup>F204</sup>under this section][<sup>F205</sup>with respect to the facility].

[ An application under subsection (2) must relate to—

<sup>F206</sup>(2A) (a) a facility (or proposed facility) which is not yet operational; or  
(b) a modification (or proposed modification) which falls within subsection (2B) and is not yet operational.

(2B) A modification (or proposed modification) falls within this subsection if it is—

- (a) a modification of an LNG import or export facility to provide for a significant increase in the capacity of the facility; or
- (b) a modification of an LNG import or export facility to enable the development of new sources of gas supply.

(2C) The Authority must send to the European Commission a copy of an application under subsection (2) as soon as is reasonably practicable following its receipt.]

[<sup>F207</sup>(3) An exemption under this section must be given in writing and on the following terms—

- (a) a term specifying the period of the exemption, or specifying how that period is to be determined;
- (b) a term as to whether the exemption applies to all of the capacity of the facility or part of that capacity only;

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- (c) a term that the owner must comply with the capacity allocation mechanism approved in accordance with section 19DB; and
  - (d) such other terms regarding non-discriminatory access to the facility or any other matter as the Authority considers appropriate.
- (3A) When determining a term under subsection (3) the Authority must take into account—
- (a) the capacity of the facility or (as the case may be) the increase in capacity of the facility;
  - (b) the length of time required to recover the investment in the facility or (as the case may be) the investment in the modification; and
  - (c) the implications of the exemption for the operation of the gas market in Great Britain.]
- <sup>F208</sup>(4) . . . . .
- [<sup>F209</sup>(5) The Authority shall give an exemption with respect to a facility where it is satisfied that the requirements of subsection (7) are met.
- [<sup>F210</sup>(5A) An exemption given in accordance with subsection (5) may apply to all of the capacity of the facility concerned or to part of that capacity only, regardless of the extent of the exemption applied for; but this is subject to subsection (6).]
- (6) In respect of a facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of subsection (5) may only be given in relation to that increase in its capacity [<sup>F211</sup>or part of that increase in its capacity].
- [<sup>F212</sup>(6A) When deciding whether the requirements of subsection (7)(a), (d) and (e) are met, the Authority must take into account the way in which capacity is to be allocated under the capacity allocation mechanism approved in accordance with section 19DB.]
- (7) The requirements of this subsection are that—
- (a) the facility or (as the case may be) the [<sup>F213</sup>modification] will promote security of supply;
  - (b) the level of risk is such that the investment to construct the facility or (as the case may be) to modify the facility <sup>F214</sup>... would not be or would not have been made without the exemption;
  - (c) the facility is or is to be owned by a person other than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility;
  - (d) charges will be levied on users of the facility or (as the case may be) the increase in its capacity; [<sup>F215</sup>and]
  - (e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; <sup>F216</sup>...
  - <sup>F216</sup>(f) . . . . .
- (8) Subject to [<sup>F217</sup>subsections (8A) and (9)], an exemption may not be given by virtue of subsection (5) more than once in respect of the same facility.
- [<sup>F218</sup>(8A) Subsection (8) does not prevent a further exemption being given by virtue of subsection (5) in respect of a facility if the previous exemption given by virtue of that subsection in respect of the facility has been revoked under section 19CA(3).]

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- (9) Subsection (8) does not prevent a further exemption being given by virtue of subsection (5) in respect of a facility if—
- the facility is or is to be modified to provide for significant increase in its capacity [<sup>F219</sup>or to enable the development of new sources of gas supply];
  - the exemption has effect only in relation to [<sup>F220</sup>modification]; and
  - no previous exemption has been given by virtue of subsection (5) in relation to [<sup>F220</sup>modification].
- (10) The Authority shall publish its decision to give or refuse to give an exemption [<sup>F221</sup>under this section, together with the reasons for its decision,] in such manner as it considers appropriate.]]

### Textual Amendments

- F200** Ss. 19A-19E inserted (10.8.2000) by S.I. 2000/1937, reg. 2(2), **Sch. 2 para. 1**
- F201** S. 19C(1)-(1B) substituted for s. 19C(1) (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(2)**
- F202** Words in s. 19C(2) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 3(b)**
- F203** Words in s. 19C(2) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(3)(a)**
- F204** Words in s. 19C(2) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(3)(b)**
- F205** Words in s. 19C(2) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 3(c)**
- F206** S. 19C(2A)-(2C) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(4)**
- F207** S. 19C(3)(3A) substituted for s. 19C(3) (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(5)**
- F208** S. 19C(4) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(6)**
- F209** S. 19C(5)-(10) substituted for s. 19C(5) (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 3(f)**
- F210** S. 19C(5A) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(7)**
- F211** Words in s. 19C(6) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(8)**
- F212** S. 19C(6A) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(9)**
- F213** Word in s. 19C(7)(a) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(10)(a)**
- F214** Words in s. 19C(7)(b) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(10)(b)**
- F215** Word in s. 19C(7)(d) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(10)(c)**
- F216** S. 19C(7)(f) and word omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(10)(d)**
- F217** Words in s. 19C(8) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(11)**
- F218** S. 19C(8A) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(12)**

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- F219** Words in s. 19C(9) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **11(13)(a)**
- F220** Word in s. 19C(9) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **11(13)(b)**
- F221** Words in s. 19C(10) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **11(14)**

## **[<sup>F222</sup>19C] Review and revocation of exemptions under section 19C**

- (1) If the Authority gives, or refuses to give, an exemption under section 19C it must send the following to the European Commission as soon as is reasonably practicable—
- (a) if an exemption was given, a copy of the exemption and of the terms on which it has been given;
  - (b) the Authority’s reasons for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Gas Directive;
  - (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—
    - (i) relevant financial information;
    - (ii) analysis of the likely effect of the exemption on competition and on the effective functioning of the EU market for natural gas;
  - (d) if an exemption was given, the basis on which the Authority determined—
    - (i) the period of the exemption or how that period is to be determined; and
    - (ii) the capacity to which the exemption applies;
  - (e) any contribution by the storage facility to the diversification of gas supply; and
  - (f) any other information requested by the European Commission.
- (2) If, in accordance with Article 36(9) of the Gas Directive, the European Commission requires the Authority to revoke an exemption given under section 19C, or to modify the terms on which such an exemption is given, the Authority must—
- (a) comply with that request within the period of 1 month beginning with the day on which it receives the request; and
  - (b) inform the European Commission when it has done so.
- (3) The Authority must revoke an exemption given under section 19C in respect of a facility—
- (a) if the construction of the facility, or (as the case may be) the making of the modification to which the exemption relates, has not been started within the 2 years beginning with the relevant date; or
  - (b) if the facility, or (as the case may be) the modification to which the exemption relates, is not operational within the 5 years beginning with the relevant date.
- (4) In subsection (4) “relevant date” means—
- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under subsection (1), the date of that notification;
  - (b) if, in accordance with Article 36(9) of the Gas Directive, the European Commission required the Authority to modify the terms, the date of that requirement;



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- (c) otherwise, the date 4 months after the Authority sent the Commission a copy of the exemption and terms under subsection (1).
- (5) The Authority may at any other time revoke an exemption given under section 19C, or modify the terms on which such an exemption is given, in respect of a facility—
  - (a) in accordance with the provisions of the exemption; or
  - (b) by giving the owner of the facility a notice of revocation at least 4 months before the revocation takes effect.]

**Textual Amendments**

**F222** S. 19CA inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **12**

**[<sup>F223</sup>19D Acquisition of rights to use LNG facilities.**

- (1) [<sup>F224</sup>Subject to subsection (2A), the owner of an [<sup>F225</sup>LNG import or export facility]] to which this section applies (a “relevant facility”)—
  - (a) shall publish [<sup>F226</sup>prior to their entry into force] the main commercial conditions relating to the grant to another person of a right to have [<sup>F227</sup>gas or][<sup>F226</sup>liquid gas] 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.

<sup>F228</sup>(2) .....

[ The cost or the method of determining the cost of acquiring the right to have [<sup>F227</sup>gas  
<sup>F229</sup>(2A) or] liquid gas treated in a relevant facility and any changes thereto must be approved by the Authority prior to their publication; and such approval may be given on condition that certain modifications are made to the cost or methodology.

- (2B) Before the owner of a relevant facility seeks approval under subsection (2A) he must carry out such consultation as the Authority may require.]
- (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 [<sup>F227</sup> gas or][<sup>F230</sup>liquid gas] treated in the facility.
- (4) Any person who seeks a right to have [<sup>F227</sup> gas or][<sup>F231</sup>liquid gas] 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—
  - <sup>F232</sup>(a) .....
  - (b) the kind of [<sup>F227</sup> gas or][<sup>F233</sup>liquid gas] to be treated (which must be of, or similar to, the kind which the facility is designed to treat); and
  - (c) the quantities of [<sup>F227</sup> gas or][<sup>F234</sup>liquid gas] to be treated.

[<sup>F235</sup>(7) The owner shall notify the applicant of his decision giving reasons for any refusal.]

*Status: Point in time view as at 30/11/2016.*

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- (8) If the owner [<sup>F236</sup>refuses the application] , 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).
- <sup>F237</sup>(9) .....
- (10) [<sup>F238</sup>Where a person applies to the Authority under subsection (8), the Authority shall—]
- [<sup>F239</sup>(a) decide whether to give directions under subsection (11), to consider the application further or to reject the application]
- (b) give notice of his decision to the applicant; and
- [<sup>F240</sup>(c) in the case of a decision that the application is to be considered further—
- (i) give to the owner of the facility, the Health and Safety Executive and any person who has a right to have [<sup>F227</sup>gas or] liquid gas treated in the facility notice that the application is to be so considered and an opportunity of being heard about the matter; and
- (ii) after so considering the matter, decide whether to give directions under subsection (11) or to reject the application and give notice of its decision to the applicant.]
- (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 [<sup>F227</sup>gas or][<sup>F241</sup>liquid gas] 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 [<sup>F227</sup>gas or][<sup>F241</sup>liquid gas] which any person who has a right to have [<sup>F227</sup>gas or][<sup>F241</sup>liquid gas] 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 [<sup>F242</sup>; but this is subject to subsections (11A) and (11B)] .
- [ When considering whether the giving of directions under subsection (11) in respect of
- <sup>F243</sup>(11A) an LNG import or export facility would be prejudicial as mentioned in that subsection, the Authority must disregard any difficulties by virtue of which the owner of the facility may or must apply for an exemption under section 19DZA with respect to the facility.
- (11B) The Authority must not give directions under subsection (11) in respect of an LNG import or export facility if—
- (a) such directions would prevent the owner from carrying out any public service obligation, within the meaning of paragraph (2) of Article 3 of the Gas Directive, which is imposed on the owner pursuant to that paragraph; or
- (b) an exemption is in force with respect to the facility under section 19DZA (regardless of whether that exemption was given before or after the application to the Authority under subsection (8) was made).]
- (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—

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- (i) for securing to the applicant the right to have treated in the facility, <sup>F244</sup>... and in the quantities so specified or determined by or under the directions, [<sup>F227</sup>gas or][<sup>F245</sup>liquid 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 treatment of [<sup>F227</sup>gas or][<sup>F246</sup>liquid gas] by virtue of that right;
  - (iv) for securing to the applicant such ancillary or incidental rights as the Director considers necessary or expedient <sup>F247</sup>...;
- (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

- F223** Ss. 19A-19E inserted (10.8.2000) by S.I. 2000/1937, reg. 2(2), **Sch. 2 para. 1**
- F224** Words in s. 19D(1) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(a)**
- F225** Words in s. 19D(1) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **13(2)**
- F226** Words in s. 19D(1)(a) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(b)**
- F227** Words in s. 19D inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **13(3)**
- F228** S. 19D(2) ceased to have effect (26.8.2004) by virtue of The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(c)**
- F229** S. 19D(2A)(2B) inserted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(d)**
- F230** Words in s. 19D(3) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(e)**
- F231** Words in s. 19D(4) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(e)**
- F232** S. 19D(6)(a) ceased to have effect (26.8.2004) by virtue of The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(f)**
- F233** Words in s. 19D(6)(b) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(g)**
- F234** Words in s. 19D(6)(c) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(g)**
- F235** S. 19D(7) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(h)**
- F236** Words in s. 19D(8) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(i)**
- F237** S. 19D(9) ceased to have effect (26.8.2004) by virtue of The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(j)**
- F238** Words in s. 19D(10) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(k)**
- F239** S. 19D(10)(a) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(l)**
- F240** S. 19D(10)(c) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(m)**

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- F241** Words in s. 19D(11) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(n\)](#)
- F242** Words in s. 19D(11) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), [13\(4\)](#)
- F243** S. 19D(11A)(11B) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), [13\(5\)](#)
- F244** Words in s. 19D(12)(a)(i) omitted (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(o\)\(i\)](#)
- F245** Words in s. 19D(12)(a)(i) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(o\)\(ii\)](#)
- F246** Words in s. 19D(12)(a)(iii) substituted (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(p\)](#)
- F247** Words in s. 19D(12)(a)(iv) omitted (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(q\)](#)

**[<sup>F248</sup> 19D] Duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments**

- (1) The owner of an LNG import or export facility may apply to the Authority for an exemption under this section with respect to the facility if the owner—
  - (a) receives an application under section 19D(4) with respect to the facility; and
  - (b) considers that allowing the application would cause the owner serious financial difficulties because of take-or-pay commitments of the owner under one or more gas-purchase contracts.
- (2) The owner of an LNG import or export facility must apply to the Authority for an exemption under this section with respect to the facility if—
  - (a) the owner refuses an application under section 19D(4) with respect to the facility; and
  - (b) the reason, or one of the reasons, given under section 19D(7) for the refusal is the consideration mentioned in subsection (1)(b).
- (3) An application made by virtue of subsection (2) must be made before the end of the 7 days beginning with the day of the refusal.
- (4) An application for an exemption under this section must enclose all relevant information, including in particular information in respect of—
  - (a) the nature and extent of the difficulties mentioned in subsection (1)(b) which the owner considers would arise (the “difficulties”);
  - (b) any steps taken by the owner to prevent the difficulties from arising; and
  - (c) the period over which the owner considers the difficulties would arise.
- (5) The Authority may give an exemption under this section if it considers that—
  - (a) having regard to any steps taken by the owner to prevent the difficulties from arising, the only reasonably available means of prevention is an exemption under this section; and
  - (b) an exemption ought to be given, having regard to—
    - (i) the objective of achieving a competitive gas market;
    - (ii) the need for the owner to comply with any relevant public service obligation, within the meaning of paragraph (2) of Article 3 of the Gas Directive, which is imposed on the owner pursuant to that paragraph;

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- (iii) the need to ensure security of the supply of gas;
  - (iv) the position of the owner of the facility in the gas market and the level of competition in the market;
  - (v) the level of seriousness of the difficulties;
  - (vi) the time when the gas-purchase contract was entered into, and the extent to which the owner could reasonably have foreseen at that time that the difficulties were likely to arise;
  - (vii) the terms of the gas-purchase contract, including the extent to which the contract allows for market changes;
  - (viii) the significance of the facility to the gas market; and
  - (ix) the overall effect of the exemption on the operation of an economically efficient gas market.
- (6) An exemption under this section must be given for a limited period and in writing and must specify—
- (a) the period of the exemption; and
  - (b) any conditions the Authority considers necessary in order to ensure that the owner takes all reasonably practicable steps to ensure that, by the time the exemption expires, the difficulties would no longer arise.
- (7) If the Authority has given an exemption under this section it must send to the European Commission as soon as is reasonably practicable—
- (a) a copy of its decision to give the exemption, including the terms on which the exemption was given; and
  - (b) any other information the Authority considers relevant to the exemption or to the terms on which the exemption was given.
- (8) An exemption under this section may be modified or revoked by the Authority—
- (a) in accordance with its provisions;
  - (b) at any other time, if the Authority considers that an exemption under this section is no longer required.
- (9) The Authority must modify or revoke an exemption given under this section if required to do so by the European Commission in accordance with Article 48(2) of the Gas Directive.
- (10) In this section “take-or-pay commitment” and “gas-purchase contract” have the same meanings as in Article 48(1) of the Gas Directive.]

**Textual Amendments**

**F248** S. 19DZA inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), 14

**F249** ~~19D~~ **Provision of information**

.....

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### Textual Amendments

**F249** S. 19DA omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **7(3)**

## [<sup>F250</sup>19DB] Allocation of capacity in exempt new and modified facilities

- (1) This section applies in relation to an application for an exemption—
  - (a) under section 19A(2), in respect of all or part of the capacity of a storage facility; or
  - (b) under section 19C(2), in respect of all or part of the capacity of an LNG import or export facility.
- (2) The application must specify the criteria that will be used to determine—
  - (a) who is to be granted rights to use the facility, or the part of the capacity of the facility, to which the application relates (the “exempt infrastructure”); and
  - (b) the way in which those rights may be exercised,

(the “capacity allocation mechanism”).

- (3) The Authority must not give an exemption under section 19A or 19C in response to the application unless it has—
  - (a) approved the capacity allocation mechanism specified in the application; or
  - (b) approved the mechanism on condition that certain modifications are made to it.
- (4) The Authority may only approve the capacity allocation mechanism under subsection (3)(a) if it considers that the mechanism meets the following three conditions.
- (5) The first condition is that before a right to use the exempt infrastructure is granted to the owner of the facility or to any other person—
  - (a) the intention to grant a right to use the exempt infrastructure must be published in a way that the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be interested in using the infrastructure; and
  - (b) such persons must be able to register an interest in using the exempt infrastructure.
- (6) The second condition is that the mechanism must require that any unused capacity in the exempt infrastructure be made available to other users or potential users.
- (7) The third condition is that the mechanism must not prevent, and must not be capable of being used to prevent, subsequent trading of rights to use the exempt infrastructure.
- (8) The Authority may only approve the capacity allocation mechanism under subsection (3)(b) if it considers that the mechanism will meet those three conditions once the modifications on which the approval is conditional have been made.]

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**Textual Amendments**

**F250** S. 19DB inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **15**

**[<sup>F251</sup>19E Sections 19A to 19D: supplemental.**

- (1) In [<sup>F252</sup>sections 19A to [<sup>F253</sup>19D]] and this section—
- “accounting information” means such accounting records as would be required by [<sup>F254</sup>section 386 of the Companies Act 2006] 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;
- <sup>F255</sup> .....
- <sup>F256</sup> .....
- <sup>F256</sup> .....
- <sup>F256</sup> .....
- <sup>F256</sup> .....
- “significant transaction” means—
- (a) any transaction which relates to rights to have [<sup>F257</sup>gas or liquid gas stored in a storage facility], or (as the case may be) [<sup>F258</sup>treated in an LNG import or export facility]; and
- (b) any other transaction which is of a description specified from time to time by the Director by notice;
- <sup>F256</sup> .....
- <sup>F256</sup> .....
- <sup>F256</sup> .....
- (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).
- <sup>F259</sup>(4) .....
- (5) Any reference in section 19B to a right to have gas or gas of [<sup>F260</sup>any kind, or liquid gas or liquid 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 [<sup>F261</sup>that kind, or liquid gas or liquid gas of that kind,].
- <sup>F262</sup>(6) ..... ]

**Textual Amendments**

**F251** Ss. 19A-19E inserted (10.8.2000) by [S.I. 2000/1937](#), reg. 2(2), **Sch. 2 para. 1**

**F252** Words in s. 19E(1) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(a)**

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- F253** Word in s. 19E(1) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **7(4)**
- F254** Words in s. 19E(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 98** (with arts. 6, 11, 12)
- F255** Words in s. 19E(1) omitted (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(b)**
- F256** Words in s. 19E omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **46(a)**
- F257** Words in s. 19E(1) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(h)(i)**
- F258** Words in s. 19E substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **46(b)**
- F259** S. 19E(4) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **46(c)**
- F260** Words in s. 19E(5) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(l)(i)**
- F261** Words in s. 19E(5) inserted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(l)(ii)**
- F262** S. 19E(6) ceased to have effect (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(m)**

**F263** 20 .....

#### Textual Amendments

- F263** 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>F264</sup>(1) If in the case of a pipe-line system operated by a [<sup>F265</sup>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>F265</sup>gas transporter] by the applicant [<sup>F266</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



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purpose of securing that those sums will be paid to [F267the transporter] if he carries out the modifications;

- (d) require [F267the 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 [F268pipe-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 [F268pipe-line system] there were substituted references to the [F268pipe-line system] as it would be with those modifications and the reference in subsection (2) to the Director deciding whether the application is to be adjourned were omitted.

- [F269(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 [F265gas 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 M6Pipe-lines Act 1962.

- [F270(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 M7Pipe-lines Act 1962.]

#### Textual Amendments

**F264** 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**

**F265** Words in s. 21 substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. 1 para. 2(1)**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in arts. 3-20)

**F266** 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**

**F267** 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**

**F268** 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**

**F269** 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**

**F270** 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**

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### Marginal Citations

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

## 22 Effect of directions.

- (1) The obligation to comply with any directions under section [F271 section 19<sup>F272</sup> ... or 21(1)] above (in this section referred to as “relevant directions”) [F273: 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.
- (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 <sup>F274</sup> .....
- (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.

<sup>F275</sup>(5) .....

### Textual Amendments

- F271** Words in s. 22(1) substituted (10.8.2000) by S.I. 2000/1937, reg. 2(2), **Sch. 2 para. 2(a)**  
**F272** Words in s. 22(1) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(2)(a)(i)**  
**F273** Words in s. 22(1) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(2)(a)(ii)**  
**F274** Words in s. 22(3) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(2)(b)**  
**F275** S. 22(5) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(2)(c)**

### Modifications etc. (not altering text)

- C40** S. 22 applied (with modifications) (1.3.1996) by 1995 c. 45, **s. 12(5)**; S.I. 1996/218, **art. 3**  
 S. 22 applied (10.8.2000) by 1995 c. 45, **s. 12(5)** (as substituted (10.8.2000) by S.I. 2000/1937, reg. 2(3), **Sch. 3 para. 4**)

## [F276] 22A Construction of pipe-lines.

- (1) [F277] A gas transporter shall not at any time execute within 23 metres from a pipe-line of another gas transporter (the “other 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;

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- (b) he has consulted with that transporter as to exactly where <sup>F278</sup> . . . the proposed pipe-line is to be located, having regard to the location of other pipe-lines <sup>F278</sup> . . . ; <sup>F279</sup> . . . .
- (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 <sup>F280</sup>; and.
- (d) (subject to subsection (1C)) where the existing pipe-line is a relevant main of the other transporter, that transporter has consented in writing to the construction of the proposed pipe-line, either unconditionally or subject to conditions.]

<sup>F281</sup> [ Subsection (1) does not apply if the proposed pipe-line is required to enable a gas transporter to comply with any duty imposed by section 10(2).]

(1B) Conditions imposed under subsection (1)(d) may relate to matters arising after the construction of the proposed pipe-line, including the use to be made of the pipe-line.

(1C) If the other transporter—

- (a) refuses or fails to give consent under subsection (1)(d); or
- (b) gives such consent subject to conditions,

consent may instead be given in writing by the Authority where it considers it appropriate to do so.

(1D) Consent under subsection (1C) may only be given unconditionally or, in a case falling within subsection (1C)(b), subject to the same conditions as were imposed by the other transporter.

(1E) A condition imposed on a gas transporter under this section shall be enforceable by civil proceedings by the other transporter for an injunction or for interdict or for any other appropriate relief.]

(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.

<sup>F282</sup> “relevant main” has the meaning given by section 10(12).]

(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

- F276** S. 22A inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 20**; S.I. 1996/218, **art. 2**
- F277** Words in s. 22A(1) substituted (1.10.2001) by 2000 c. 27, s. 78(2)(a); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F278** Words in s. 22A(1)(b) repealed (1.10.2001) by 2000 c. 27, ss. 78(2)(b), 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F279** Word in s. 22A(1)(b) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F280** S. 22A(1)(d) and word “and” immediately preceding it inserted (1.10.2001) by 2000 c. 27, s. 78(2)(c); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F281** S. 22A(1A)-(1E) inserted (1.10.2001) by 2000 c. 27, s. 78(3); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F282** Definition of  
“relevant main”  
in s. 22A(3) inserted (1.10.2001) by 2000 c. 27, s. 78(4); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

### [<sup>F283</sup> Modification of licences]

### Textual Amendments

- F283** 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>F284</sup>23 Modification of conditions of licences

- (1) The Authority may make modifications of—
  - (a) the conditions of a particular licence;
  - (b) the standard conditions of licences of any type under section 7, 7ZA, or 7A(1) or (2).
- (2) Before making any modifications under this section, the Authority must give notice—
  - (a) stating that it proposes to make modifications;
  - (b) setting out the proposed modifications and their effect;
  - (c) stating the reasons why it proposes to make the modifications; and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.
- (4) A notice under subsection (2) must be given—
  - (a) by publishing the notice in such manner as the Authority 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—
    - (i) each relevant licence holder,
    - (ii) the Secretary of State,

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- (iii) the Health and Safety Executive, <sup>F285</sup> ...
  - (iv) [<sup>F286</sup>Citizens Advice, and
  - (v) Citizens Advice Scotland.]
- (4A) The Authority must consider any representations which are duly made.]
- (5) If, within the time specified [<sup>F287</sup>by virtue of subsection (2)(d)] , the Secretary of State directs the Director not to make any modification, the Director shall comply with the direction.
- [<sup>F288</sup>(6) Subsections (7) to (9) apply where, having complied with subsections (2) to (4A), the Authority decides to proceed with the making of modifications of the conditions of any licence under this section.
- (7) The Authority must—
- (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,
  - (b) state the effect of the modifications,
  - (c) state how it has taken account of any representations duly made, and
  - (d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).
- (8) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 4A).
- (9) The date specified by virtue of subsection (8) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.
- (10) In this section “relevant licence holder”—
- (a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
    - (i) which is to be modified by the inclusion of any new standard condition, or
    - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d); or
  - (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.]

#### Textual Amendments

**F284** S. 23(1)-(4A) and heading substituted for s. 23(1)-(4) and heading (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(3)** (with reg. 42)

**F285** Word in s. 23(4)(b)(iii) omitted (1.4.2014) by virtue of [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 4(5)(a)** (with Sch. 1 para. 28, 2 paras. 13-15)

**F286** S. 23(4)(b)(iv)(v) substituted for s. 23(4)(b)(iv) (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 4(5)(b)** (with Sch. 1 para. 28, 2 paras. 13-15)

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**F287** Words in s. 23(5) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(4)** (with reg. 42)

**F288** S. 23(6)-(10) substituted for s. 23(6)-(13) (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(5)** (with reg. 42)

### [<sup>F289</sup>23A Modification of conditions under section 23: supplementary

- (1) Subsections (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under section 23.
- (2) If the conditions modified are standard conditions, the Authority must—
  - (a) also 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) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.
- (3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.
- (4) The modification of part of a standard condition of a particular licence under section 23 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 4A in relation to the decision to which the modification relates.]

#### Textual Amendments

**F289** S. 23A inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(6)** (with reg. 42)

### [<sup>F290</sup>Appeal from decisions of the Authority

#### Textual Amendments

**F290** Ss. 23B-23G and cross-heading inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(7)** (with reg. 42)

### 23B Appeal to the [<sup>F291</sup>CMA]

- (1) An appeal lies to the [<sup>F292</sup>CMA] against a decision by the Authority to proceed with the modification of a condition of a licence under section 23.
- (2) An appeal may be brought under this section only by—
  - (a) a relevant licence holder (within the meaning of section 23);
  - (b) any other person who holds a licence of any type under section 7, 7ZA, [<sup>F293</sup>7A(1) or (2) or 7AB] whose interests are materially affected by the decision;

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- (c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);
  - (d) [<sup>F294</sup>Citizens Advice or Citizens Advice Scotland or those bodies acting jointly] in the capacity of representing consumers whose interests are materially affected by the decision.
- (3) The permission of the [<sup>F295</sup>CMA] is required for the bringing of an appeal under this section.
- (4) The [<sup>F295</sup>CMA] may refuse permission to bring an appeal only on one of the following grounds—
- (a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;
  - (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
  - (c) in relation to an appeal brought [<sup>F296</sup>by Citizens Advice or Citizens Advice Scotland or those bodies acting jointly,] that the interests of the consumers represented are not materially affected by the decision;
  - (d) in relation to any appeal—
    - (i) that the appeal is brought for reasons that are trivial or vexatious;
    - (ii) that the appeal has no reasonable prospect of success.
- (5) References in this section to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

#### Textual Amendments

- F291** Word in s. 23B heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 16(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F292** Word in s. 23B(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 16(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F293** Words in s. 23B(2)(b) substituted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 24
- F294** Words in s. 23B(2)(d) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 4(6)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F295** Word in s. 23B(3)(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 16(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F296** Words in s. 23B(4)(c) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 4(6)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

### 23C Procedure on appeal to [<sup>F297</sup>CMA]

- <sup>F298</sup>(1) .....
- (2) <sup>F299</sup>... Schedule 4A to this Act has effect.

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[ Except where specified otherwise in Schedule 4A, the functions of the CMA with <sup>F300</sup>(2A) respect to an appeal under section 23B are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

#### Textual Amendments

- F297** Word in s. 23C heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 17\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F298** S. 23C(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 17\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F299** Word in s. 23C(2) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 17\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F300** S. 23C(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 17\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 23D Determination by [<sup>F301</sup>CMA] of appeal

- (1) This section applies to every appeal brought under section 23B.
- (2) In determining an appeal the [<sup>F302</sup>CMA] must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—
  - (a) in the carrying out of its principal objective under section 4AA;
  - (b) in the performance of its duties under that section; and
  - (c) in the performance of its duties under sections 4AB and 4A.
- (3) In determining the appeal the [<sup>F302</sup>CMA] —
  - (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
  - (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.
- (4) The [<sup>F302</sup>CMA] may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
  - (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);
  - (b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);
  - (c) that the decision was based, wholly or partly, on an error of fact;
  - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 23(7)(b);
  - (e) that the decision was wrong in law.
- (5) To the extent that the [<sup>F302</sup>CMA] does not allow the appeal, it must confirm the decision appealed against.

#### Textual Amendments

- F301** Word in s. 23D heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 18\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)



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**F302** Word in s. 23D(2)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 18\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 23E <sup>F303</sup>CMA's] powers on allowing appeal

- (1) This section applies where the <sup>F304</sup>CMA] allows an appeal to any extent.
- (2) If the appeal is in relation to a price control decision, the <sup>F305</sup>CMA] must do one or more of the following—
  - (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the <sup>F305</sup>CMA] ;
  - (c) substitute the <sup>F306</sup>CMA's] decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.
- (3) If the appeal is in relation to any other decision, the <sup>F307</sup>CMA] must do one or both of the following—
  - (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the <sup>F307</sup>CMA] .
- (4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).
- (5) A person to whom a direction is given under that subsection must comply with it.
- (6) A direction given under that subsection to a person other than the Authority is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.
- (7) For the purposes of this section a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the <sup>F308</sup>CMA's] opinion, to limit or control the charges on, or the revenue of, the holder of the licence.
- (8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.
- (9) In this section and sections 23F and 23G any reference to a party to an appeal is to be read in accordance with Schedule 4A.

### Textual Amendments

- F303** Word in s. 23E heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 19\(6\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F304** Word in s. 23E(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 19\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F305** Word in s. 23E(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 19\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F306** Word in s. 23E(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 19\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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**F307** Word in s. 23E(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 19\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F308** Word in s. 23E(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 19\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 23F Time limits for [<sup>F309</sup>CMA] to determine an appeal

- (1) The [<sup>F310</sup>CMA] must—
  - (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
  - (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.
- (2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.
- (3) This subsection applies where—
  - (a) the [<sup>F311</sup>CMA] has received representations on the timing of the determination from a party to the appeal; and
  - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).
- (4) Where subsection (3) applies, the [<sup>F311</sup>CMA] must—
  - (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
  - (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (5) Where subsection (3) applies, the [<sup>F311</sup>CMA] must also—
  - (a) inform the parties to the appeal of the time limit for determining the appeal, and
  - (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.
- (6) In this section “price control decision” is to be read in accordance with section 23E.
- (7) References in this section to the permission date are to the date on which the [<sup>F312</sup>CMA] gave permission to bring the appeal in accordance with section 23B(3).

### Textual Amendments

**F309** Word in s. 23F heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 20\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F310** Word in s. 23F(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 20\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F311** Words in ss. 23F(3)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 20\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F312** Word in s. 23F(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 20\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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## **23G Determination of appeal by [F313CMA] : supplementary**

- (1) A determination by the [F314CMA] on an appeal—
  - (a) must be contained in an order made by the [F314CMA] ;
  - (b) must set out the reasons for the determination;
  - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
  - (d) must be notified by the [F314CMA] to the parties to the appeal;
  - (e) must be published by the [F314CMA] —
    - (i) as soon as reasonably practicable after the determination is made;
    - (ii) in such manner as the [F314CMA] considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The [F315CMA] may exclude from publication under subsection (1)(e) any information which it is satisfied is—
  - (a) commercial information, the disclosure of which would, or might in the [F316CMA's] opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or
  - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the [F316CMA's] opinion, significantly harm the individual's interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the [F317CMA] made by virtue of subsection (1)(a).
- (4) The steps must be taken—
  - (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
  - (b) in any other case, within a reasonable time.
- (5) Subsections (2) to (4) of section 23A apply where a condition of a licence is modified in accordance with section 23E as they apply where a condition of a licence is modified under section 23.]

### **Textual Amendments**

- F313** Word in s. 23G heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 21\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F314** Word in s. 23G(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 21\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F315** Word in s. 23G(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 21\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F316** Word in s. 23G(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 21\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F317** Word in s. 23G(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 21\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## **F318 24 Modification references to Monopolies Commission.**

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*Status: Point in time view as at 30/11/2016.*

*Changes to legislation: Gas Act 1986, Part 1 is up to date with all changes known to be in force on or before 22 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**

**F318** Ss. 24-26A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(9)** (with reg. 42)

**F318 24A References under section 24: time limits**

.....

**Textual Amendments**

**F318** Ss. 24-26A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(9)** (with reg. 42)

**F318 24B References under section 24: powers of investigation**

.....

**Textual Amendments**

**F318** Ss. 24-26A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(9)** (with reg. 42)

**F318 25 Reports on modification references.**

.....

**Textual Amendments**

**F318** Ss. 24-26A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(9)** (with reg. 42)

**F318 26 Modification following report.**

.....

**Textual Amendments**

**F318** Ss. 24-26A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(9)** (with reg. 42)

**F318 26A Competition Commission’s power to veto modifications following report.**

.....

*Status: Point in time view as at 30/11/2016.*

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### Textual Amendments

**F318** Ss. 24-26A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **41(9)** (with reg. 42)

### [<sup>F319</sup>27 Modification by order under other enactments.

[<sup>F320</sup>(1) Where the [<sup>F321</sup>CMA] or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, 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[<sup>F322</sup>, licences under section 7ZA above], licences under subsection (1) of section 7A above or licences under subsection (2) of that section,

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1ZA) In subsection (1) above “relevant order” means—

- (a)<sup>F323</sup> an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [<sup>F324</sup>or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to—
  - (i) activities authorised or regulated 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.]

[<sup>F325</sup>(1A) The modification under subsection (1)(a) 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.]

(2) Where at any time the [<sup>F326</sup>relevant authority] modifies under subsection (1)(b) above the standard conditions of licences under section 7 above[<sup>F327</sup>, licences under section 7ZA above], licences under subsection (1) of section 7A above or licences under subsection (2) of that [<sup>F328</sup>section, the relevant authority] —

- (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 [<sup>F329</sup>as the relevant authority considers] necessary or expedient of any conditions of licences under that provision granted before that time.

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<sup>F330</sup>(3) .....

<sup>F330</sup>(4) .....

(5) Where at any time the [<sup>F331</sup>relevant authority] modifies standard conditions under subsection (2)(a) above for the purposes of their incorporation in licences granted after that time, [<sup>F332</sup>the relevant authority] shall publish those modifications in such manner as [<sup>F332</sup>the relevant authority] considers appropriate.

[<sup>F333</sup>(6) Expressions used in subsection (1ZA) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.]]

#### Textual Amendments

- F319** S. 27 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 25**; S.I. 1996/218, **art. 2**
- F320** S. 27(1)(1ZA) substituted for s. 27(1) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 4(2)**; S.I. 2003/1397, **art. 2(1), Sch.**
- F321** Word in s. 27(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 22**; S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F322** Words in s. 27(1)(b) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 150(8)**, 198(2); S.I. 2004/2575, **art. 2(2), Sch. 2**
- F323** S. 27(1ZA)(a) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 1(1), Sch. 4 para. 6**
- F324** Words in s. 27(1ZA)(b) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1), Sch. 1 para. 47** (with art. 3)
- F325** S. 27(1A) inserted (1.10.2001) by 2000 c. 27, **s. 83(5)**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F326** Words in s. 27(2) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 4(3)(a)**; S.I. 2003/1397, **art. 2(1), Sch.**
- F327** Words in s. 27(2) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 150(8)**, 198(2); S.I. 2004/2575, **art. 2(2), Sch. 2**
- F328** Words in s. 27(2) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 4(3)(b)**; S.I. 2003/1397, **art. 2(1), Sch.**
- F329** Words in s. 27(2) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 4(3)(c)**; S.I. 2003/1397, **art. 2(1), Sch.**
- F330** S. 27(3)(4) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 4(4), Sch. 26**; S.I. 2003/1397, **art. 2(1), Sch.**
- F331** Words in s. 27(5) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 4(5)(a)**; S.I. 2003/1397, **art. 2(1), Sch.**
- F332** Words in s. 27(5) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 4(5)(b)**; S.I. 2003/1397, **art. 2(1), Sch.**
- F333** S. 27(6) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 4(6)**; S.I. 2003/1397, **art. 2(1), Sch.**

[<sup>F334</sup> *Determination of disputes*]

#### Textual Amendments

- F334** 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**

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## 27A [F335 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 [F336 gas transporter] or gas supplier and a person who is, or wishes to become, a [F337 customer of a person authorised by a licence or exemption to supply gas]—
  - (a) may be referred to the [F338 Authority]—
    - (i) by either party, or
    - (ii) with the consent of either party, by Citizens Advice or Citizens Advice Scotland or Citizens Advice and Citizens Advice Scotland acting jointly;]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 [F336 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.
- (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 [F336 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—

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- (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 [<sup>F339</sup>the 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

- F335** S. 27A inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 26**; S.I. 1996/218, **art. 2**
- F336** Words in s. 27A substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. 1 para. 2(1)**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in arts. 3-20)
- F337** Words in s. 27A(1) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6, Pt. 1 para. 10**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in arts. 3-20)
- F338** Words in s. 27A(1)(a) substituted (1.4.2014) by virtue of *The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014* (S.I. 2014/631), **art. 1(3), Sch. 1 para. 4(7)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F339** Words in s. 27A(9)(b) substituted (22.4.2014) by *Crime and Courts Act 2013* (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, **art. 2(c)** (with **art. 3**) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

#### [<sup>F340</sup>[<sup>F341</sup>Article 41] Disputes

#### Textual Amendments

- F340** Ss. 27B-27D and cross-heading inserted (29.6.2009) by *The Gas and Electricity (Dispute Resolution) Regulations 2009* (S.I. 2009/1349), **regs. 1(1), 2**
- F341** Words in s. 27B and cross-heading substituted (10.11.2011) by *The Electricity and Gas (Internal Markets) Regulations 2011* (S.I. 2011/2704), **regs. 1(1), 28(2)**

### 27B Meaning of “[<sup>F341</sup>Article 41] dispute”

- [<sup>F342</sup>(1) For the purposes of sections 27C and 27D, a dispute is an “Article 41 dispute” if—
- (a) it arises from a written complaint—
    - (i) made against a gas transporter,
    - (ii) made against the holder of a licence under section 7ZA,
    - (iii) made against the owner of an LNG import or export facility,
    - (iv) made against the owner of a storage facility,
    - (v) made against a person carrying out an activity described in section 5(1)(a) or (aa) who has been granted an exemption under section 6A(1), or
    - (vi) made by a person falling within paragraph (a) of subsection (1B) against a person falling within paragraph (b) of that subsection;
  - (b) it is wholly or mainly a dispute regarding an obligation of the person complained against under any relevant condition or relevant requirement in



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relation to that person imposed for the purpose of implementing the Gas Directive; and

(c) it is a dispute between the complainant and the person complained against.

(1A) Until section 75 of the Utilities Act 2000 comes into force the reference in subsection (1)(a)(v) above to a person who has been granted an exemption under section 6A(1) includes a person to whom one or more of the exceptions to section 5(1) contained in Schedule 2A applies.

(1B) For the purposes of subsection (1)(a)(vi)—

(a) a person falls within this paragraph if the person is certified on the ground mentioned in section 8G(5) in respect of a pipe-line system or gas interconnector;

(b) a person falls within this paragraph if the person is designated under section 8J(3) in respect of the pipe-line system or gas interconnector mentioned in paragraph (a).]

(2) The reference in subsection [F343(1)(a)] to a complaint does not include a reference to—

(a) a complaint about a modification (or a failure to make a modification) of—

(i) a term or condition of a relevant licence held by the person complained against, or

(ii) an obligation or right contained in any code or other document and having effect by virtue of such a term or condition; or

(b) a complaint made by a person as a household customer or potential household customer.

(3) In this section and section 27C—

F344

...

[F345“household customer” means a customer who purchases gas for consumption by the customer’s own household;]

F344

...

F344

...

“relevant licence” means a licence under section 7(2) or 7ZA.

#### Textual Amendments

**F342** Ss. 27B(1)-(1B) substituted for s. 27B(1) (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(3)(a)**

**F343** Word in s. 27B(2) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(3)(b)**

**F344** Words in s. 27B(3) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(3)(c)(i)**

**F345** Words in s. 27B(3) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(3)(c)(ii)**

#### 27C Determination of disputes

(1) An [F346Article 41] dispute (other than one which may be referred to the Authority under or by virtue of any other provision of this Act) may be referred to the Authority under this section by the person who is the complainant in relation to the dispute.

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- (2) An [<sup>F347</sup>Article 41] dispute referred to the Authority under this section shall be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator (or in Scotland an arbiter) appointed by the Authority.
- (3) The practice and procedure to be followed in connection with an [<sup>F348</sup>Article 41] dispute referred to the Authority under this section shall be such as the Authority may consider appropriate.
- (4) An order under this section—
- (a) may include such incidental, supplemental and consequential provision as the person making the order considers appropriate; and
  - (b) shall be final.
- (5) The provision that may be included in an order under this section by virtue of subsection (4)(a) above includes provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order (“costs provision”).
- (6) In including costs provision in an order under this section, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.
- (7) Costs provision included in an order under this section shall be enforceable—
- (a) in England and Wales, as if it were a judgment of the county court;
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- [<sup>F349</sup>(8) Sections 28 to 30F and 38 have effect in relation to a person against whom a complaint is made as mentioned in section 27B(1)(a), and on whom a duty or other requirement is imposed by an order under this section—
- (a) as if references in those sections to a relevant requirement (other than the reference in section 28(8)) included references to that duty or requirement; and
  - (b) if the complaint is made against the person as mentioned in sub-paragraph (vi) of section 27B(1)(a), also as if references in those sections to a regulated person included references to that person.]

<sup>F350</sup>(9) .....

#### Textual Amendments

- F346** Words in s. 27C(1) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(4)(a)**
- F347** Words in s. 27C(2) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(4)(a)**
- F348** Words in s. 27C(3) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(4)(a)**
- F349** S. 27C(8) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(4)(b)**
- F350** S. 27C(9) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(4)(c)**

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## 27D Time limit for determinations

- (1) An order determining an [<sup>F351</sup>Article 41] dispute (whether made under section 27C or made under or by virtue of any other provision of this Act) shall be made within the permitted period.
- (2) Subject to subsection (3), the permitted period is the period of two months beginning with the day on which the dispute is referred to the Authority.
- (3) Where the person determining the dispute requests further information from anyone for the purposes of determining the dispute, the person may, by giving notice to the parties, extend the permitted period—
  - (a) by two months, or
  - (b) with the agreement of the complainant, by a longer period.
- (4) If a person refers a dispute to the Authority, or purports to do so, and the Authority gives to that person a notice—
  - (a) specifying information which it requires in order to assess whether the dispute is an [<sup>F352</sup>Article 41] dispute, or whether there is a dispute at all, and
  - (b) requesting the person to provide that information,the dispute shall be treated for the purposes of subsection (2) as not referred to the Authority until the information is provided.]

### Textual Amendments

**F351** Words in s. 27D(1) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(5)**

**F352** Words in s. 27D(4)(a) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **28(5)**

### *[<sup>F353</sup>Enforcement of obligations of regulated persons]*

### Textual Amendments

**F353** S. 28 cross-heading substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(3)**

## 28 Orders for securing compliance with certain provisions.

- (1) Subject to subsections (2)[<sup>F354</sup>, [<sup>F355</sup>(4A) to] (5A)] and section 29 below, where the Director is satisfied that a [<sup>F356</sup>regulated person] is contravening, or [<sup>F357</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.
- (2) Subject to [<sup>F358</sup>subsections [<sup>F355</sup>(4A) to] (5A)] below, where it appears to the Director—
  - (a) that a [<sup>F356</sup>regulated person] is contravening, or [<sup>F357</sup>is likely] to contravene, any relevant condition or requirement; and
  - (b) that it is requisite that a provisional order be made,

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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 <sup>F358</sup>subsections <sup>F359</sup>[ (4A) to] (5A)] and section 29 below, the Director shall confirm a provisional order, with or without modifications, if—
  - (a) he is satisfied that the <sup>F356</sup>regulated person] is contravening, or <sup>F357</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.

<sup>F360</sup>(4A) Before making a final order or making or confirming a provisional order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(4B) The Authority shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.]

- (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>F361</sup>section <sup>F362</sup>[4AA, 4AB or 4A] preclude the making or, as the case may be, the confirmation of the order
  - <sup>F363</sup>(aa) .....
  - <sup>F363</sup>(b) .....
  - <sup>F364</sup>(c) .....

<sup>F365</sup>(5A) [ The Authority is not required to make a final order or make or confirm a provisional order if it is satisfied—

- (a) that the <sup>F356</sup>regulated person] has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the <sup>F356</sup>regulated person] 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 <sup>F366</sup>decides that it would be more appropriate to proceed under the Competition Act 1998 or] is satisfied as mentioned in <sup>F358</sup>subsections (5) <sup>F367</sup>or] (5A)] above, he shall—

- (a) give notice that he <sup>F368</sup>has so decided or] is so satisfied to the <sup>F356</sup>regulated person] ; and

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- (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 [F356regulated person] (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.

F369(7A) . . . . .

(8) In this section and sections 29 to [F37030O] 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;

[F371“regulated person” means a person who is one or more of the following—

- (a) a licence holder;
- (b) a distribution exemption holder;
- (c) a supply exemption holder;
- (d) the owner of a storage facility;
- (e) the owner of an LNG import or export facility;
- (f) a gas undertaking which is a relevant producer or supplier;]

“relevant condition”, in relation to a [F356regulated person] , means any condition of [F372any licence held by that person] ;

[F373“relevant requirement”, in relation to a [F356regulated person] , means any requirement imposed on [F374that person under a provision specified in Schedule 4B as a relevant provision in respect of that person]

F375(9) . . . . .]]

#### Textual Amendments

- F354** Words in s. 28(1) substituted (1.10.2001) by 2000 c. 27, s. 96(2) (with s. 96(7)) (with s. 96(7)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F355** Words in s. 28(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 14 para. 2(2); S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F356** Words in s. 28 substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 37(4)(a)
- F357** 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.
- F358** Words in s. 28(2)(4)(6) substituted (1.10.2001) by 2000 c. 27, s. 96(3) (with s. 96(7)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F359** Words in s. 28(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 14 para. 2(2); S.I. 2014/416, art. 2(1)(e) (with Sch.)

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- F360** S. 28(4A)(4B) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 2(3)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F361** 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**
- F362** Words in s. 28(5)(a) substituted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 11**; S.I. 2000/3343, **art. 2, Sch.** (subject to transitional provisions in arts. 3-15)
- F363** S. 28(5)(aa)(b) repealed (1.10.2001) by 2000 c. 27, ss. 96(4), 108, **Sch. 8** (with s. 96(7)); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F364** S. 28(5)(c) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 2(4)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F365** S. 28(5A) inserted (1.10.2001) by 2000 c. 27, s. 96(5) (with s. 96(7)); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F366** Words in s. 28(6) inserted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 2(5)(a)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F367** Word in s. 28(6) substituted (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 7 para. 6**; S.I. 2008/2550, art. 2, **Sch.**
- F368** Words in s. 28(6)(a) inserted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 2(5)(b)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F369** S. 28(7A) repealed (1.10.2001) by 2000 c. 27, ss. 95(2)(a), 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F370** Word in s. 28(8) substituted (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 1(3)**
- F371** Words in s. 28(8) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **37(5)(a)**
- F372** Words in s. 28(8) substituted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **37(5)(b)**
- F373** Definition of “relevant requirement” 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**
- F374** Words in s. 28(8) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **37(5)(c)**
- F375** S. 28(9) repealed (1.10.2001) by 2000 c. 27, ss. 95(2)(a), 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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

- C41** Ss. 28-30F applied (with modifications) by 1995 c. 45, s. 12(5) (as substituted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(10), 121(1)**; S.I. 2012/873, art. 2(b)(ii))

## 29 Procedural requirements.

- (1) Before making a final order or confirming a provisional order, the Director shall give notice—
- (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 [<sup>F376</sup>21] 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—

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- (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 [F377regulated person] .
- (3) The Director shall not make a final order, or confirm a provisional order, with modifications except with the consent of the [F377regulated person] or after complying with the requirements of subsection (4) below.
- (4) The said requirements are that the Director shall—
  - (a) give to the [F377regulated person] 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 [F37821] 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 [F377regulated person] .
- (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 [F377regulated person] ; 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.

#### Textual Amendments

**F376** Word in s. 29(1)(c) substituted (1.10.2001) by 2000 c. 27, s. 96(6) (with s. 96(7)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

**F377** Words in s. 29 substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 37(4)(b)

**F378** Word in s. 29(4)(b) substituted (1.10.2001) by 2000 c. 27, s. 96(6) (with s. 96(7)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

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

**C41** Ss. 28-30F applied (with modifications) by 1995 c. 45, s. 12(5) (as substituted (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), **ss. 92(10)**, 121(1); S.I. 2012/873, **art. 2(b)(ii)**)

### 30 Validity and effect of orders.

(1) If the [<sup>F379</sup>regulated person] 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>F380</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 I [<sup>F379</sup>regulated person] have been substantially prejudiced by a failure to comply with those requirements—  
(a) may quash the order or any provision of the order; <sup>F381</sup> . . .  
<sup>F382</sup>(b) . . . . .]

(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.

#### Textual Amendments

**F379** Words in s. 30 substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(4)(c)**

**F380** 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**



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**F381** Word in s. 30(2)(a) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**F382** S. 30(2)(b) repealed (1.10.2001) by 2000 c. 27, ss. 95(3), 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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

**C41** Ss. 28-30F applied (with modifications) by 1995 c. 45, s. 12(5) (as substituted (21.3.2012) by **Energy Act 2011 (c. 16)**, ss. **92(10)**, 121(1); S.I. 2012/873, art. 2(b)(ii))

**C42** S. 30(4) modified (E.W.) (1.10.2008) by **Serious Crime Act 2007 (c. 27)**, s. 94(1), **Sch. 6 para. 12** (with **Sch. 13 para. 5**); S.I. 2008/2504, art. 2(a)

**[<sup>F383</sup>30A Penalties.**

- (1) Where the Authority is satisfied that a [<sup>F384</sup>regulated person] —
- (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 [<sup>F384</sup>regulated person] a penalty of such amount as is reasonable in all the circumstances of the case.

[<sup>F385</sup>(2) Before imposing a penalty on a regulated person under subsection (1), the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(2A) The Authority shall not impose a penalty on a regulated person under subsection (1) if it considers that it would be more appropriate to proceed under the Competition Act 1998.]

(3) Before imposing a penalty on a [<sup>F384</sup>regulated person] 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,

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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 [F384regulated person] and its amount;
  - (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 [F384regulated person] , by which the penalty is required to be paid.
- (6) The [F384regulated person] 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 [F384regulated person] ; F386 ...
  - [F387](c) by serving a copy of the notice on Citizens Advice; and
  - (d) by serving a copy of the notice on Citizens Advice Scotland.]
- [F388(8A) This section is subject to section 300 (maximum amount of penalty or compensation that may be imposed).]
- (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

**F383** 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)

**F384** Words in s. 30A substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 37(4)(d)

**F385** S. 30A(2)(2A) substituted for s. 30A(2) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 14 para. 3; S.I. 2014/416, art. 2(1)(e) (with Sch.)

**F386** Word in s. 30A(7) omitted (1.4.2014) by virtue of The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(8)(a) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

**F387** S. 30A(7)(c)(d) substituted for s. 30A(7)(c) (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents

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etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 4(8)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

**F388** S. 30A(8A) substituted for s. 30A(8)(9) (18.2.2014) by **Energy Act 2013 (c. 32)**, s. 156(2)(h), **Sch. 14 para. 1(4)** (with Sch. 14 para. 1(8))

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

**C41** Ss. 28-30F applied (with modifications) by 1995 c. 45, s. 12(5) (as substituted (21.3.2012) by **Energy Act 2011 (c. 16)**, **ss. 92(10)**, 121(1); S.I. 2012/873, art. 2(b)(ii))

**C43** S. 30A(1)(b) amended (*temp.* from 19.12.2000) by SI. 2000/3343, art. 9(2) (subject to transitional provisions in arts. 3-15)

**[<sup>F389</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**

**F389** 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)**

**C41** Ss. 28-30F applied (with modifications) by 1995 c. 45, s. 12(5) (as substituted (21.3.2012) by **Energy Act 2011 (c. 16)**, **ss. 92(10)**, 121(1); S.I. 2012/873, art. 2(b)(ii))

**[<sup>F390</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 [<sup>F391</sup>five years] 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 [<sup>F392</sup>regulated person] under section 30A(7), or
  - (b) a notice relating to the contravention or failure is served on the [<sup>F392</sup>regulated person] under section 38(1).

*Status: Point in time view as at 30/11/2016.*

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- (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 <sup>F392</sup>... 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.]

#### Textual Amendments

**F390** 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)

**F391** Words in s. 30C(1) substituted (8.6.2010) by Energy Act 2010 (c. 27), ss. 24(1), 38(3) (with s. 24(3))

**F392** Words in s. 30C substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 37(4)(e)

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

**C41** Ss. 28-30F applied (with modifications) by 1995 c. 45, s. 12(5) (as substituted (21.3.2012) by Energy Act 2011 (c. 16), ss. 92(10), 121(1); S.I. 2012/873, art. 2(b)(ii))

### [<sup>F393</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>M8</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

**F393** 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)

**C41** Ss. 28-30F applied (with modifications) by 1995 c. 45, s. 12(5) (as substituted (21.3.2012) by Energy Act 2011 (c. 16), ss. 92(10), 121(1); S.I. 2012/873, art. 2(b)(ii))

#### Marginal Citations

**M8** 1838 c. 110.

*Status: Point in time view as at 30/11/2016.*

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### [<sup>F394</sup>30E Appeals [<sup>F395</sup>against penalties] .

- (1) If the [<sup>F396</sup>regulated person] 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 [<sup>F396</sup>regulated person] 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 [<sup>F396</sup>regulated person] of a notice under section 30A(5), or
  - (b) where the application relates to a decision of the Authority on an application by the [<sup>F396</sup>regulated person] under section 30A(6), within 42 days from the date the licence holder is notified of the decision.
- (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 [<sup>F396</sup>regulated person] 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

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(b) in relation to Scotland, the Court of Session.]

#### Textual Amendments

**F394** 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)

**F395** Words in s. 30E title inserted (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), Sch. 14 para. 1(5)

**F396** Words in s. 30E substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 37(4)(f)

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

**C41** Ss. 28-30F applied (with modifications) by 1995 c. 45, s. 12(5) (as substituted (21.3.2012) by Energy Act 2011 (c. 16), ss. 92(10), 121(1); S.I. 2012/873, art. 2(b)(ii))

### [<sup>F397</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 [<sup>F398</sup>regulated person], as a civil debt due to it, any of the penalty and any interest which has not been paid.]

#### Textual Amendments

**F397** 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)

**F398** Words in s. 30F substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 37(4)(g)

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

**C41** Ss. 28-30F applied (with modifications) by 1995 c. 45, s. 12(5) (as substituted (21.3.2012) by Energy Act 2011 (c. 16), ss. 92(10), 121(1); S.I. 2012/873, art. 2(b)(ii))

### [<sup>F399</sup>30G Consumer redress orders

- (1) This section applies where the Authority is satisfied that—
  - (a) a regulated person has contravened, or is contravening, any relevant condition or requirement, and
  - (b) as a result of the contravention, one or more consumers have suffered loss or damage or been caused inconvenience.
- (2) The Authority may make an order (a “consumer redress order”) requiring the regulated person to do such things as appear to the Authority necessary for the purposes of—
  - (a) remedying the consequences of the contravention, or
  - (b) preventing a contravention of the same or a similar kind from being repeated.

*Status: Point in time view as at 30/11/2016.*

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- (3) A consumer redress order must specify the following—
- (a) the regulated person to whom the order applies;
  - (b) the contravention in respect of which the order is made;
  - (c) the affected consumers, or a description of such consumers;
  - (d) the requirements imposed by the order;
  - (e) the date by which the regulated person must comply with such requirements.
- (4) As soon as practicable after making a consumer redress order, the Authority must—
- (a) serve a copy of the order on the regulated person to whom the order applies, and
  - (b) either—
    - (i) serve a copy of the order on each affected consumer, or
    - (ii) publish the order in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of affected consumers.
- (5) The date specified in a consumer redress order under subsection (3)(e) may not be earlier than the end of the period of 7 days from the date of the service of a copy of the order on the regulated person.
- (6) Different dates may be specified under subsection (3)(e) in relation to different requirements imposed by the order.
- (7) This section is subject to sections 30H to 30O.
- (8) In this section and in sections 30H to 30O—
- “affected consumers”, in relation to a consumer redress order (or proposed order), are those consumers that the Authority is satisfied have suffered loss or damage, or been caused inconvenience, as a result of the contravention in respect of which the order is (or would be) made;
  - “consumers” means consumers in relation to gas conveyed through pipes;
  - “consumer redress order” means an order under subsection (2).

#### Textual Amendments

**F399** Ss. 30G-30O inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 1\(2\)](#) (with [Sch. 14 para. 1\(8\)](#))

### 30H Remedial action under a consumer redress order

- (1) The things mentioned in section 30G(2) that a regulated person may be required to do under a consumer redress order (“the required remedial action”) include, in particular—
- (a) paying an amount to each affected consumer by way of compensation for the loss or damage suffered, or for the inconvenience caused, as a result of the contravention;
  - (b) preparing and distributing a written statement setting out the contravention and its consequences;
  - (c) terminating or varying any contracts entered into between the regulated person and affected consumers.

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- (2) Where the required remedial action includes the payment of compensation, the order must specify—
  - (a) the amount of compensation to be paid, and
  - (b) the affected consumers, or a description of such consumers, to whom it is to be paid.
- (3) Where the required remedial action includes the preparation and distribution of a statement, the order may specify the information to be contained in the statement and the form and manner in which it is to be distributed.
- (4) The manner so specified may in particular include—
  - (a) sending a copy of the statement to each affected consumer;
  - (b) publishing the statement in such manner as the Authority considers appropriate for the purpose of bringing the statement to the attention of those consumers.
- (5) Where the required remedial action includes the termination or variation of a contract with an affected consumer—
  - (a) the order may specify the terms on which the contract is to be terminated or the way in which it is to be varied,
  - (b) the requirement has effect only if, and to the extent that, the affected consumer consents to the termination of the contract on those terms or to its variation in that way, and
  - (c) the order may specify the steps to be taken by the regulated person for the purpose of enabling the affected consumer to give such consent.

#### Textual Amendments

**F399** Ss. 30G-30O inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 1\(2\)](#) (with [Sch. 14 para. 1\(8\)](#))

### 30I Other procedural requirements in relation to consumer redress orders

- (1) Before making a consumer redress order the Authority must give notice stating that it proposes to make the order.
- (2) A notice under subsection (1) must specify—
  - (a) the regulated person to whom the order will apply,
  - (b) the contravention in respect of which the order is to be made,
  - (c) the affected consumers, or a description of such consumers,
  - (d) the requirements to be imposed by the order and the period within which such requirements are to be complied with, and
  - (e) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed order may be made, and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (3) Before varying any proposal stated in a notice under subsection (1) the Authority must give notice specifying—
  - (a) the proposed variation and the reasons for it, and



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- (b) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed variation may be made,
- and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (4) Before revoking a consumer redress order the Authority must give notice—
- (a) stating that it proposes to revoke the order and the reasons for doing so, and
- (b) specifying the time (not being less than 21 days from the relevant date) within which representations or objections to the proposed revocation may be made,
- and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (5) A notice required to be given under this section is to be given—
- (a) by serving a copy of the notice on the regulated person, and
- (b) either—
- (i) by serving a copy of the notice on each affected consumer, or
- (ii) 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 affected consumers.
- (6) The “relevant date”, in relation to a notice under this section, is—
- (a) in a case where the notice is published in accordance with subsection (5)(b)(ii), the date on which it is published;
- (b) in any other case, the latest date on which a copy of the notice is served in accordance with subsection (5)(a) and (b)(i).

#### **Textual Amendments**

**F399** Ss. 30G-30O inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 1\(2\)](#) (with [Sch. 14 para. 1\(8\)](#))

### **30J Statement of policy with respect to consumer redress orders**

- (1) The Authority must prepare and publish a statement of policy with respect to—
- (a) the making of consumer redress orders, and
- (b) the determination of the requirements to be imposed by such orders (including, in particular, the considerations the Authority will have regard to in determining such requirements).
- (2) The Authority must have regard to its current statement of policy—
- (a) in deciding whether to make a consumer redress order in respect of a contravention, and
- (b) in determining the requirements to be imposed by any such order.
- (3) The Authority may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) Publication under this section is to 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.

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- (5) The Authority must consult such persons as it considers appropriate when preparing or revising its statement of policy.

#### Textual Amendments

**F399** Ss. 30G-30O inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 1\(2\)](#) (with [Sch. 14 para. 1\(8\)](#))

### 30K Time limits for making consumer redress orders

- (1) Where no final or provisional order has been made in relation to a contravention, the Authority may not give a consumer redress order in respect of the contravention later than the end of the period of 5 years from the time of the contravention.
- (2) Subsection (1) does not apply if before the end of that period—
- (a) the notice under section 30I(1) relating to the order is served on the regulated person, or
  - (b) a notice relating to the contravention is served on the regulated person under section 38(1).
- (3) Where a final or provisional order has been made in relation to a contravention, the Authority may give a consumer redress order in respect of the contravention only if the notice relating to the consumer redress order under section 30I(1) is served on the regulated person—
- (a) within 3 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 6 months from the making of the provisional order.

#### Textual Amendments

**F399** Ss. 30G-30O inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 1\(2\)](#) (with [Sch. 14 para. 1\(8\)](#))

### 30L Enforcement of consumer redress orders

- (1) Compliance with a consumer redress order is enforceable by civil proceedings by the Authority—
- (a) for an injunction or interdict,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (2) Proceedings under subsection (1) are to be brought—
- (a) in England and Wales, in the High Court, or
  - (b) in Scotland, in the Court of Session.
- (3) The obligation of a regulated person to comply with a consumer redress order is a duty owed to any person who may be affected by a contravention of the order.

*Status: Point in time view as at 30/11/2016.*

*Changes to legislation: Gas Act 1986, Part I is up to date with all changes known to be in force on or before 22 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)*

- (4) Without limiting the Authority's right to bring civil proceedings under subsection (1), a duty owed to any person (“P”) by virtue of subsection (3) may be enforced by civil proceedings by P for any appropriate remedy or relief.
- (5) For the purposes of subsection (4), the duty owed to P may in particular be enforced by P as if it were contained in a contract between P and the regulated person who owes the duty.

#### **Textual Amendments**

**F399** Ss. 30G-30O inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 1\(2\)](#) (with [Sch. 14 para. 1\(8\)](#))

### **30M Appeals against consumer redress orders**

- (1) A regulated person in respect of whom a consumer redress order is made may make an application to the court under this section if the person is aggrieved by—
  - (a) the making of the order, or
  - (b) any requirement imposed by the order.
- (2) An application under subsection (1) must be made within 42 days from the date of service on the regulated person of a copy of the order under section 30G(4)(a).
- (3) On an application under subsection (1) the court may—
  - (a) quash the order or any provision of the order, or
  - (b) vary any such provision in such manner as the court considers appropriate.
- (4) The court may exercise the powers under subsection (3) only if it considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the following grounds—
  - (a) that the making of the order was not within the power of the Authority under section 30G;
  - (b) that any of the requirements under section 30G(4) and 30I have not been complied with in relation to the making of the order and the interests of the regulated person have been substantially prejudiced by the non-compliance;
  - (c) that it was unreasonable of the Authority to require something to be done under the order (whether at all or in accordance with the provisions of the order).
- (5) If an application is made under this section in relation to a consumer redress order, a requirement imposed by the order does not need to be carried out in accordance with the order until the application has been determined.
- (6) Where the court substitutes a lesser amount of compensation for an amount required by the Authority in a consumer redress order, it may require the payment of interest on the substituted amount at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which any compensation under a consumer redress order is to be paid a date before the determination of the application under this section, it may require the payment of interest on the amount from that date at such rate as it considers just and equitable.

*Status: Point in time view as at 30/11/2016.*

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- (8) Except as provided by this section, the validity of a consumer redress order is not to be questioned by any legal proceedings whatever.
- (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.

#### Textual Amendments

**F399** Ss. 30G-30O inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), **Sch. 14 para. 1(2)** (with [Sch. 14 para. 1\(8\)](#))

### 30N Consumer redress orders: miscellaneous

- (1) If—
- (a) compensation is required to be paid under a consumer redress order, and
  - (b) it is not paid by the date by which it is required to be paid in accordance with the order,
- the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) The Authority may not make a consumer redress order where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
- (3) The Authority's power to make a consumer redress order as a result of a contravention of a relevant condition or requirement is not to be taken as limiting the Authority's power to impose a penalty under section 30A in relation to the same contravention (whether instead of, or in addition to, making a consumer redress order).
- (4) The power of the Authority to make a consumer redress order is not exercisable in respect of any contravention before the coming into force of Schedule 14 to the Energy Act 2013.

#### Textual Amendments

**F399** Ss. 30G-30O inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), **Sch. 14 para. 1(2)** (with [Sch. 14 para. 1\(8\)](#))

### 30O Maximum amount of penalty or compensation

- (1) The maximum amount of penalty that may be imposed on a regulated person in respect of a contravention may not exceed 10 per cent of the person's turnover.
- (2) The maximum amount of compensation that a regulated person may be required to pay in respect of a contravention may not exceed 10 per cent of the person's turnover.
- (3) Subsections (1) and (2) are subject to subsection (4) if, in respect of a contravention, both a penalty is imposed and compensation is required to be paid.
- (4) The maximum amount in total of the penalty and compensation combined in respect of the contravention may not exceed 10 per cent of the regulated person's turnover.

*Status: Point in time view as at 30/11/2016.*

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- (5) The Secretary of State may by order provide for how a person's turnover is to be determined for the purposes of this section.
- (6) An order under subsection (5) may make different provision for penalties and compensation.
- (7) An order under subsection (5) 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.
- (8) In this section—
  - “compensation” means compensation that a regulated person is required to pay by a consumer redress order;
  - “penalty” means a penalty imposed on a regulated person under section 30A.]

**Textual Amendments**

**F399** Ss. 30G-30O inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), **Sch. 14 para. 1(2)** (with [Sch. 14 para. 1\(8\)](#))

*Investigation of complaints etc.*

<sup>F400</sup>**31** .....

**Textual Amendments**

**F400** S. 31 repealed (7.11.2000) by [2000 c. 27](#), ss. 22(3), 108, **Sch. 8** (with [Sch. 7 para. 31](#)); S.I. 2000/2974, [art. 2](#), **Sch.** (subject to transitional provisions in [arts. 3-12](#))

<sup>F401</sup>**32** **Consumer complaints.**  
.....

**Textual Amendments**

**F401** S. 32 repealed (1.10.2008) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\)](#), s. 66(2), **Sch. 8**; S.I. 2008/2550, [art. 2](#), **Sch.**

<sup>F402</sup>**32A** .....

**Textual Amendments**

**F402** S. 32A repealed (7.11.2000) by [2000 c. 27](#), ss. 22(3), 108, **Sch. 8** (with [Sch. 7 para. 31](#)); S.I. 2000/2974, [art. 2](#), **Sch.** (subject to transitional provisions in [arts. 3-12](#))

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**F403 33 Power of Council to investigate other matters.**

.....

**Textual Amendments**

**F403** S. 33 repealed (1.10.2008) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\), s. 66\(2\), Sch. 8](#); S.I. 2008/2550, art. 2, Sch.

*F404 [Standards of performance]*

**Textual Amendments**

**F404** 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.

**F405 [33A Standards of performance in individual cases.**

[ The Authority may make regulations prescribing such standards of performance in <sup>F406</sup>(1) connection with the activities of gas suppliers, so far as affecting customers or potential customers of theirs, 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) Regulations under this section may—

- (a) prescribe circumstances in which [<sup>F407</sup>gas suppliers] are to inform [<sup>F408</sup>customers or potential customers] of their rights under this section [<sup>F409</sup>or the rights under section 33AA];
- (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>F407</sup>gas suppliers] are to be exempted from any requirements of the regulations or this section; and
- (d) [<sup>F410</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>F407</sup>gas suppliers].

(4) If a [<sup>F411</sup>gas supplier] fails to meet a prescribed standard, he shall make to any [<sup>F412</sup>customer or potential customer] who is affected by the failure [<sup>F413</sup>and is of a prescribed description]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.

<sup>F414</sup>(6) .....

<sup>F414</sup>(7) .....

*Status: Point in time view as at 30/11/2016.*

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- F414(8) .....
- F414(9) .....
- F415(10) .....
- F415(11) .....

### Textual Amendments

- F405** 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.
- F406** S. 33A(1)(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by **2000 c. 27, s. 108, Sch. 6 Pt. I para. 13(a)**; 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)
- F407** 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**
- F408** Words in s. 33A(3)(s) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by **2000 c. 27, s. 108, Sch. 6 Pt. I para. 13(b)**; 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)
- F409** Words in s. 33A(3)(a) inserted (1.10.2001) by **2000 c. 27, s. 90(1)(a)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F410** 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**
- F411** 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**
- F412** Words in s. 33A(4) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by **2000 c. 27, s. 108, Sch. 6 Pt. I para. 13(c)**; 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 art. 3-20)
- F413** Words in s. 33A(4) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by **2000 c. 27, s. 108, Sch. 6 Pt. I para. 13(c)**; 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)
- F414** S. 33A(6)-(9) repealed (1.10.2001) by **2000 c. 27, ss. 90(1)(b), 108, Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F415** 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**

### <sup>F416</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—

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- (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.]

#### Textual Amendments

**F416** 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)

#### <sup>F417</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 <sup>F418</sup>Authority—
    - (i) by either party, or
    - (ii) with the consent of either party, by Citizens Advice or Citizens Advice Scotland or Citizens Advice and Citizens Advice Scotland acting jointly;] 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 <sup>F419</sup>Citizens Advice or Citizens Advice Scotland] ) 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 <sup>F420</sup>the county court] ; and



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- (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**

- F417** 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)
- F418** Words in s. 33AB(1)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(9)(a) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F419** Words in s. 33AB(1)(b) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(9)(b) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F420** Words in s. 33AB(4)(a) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

[<sup>F421</sup>**33B 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>F422</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.

<sup>F423</sup>(2) .....

[ Different standards may be determined for different gas suppliers if the Director is <sup>F424</sup>(3) 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>F425</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**

- F421** 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.
- F422** 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

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- F423** S. 33B(2) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F424** 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**
- F425** 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**

<sup>F426</sup>**[33BA 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.]

**Textual Amendments**

- F426** 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)

<sup>F427</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 [<sup>F428</sup>Citizens Advice and Citizens Advice Scotland] 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.

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- (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.]

#### Textual Amendments

**F427** 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)

**F428** Words in s. 33BAA(1)(c) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(10) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

#### [<sup>F429</sup>33BQ<sup>F430</sup>Promotion of reductions in carbon emissions: gas transporters and gas suppliers]

- (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 [<sup>F431</sup>carbon emissions reduction target] to be determined by [<sup>F432</sup>the Administrator] under the order for that transporter or supplier (and that obligation is referred to in this section as [<sup>F433</sup>a “carbon emissions reduction obligation”]).

[ The power to make orders under this section may be exercised so as to impose more <sup>F434</sup>(1A) than one carbon emissions reduction obligation on a person in relation to the same period or to periods that overlap to any extent.]

- [<sup>F435</sup>(2) In this section “carbon emissions reduction target” means a target for the promotion of any of the following—
  - (a) measures for improving energy efficiency, that is to say, efficiency in the use by consumers of electricity, gas conveyed through pipes or any other source of energy which is specified in the order;
  - (b) if the order so provides—
    - (i) measures for increasing the amount of electricity generated, or heat produced, by microgeneration;
    - (ii) any other measures of a description specified in the order for increasing the amount of electricity generated, or heat produced, using low-emissions sources or technologies;

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(iii) measures for reducing the consumption of such energy as is mentioned in paragraph (a).]

[ In this section “the Administrator” means—

- <sup>F436</sup>(2A) (a) the Authority; or  
(b) if the order so provides, the Secretary of State or a specified body other than the Authority.]
- (3) An order under this section may specify criteria by reference to which [<sup>F437</sup>the Administrator] is to determine [<sup>F438</sup>carbon emissions reduction targets] for the gas transporters and gas suppliers on whom obligations are imposed by the order.
- (4) The Secretary of State and [<sup>F439</sup>(subject to any directions given under subsection (9B)) the Administrator] 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 [<sup>F440</sup>carbon emissions reduction 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 [<sup>F441</sup>a carbon emissions reduction target];
- [<sup>F442</sup>(ba) requiring part of a carbon emissions reduction target to be met by action of a specified description;
- (bb) requiring the whole or any part of a carbon emissions reduction target to be met by action relating to—
- (i) individuals of a specified description,
- (ii) property of a specified description,
- (iii) specified areas or areas of a specified description, or
- (iv) individuals or property of a specified description in specified areas or areas of a specified description;
- (bc) enabling the Administrator to direct a transporter or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction;
- (bd) preventing action from qualifying for the purpose of meeting the whole or any part of a carbon emissions reduction target unless such persons as are specified in, or determined in accordance with, the order—
- (i) have been consulted about the action;
- (ii) have consented to the action;
- (be) requiring action which qualifies for the purpose of meeting both a carbon emissions reduction target and a home-heating cost reduction target to be treated as qualifying only for the purpose of meeting such one of those targets as the transporter or supplier concerned elects;
- (c) determining, or specifying the method for determining, the contribution that any action makes towards meeting a carbon emissions reduction target;]
- (d) requiring transporters and suppliers to give to [<sup>F443</sup>the Administrator] specified information, or information of a specified nature, about their proposals for complying with their [<sup>F444</sup>carbon emissions reduction obligations];
- (e) requiring [<sup>F445</sup>the Administrator] to determine—

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- (i) whether any proposed action qualifies for the purpose of achieving the whole or any part of a person's [<sup>F446</sup>carbon emissions reduction target]; and
  - [<sup>F447</sup>(ii) if so, what contribution the proposed action (or any result of that action specified in the determination) is to make towards achieving the carbon emissions reduction target;]
  - (f) requiring transporters or suppliers to produce to [<sup>F448</sup>the Administrator] evidence of a specified kind demonstrating that they have complied with their [<sup>F449</sup>carbon emissions reduction obligations][<sup>F450</sup>; and
  - (g) requiring the Administrator or a specified body to offer services of a specified kind and authorising a specified fee to be charged to those who take up the offer.]
- [ If the order makes provision by virtue of subsection (5)(bc) enabling the Administrator <sup>F451</sup>(5A) to direct a transporter or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction the order may also make provision—
- (a) authorising the Administrator to require specified persons to provide it with information for the purpose of enabling it to identify and select individuals who are to be the subject of a direction;
  - (b) specifying criteria in accordance with which the Administrator is to select individuals who are to be the subject of a direction;
  - (c) determining, or specifying the method for determining, which transporter or supplier is to be given a direction in relation to any particular individual selected in accordance with provision made under paragraph (b);
  - (d) authorising the Administrator, if it gives a direction to a transporter or supplier, to provide the transporter or supplier with information relating to the individual concerned for the purpose of assisting the transporter or supplier to comply with the direction;
  - (e) as to the times at which a direction may be given;
  - (f) as to the circumstances in which a direction need not be complied with.
- (5B) Provision made by virtue of subsection (5)(c) may in particular provide for an action to be treated as making a greater contribution than it would otherwise do if the action relates to—
- (a) an individual of a specified description,
  - (b) a property of a specified description, or
  - (c) both an individual of a specified description and a property of a specified description.]
- (6) The order may make provision authorising [<sup>F452</sup>the Administrator] 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 [<sup>F453</sup>carbon emissions reduction 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 [<sup>F454</sup>carbon emissions reduction target] may be altered during the period to which the order relates;

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- (b) the whole or any part of a person's [<sup>F454</sup>carbon emissions reduction 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 [<sup>F455</sup>carbon emissions reduction 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>M9</sup>Electricity Act 1989); or
  - (e) a person may carry forward the whole or any part of his [<sup>F455</sup>carbon emissions reduction target] for the period to which the order relates to a subsequent period.
- [ The order may—
- <sup>F456</sup>(7A) (a) make provision for any specified requirement contained in it to be treated as a relevant requirement for the purposes of this Part; or
- (b) if it provides for the Administrator to be a person other than the Authority, make provision for and in connection with enabling the Administrator to enforce any requirement imposed by the order.
- (7B) Provision made by virtue of paragraph (b) of subsection (7A) may, in particular, include provision corresponding to or applying (with or without modifications) any of sections 28 to 30F and section 38.]
- (8) The order may—
- (a) provide for exceptions from any requirement of the order;
  - <sup>F457</sup>(b) .....
  - (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.
- [ The order may make provision requiring the Administrator to give guidance to
- <sup>F458</sup>(9A) transporters or suppliers concerning such matters relating to the order as are specified.
- (9B) The Administrator shall carry out its functions under this section in accordance with any general or specific directions given to it by the Secretary of State.]
- (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.
- <sup>F459</sup>(10A) The Secretary of State must obtain the consent of the Scottish Ministers before making an order under this section which contains provision that—

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- (a) is included by virtue of subsection (2)(b),
  - (b) extends to Scotland, and
  - (c) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.]
- (11) Before making an order under this section the Secretary of State shall consult the Authority, [<sup>F460</sup>Citizens Advice, Citizens Advice Scotland] , gas transporters and gas suppliers and such other persons as he considers appropriate.
- (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.]
- [<sup>F461</sup>(12A) Subsection (12) does not apply to an order under this section made only for the purpose of amending an earlier order under this section so as to alter the provision included in the earlier order by virtue of any of paragraphs (b), (ba) or (c) of subsection (5). But such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12B) If an order under this section provides for the Administrator to be a body other than the Authority, the Secretary of State may make payments to the body of such amounts as the Secretary of State considers appropriate.]
- [<sup>F462</sup>(13) In this section—
- “[<sup>F463</sup>home-heating cost reduction target ” has the meaning given by section 33BD(2)(a);]
  - “microgeneration” has the same meaning as in the Climate Change and Sustainable Energy Act 2006;
  - “plant” includes any equipment, apparatus or appliance;
  - [<sup>F464</sup>“specified” means specified in the order.]
- (14) For the purposes of subsection (2)(b)(ii), electricity is generated, or heat is produced, using low-emissions sources or technologies if it is generated, or produced, by plant which relies wholly or mainly on a source of energy or a technology mentioned in section 26(2) of the Climate Change and Sustainable Energy Act 2006.]

#### Textual Amendments

- F429** 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)
- F430** S. 33BC heading substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), Sch. para. 2(2); S.I. 2007/538, art. 2
- F431** Words in s. 33BC(1) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), ss. 15(2)(a), 28(3); S.I. 2007/538, art. 2
- F432** Words in s. 33BC(1) substituted (18.12.2011) by Energy Act 2011 (c. 16), ss. 66(2), 121(3)
- F433** Words in s. 33BC(1) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), ss. 15(2)(b), 28(3); S.I. 2007/538, art. 2
- F434** S. 33BC(1A) inserted (26.1.2009) by Climate Change Act 2008 (c. 27), s. 100(5), Sch. 8 para. 1(2)
- F435** S. 33BC(2) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), ss. 15(3), 28(3); S.I. 2007/538, art. 2
- F436** S. 33BC(2A) inserted (18.12.2011) by Energy Act 2011 (c. 16), ss. 66(3), 121(3)
- F437** Words in s. 33BC(3) substituted (18.12.2011) by Energy Act 2011 (c. 16), ss. 66(4), 121(3)

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- F438** Words in s. 33BC(3) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 2(3)**; S.I. 2007/538, art. 2
- F439** Words in s. 33BC(4) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(5)**, 121(3)
- F440** Words in s. 33BC(5) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 2(4)(a)**; S.I. 2007/538, art. 2
- F441** Words in s. 33BC(5)(b) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 2(4)(b)**; S.I. 2007/538, art. 2
- F442** Ss. 33BC(5)(ba)-(c) substituted for s. 33BC(5)(ba)(c) (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(6)(a)**, 121(3)
- F443** Words in s. 33BC(5)(d) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(6)(b)**, 121(3)
- F444** Words in s. 33BC(5)(d) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 2(4)(d)**; S.I. 2007/538, art. 2
- F445** Words in s. 33BC(5)(e) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(6)(c)(i)**, 121(3)
- F446** Words in s. 33BC(5)(e)(i) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 2(4)(e)(i)**; S.I. 2007/538, art. 2
- F447** S. 33BC(5)(e)(ii) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(6)(c)(ii)**, 121(3)
- F448** Words in s. 33BC(5)(f) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(6)(d)**, 121(3)
- F449** Words in s. 33BC(5)(f) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 2(4)(d)**; S.I. 2007/538, art. 2
- F450** S. 33BC(5)(g) and words inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(6)(e)**, 121(3)
- F451** S. 33BC(5A)(5B) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(7)**, 121(3)
- F452** Words in s. 33BC(6) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(8)**, 121(3)
- F453** Words in s. 33BC(6) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 2(5)**; S.I. 2007/538, art. 2
- F454** Words in s. 33BC(7) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 2(6)**; S.I. 2007/538, art. 2
- F455** Words in s. 33BC(7)(d)(e) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 2(6)**; S.I. 2007/538, art. 2
- F456** S. 33BC(7A)(7B) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(9)**, 121(3)
- F457** S. 33BC(8)(b) omitted (18.12.2011) by virtue of Energy Act 2011 (c. 16), **ss. 66(10)**, 121(3)
- F458** S. 33BC(9A)(9B) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(11)**, 121(3)
- F459** S. 33BC(10A) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(12)**, 121(3)
- F460** Words in s. 33BC(11) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 4(11)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F461** S. 33BC(12A)(12B) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(13)**, 121(3) (with s. 66(15))
- F462** S. 33BC(13)(14) added (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 15(5)**, 28(3); S.I. 2007/538, art. 2
- F463** Words in s. 33BC(13) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 66(14)**, 121(3)
- F464** Words in s. 33BC(13) inserted (26.1.2009) by Climate Change Act 2008 (c. 27), s. 100(5), **Sch. 8 para. 1(4)**

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

- C44** Definition of  
“energy efficiency target”  
in s. 33BC(2) modified (15.12.2001) by S.I. 2001/4011, **art. 5**

#### Marginal Citations

- M9** 1989 c. 29.



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[<sup>F465</sup>**33BD**Promotion of reductions in home-heating costs: gas transporters and gas suppliers

- (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 home-heating cost reduction target to be determined by the Administrator under the order for that transporter or supplier (and that obligation is referred to in this section as a “home-heating cost reduction obligation”).
- (2) In this section—
  - (a) “the Administrator” means—
    - (i) the Authority; or
    - (ii) if the order so provides, the Secretary of State or a specified body other than the Authority;
  - (b) “home-heating cost reduction target” means a target for the promotion of measures for reducing the cost to individuals of heating their homes;
  - (c) “specified” means specified in the order.
- (3) The power to make orders under this section may be exercised so as to impose more than one home-heating cost reduction obligation on a person in relation to the same period or to periods that overlap to any extent.
- (4) Subsections (3), (5) to (8), (9A) and (10A) to (12B) of section 33BC apply to an order under this section as they apply to an order under that section, with the following modifications—
  - (a) for “carbon emissions reduction obligation” (in each place) substitute “ home-heating cost reduction obligation ”;
  - (b) for “carbon emissions reduction obligations” (in each place) substitute “ home-heating cost reduction obligations ”;
  - (c) for “carbon emissions reduction target” (in each place other than in paragraph (be) of subsection (5)) substitute “ home-heating cost reduction target ”;
  - (d) for “carbon emissions reduction targets” (in each place) substitute “ home-heating cost reduction targets ”; and
  - (e) omit paragraph (a) of subsection (10A).
- (5) Subsections (4) and (9B) of section 33BC apply to the carrying out by the Secretary of State and the Administrator of their respective functions under this section as they apply to the carrying out by those persons of their functions under that section.
- (6) 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.]

**Textual Amendments**

**F465** S. 33BD inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 68, 121(3)**

*Status: Point in time view as at 30/11/2016.*

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**[<sup>F467</sup>33C 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>F468</sup>gas suppliers] under section 33A above;
  - (b) the levels of overall performance achieved by [<sup>F468</sup>gas suppliers] in connection with the provision of gas supply services; <sup>F469</sup> . . .
  - <sup>F469</sup>(c) . . . . .

[ The Authority shall from time to time collect information with respect to—

- <sup>F470</sup>(1A) (a) the compensation made by gas transporters under section 33AA;
- (b) the levels of overall performance achieved by gas transporters.]
- (2) At such times as the Director may direct, each [<sup>F471</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>F472</sup>section 33B <sup>F473</sup> . . . ], such information with respect to the level of performance achieved by the supplier as [<sup>F474</sup>the Authority may direct].

[ At such times as the Authority may direct, each gas transporter shall give the following <sup>F475</sup>(2A) information to the Authority—

- (a) as respects each standard prescribed by regulations under section 33AA, 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 section 33BA, such information with respect to the level of performance achieved by the transporter as the Authority may direct.]

(3) . . . . .

<sup>F476</sup>(4) . . . . .

<sup>F476</sup>(5) . . . . .]

**Textual Amendments**

**F467** 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.

**F468** 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**

**F469** s. 33C(1)(c) and word “and” immediately preceding it repealed (1.10.2001) by [2000 c. 27, ss. 93\(2\), 108, Sch. 8](#); S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

**F470** S. 33C(1A) inserted (1.10.2001) by [2000 c. 27, s. 93\(3\)](#); S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

**F471** 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**

**F472** 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**

**F473** Words in s. 33C(2)(b) repealed (1.10.2001) by [2000 c. 27, ss. 93\(4\), 108, Sch. 8](#); S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

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- F474** Words in s. 33C(2)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6**, Pt. I para. 14; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F475** S. 33C(2A) inserted (1.10.2001) by 2000 c. 27, s. 93(5); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F476** S. 33C(4)(5) repealed (1.10.2001) by 2000 c. 27, ss. 20(7), 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[<sup>F477</sup>**33D Information to be given to customers about overall performance.**

- (1) The Authority may make regulations requiring such information as may be specified or described in the regulations about—
- (a) the standards of overall performance determined under section 33B or 33BA; and
  - (b) the levels of performance achieved as respects those standards,
- to be given by gas suppliers or gas transporters to customers or potential customers of gas suppliers.
- (2) Regulations under this section may include provision—
- (a) as to the form and manner in which and the frequency with which information is to be given; and
  - (b) requiring information about the matters mentioned in subsection (1)(a) or (b) and relating to gas transporters to be given by gas transporters to gas suppliers and by gas suppliers to their customers or potential customers.]

**Textual Amendments**

- F477** S. 33D substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 94; 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)

[<sup>F478</sup>**33D~~A~~ Publication of statistical information about standards of performance.**

- (1) [<sup>F479</sup>It shall be the duty of both Citizens Advice and Citizens Advice Scotland to secure the publication, in such form and manner and with such frequency as the particular body thinks appropriate, of such statistical information as the particular body 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) [<sup>F480</sup>carbon emissions reduction obligations] imposed by order under section 33BC; and
    - [<sup>F481</sup>home-heating cost reduction obligations imposed by order under (iii) section 33BD; and]
  - (b) complaints made by consumers about any matter relating to the activities of such suppliers or transporters and the handling of such complaints.

- [ Citizens Advice and Citizens Advice Scotland may comply with the duty in <sup>F482</sup>(1A) subsection (1) by publishing information jointly or by securing that information is published on behalf of both of them.]

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- (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 [<sup>F483</sup>Citizens Advice or Citizens Advice Scotland] .]

**Textual Amendments**

**F478** 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)

**F479** Words in s. 33DA(1) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(12)(a) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

**F480** Words in s. 33DA(1)(a)(ii) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), Sch. para. 3; S.I. 2007/538, art. 2

**F481** S. 33DA(1)(a)(iii) inserted (18.12.2011) by Energy Act 2011 (c. 16), s. 121(5)(a), Sch. 1 para. 1

**F482** S. 33DA(1A) inserted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(12)(b) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

**F483** Words in s. 33DA(2) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(12)(c) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

[<sup>F484</sup>**33DB**Information relating to complaints handling standards

- (1) This section applies in relation to standards prescribed by the Authority by regulations under section 43 of the Consumers, Estate Agents and Redress Act 2007 (standards for complaints handling) in relation to licence holders (or some of them).
- (2) The Authority must from time to time collect information with respect to the levels of compliance with the standards which those licence holders have achieved.
- (3) At such times as the Authority may direct, each of those licence holders must give the Authority such information as the Authority may direct with respect to the levels of compliance with the standards which the licence holder has achieved.]

**Textual Amendments**

**F484** S. 33DB inserted (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), Sch. 5 para. 1(3) (with s. 48(3)); S.I. 2008/2550, art. 2, Sch.

[<sup>F485</sup>**33E** .....

**Textual Amendments**

**F485** S. 33E repealed (7.11.2000 for s. 33E(2)(a) and otherwise 1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. 1 para. 15, Sch. 8; 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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### *F486* Service standards and remuneration

#### Textual Amendments

**F486** 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>F487</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)—
  - (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and

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- (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;
- [<sup>F488</sup>“company” means a company (as defined in section 1(1) of the Companies Act 2006) that—
- (a) is limited by shares, and
  - (b) has its registered office in Great Britain.]

“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

**F487** 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)

**F488** Words in s. 33F(10) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 70(2) (with art. 10)

#### *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>F489</sup>(a) such activities as are mentioned in section 5(1) above [<sup>F490</sup>or subsection (2A) below] ; 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>F491</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.
- [<sup>F492</sup>(2A) The activities referred to in subsection (1)(a) are the matters specified in the following provisions of the Gas Directive as matters to be monitored—
- (a) Article 26(3);  
(b) Article 41(1)(g) to (k), (m), (n) and (r) to (t);  
(c) where a person is certified on the ground mentioned in subsection (5) of section 8G, Article 41(3)(a) and (b);  
(d) where a person is certified on the ground mentioned in subsection (6) of section 8G, Article 41(5)(b) and (d); and  
(e) Article 41(9).]
- (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 [<sup>F493</sup>the CMA] to do so, to give information, advice and assistance to the Secretary of State or [<sup>F493</sup>the CMA] with respect to any matter in respect of which any function of the Director [<sup>F494</sup>or the Secretary of State.] is exercisable.
- [<sup>F495</sup>(5) The Authority shall have power to make agreements with the Health and Safety Executive for the Authority to perform on behalf of that Executive (with or without payment) any of the functions of that Executive.]

#### Textual Amendments

- F489** 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**
- F490** Words in s. 34(1)(a) inserted (10.11.2011) by **The Electricity and Gas (Internal Markets) Regulations 2011** (S.I. 2011/2704), regs. 1(1), **30(2)**
- F491** 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**
- F492** S. 34(2A) inserted (10.11.2011) by **The Electricity and Gas (Internal Markets) Regulations 2011** (S.I. 2011/2704), regs. 1(1), **30(3)**
- F493** Words in s. 34(4) substituted (1.4.2014) by **The Enterprise and Regulatory Reform Act 2013** (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 48** (with art. 3)

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- F494** 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**  
**F495** S. 34(5) substituted (1.4.2008) by **The Legislative Reform (Health and Safety Executive) Order 2008** (S.I. 2008/960), art. 1, **Sch. 3** (with art. 21, Sch. 2)

[<sup>F496</sup>**34A Power to require information etc for the purpose of monitoring**

- (1) The Authority may, for the purpose of performing its duty under subsection (1)(a) or (b) of section 34 in relation to activities falling within subsection (2A) of that section, serve a notice under subsection (2) on any regulated person.
- (2) A notice under this subsection is a notice signed by the Authority which—
  - (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority any documents which are specified or described in the notice and are in that person’s custody or under that person’s control; or
  - (b) requires that person, if that person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.
- (3) In paragraphs (a) and (b) of subsection (2) the reference to the Authority includes a reference to a person appointed by the Authority for the purpose of exercising the power in question.
- (4) Sections 28 to 30 have effect in relation to a person on whom a notice is served under subsection (2) as if references in those sections to a relevant requirement (other than the reference in section 28(8)) included references to a requirement of that notice.
- (5) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is liable—
  - (a) on summary conviction—
    - (i) in England and Wales, to a fine not exceeding the statutory maximum;
    - (ii) in Scotland, to a fine not exceeding £5,000; or
  - (b) on conviction on indictment, to a fine.
- (6) The definition of “regulated person” in section 28(8) applies for the purposes of this section.]

**Textual Amendments**

- F496** S. 34A inserted (10.11.2011) by **The Electricity and Gas (Internal Markets) Regulations 2011** (S.I. 2011/2704), regs. 1(1), **30(4)**

[<sup>F497</sup>**35 Publication of advice and information about consumer matters.**

- (1) If it appears to the Authority that the publication of any advice and information would promote the interests of consumers in relation to gas conveyed through pipes, the Authority may publish that advice or information in such manner as it thinks fit.
- (2) In publishing advice or information under this section the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where



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publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

- (3) Before deciding to publish under this section any advice or information relating to a particular individual or body of persons the Authority shall consult that individual or body.

[<sup>F499</sup>The CMA] shall consult the Authority before publishing under section 6 of <sup>F498</sup>(3A) the Enterprise Act 2002 any information or advice which may be published by the Authority under this section.]

- (4) In this section “consumers” includes both existing and future consumers.]

#### Textual Amendments

- F497** S. 35 substituted (20.12.2000) by 2000 c. 27, s. 6(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15)
- F498** S. 35(3A) inserted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 15(9); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F499** Words in s. 35(3A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 49 (with art. 3)

### 36 Keeping of register.

[<sup>F500</sup>(1) The Director shall keep a register of notifications and directions under [<sup>F501</sup>paragraph 5 of Schedule 2A to this Act], exemptions granted under section 6A above to particular persons, [<sup>F502</sup>licences under section 7[<sup>F503</sup>, 7ZA][<sup>F504</sup>, 7A or 7AB]] above [<sup>F505</sup>, final and provisional orders and penalties imposed under section 30A(1)]<sup>F506</sup>... in such form as he may determine.

(2) Subject to [<sup>F507</sup>subsection (2A) and 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>F508</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 <sup>F509</sup>... of an exemption granted under that section to persons of a particular class [<sup>F510</sup>and every direction under [<sup>F511</sup>subsection (7)] of that section];
- (d) every [<sup>F512</sup>licence under section 7[<sup>F513</sup>, 7ZA][<sup>F514</sup>, 7A or 7AB]] above and every modification or revocation of, and every direction or consent given or determination made under, [<sup>F515</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][<sup>F516</sup>; and.
- (f) every notice under section 30A(5).]

[<sup>F517</sup>(2A) The Authority may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of—

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- (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and
  - (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority's opinion, seriously and prejudicially affect the interests of that body.]
- (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.
- [<sup>F518</sup>(4) The contents of the register must be shown on the Authority's website.]
- (5) Any person may, on payment of such fee as may be prescribed by an order [<sup>F519</sup>made by the Secretary of State], 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

- F500** S. 36(1)(2) substituted (31.10.1994) by 1993 c. 1, s. 3; S.I. 1994/2568, art. 2
- F501** 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
- F502** 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
- F503** Words in s. 36(1) inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. 149(8)(b), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F504** Words in s. 36(1) substituted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 25
- F505** Words in s. 36(1) substituted (1.10.2001) by 2000 c. 27, s. 95(4)(a); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F506** Words in s. 36(1) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), ss. 97(2), 115(3)(k)
- F507** Words in s. 36(2) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 183(2), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F508** 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
- F509** Words in s. 36(2)(c) omitted (1.10.2001) by virtue of 2000 c. 27, s. 108, Sch. 6, Pt. I para. 16(a); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20) and are repealed (*prosp.*) by 2000 c. 27, ss. 108, 110(2), Sch. 8
- F510** 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
- F511** Words in s. 36(2)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6, Pt. I para. 16(b); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F512** 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
- F513** Words in s. 36(2)(d) inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. 149(8)(b), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F514** Words in s. 36(2)(d) substituted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 25

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- F515** 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**
- F516** S. 36(2)(f) and word “and” immediately preceding it inserted (1.10.2001) by 2000 c. 27, **s. 95(4)(b)**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in arts. 3-20)
- F517** S. 36(2A) inserted (5.10.2004) by **Energy Act 2004 (c. 20), ss. 183(1)**, 198(2); S.I. 2004/2575, **art. 2(1), Sch. 1**
- F518** S. 36(4) substituted (26.5.2015) by **Deregulation Act 2015 (c. 20), ss. 97(3)**, 115(3)(k)
- F519** Words in s. 36(5) substituted (26.5.2015) by **Deregulation Act 2015 (c. 20), ss. 97(4)**, 115(3)(k)

**[36A** <sup>F520</sup> **Functions with respect to competition.**

<sup>F521</sup>(1) . . . . .

<sup>F522</sup>(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Authority and the <sup>F523</sup>CMA] .

(2A) This subsection applies to the functions of the <sup>F524</sup>CMA] under Part 4 of the Enterprise Act 2002 (other than sections 166 <sup>F525</sup>, 171 and 174E] ) so far as <sup>F526</sup>those functions—

- (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
- (b) relate to] commercial activities connected with the carrying on of activities to which this subsection applies.

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) <sup>F527</sup>above—

- (a) references] in Part 4 of the Act of 2002 to the <sup>F528</sup>CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 <sup>F529</sup>, 171 and 174E] of that Act and in any other provision of that Act where the context otherwise <sup>F530</sup>requires);
- (b) references in that Part to section 5 of the Act of 2002 are to be construed as including references to section 34(1) and (2) of this Act.]

<sup>F531</sup>(2C) Section 130A of the Enterprise Act 2002 is to have effect in its application in relation to the Authority by virtue of subsections (2) and (2A)—

(a) as if for subsection (1) of that section there were substituted—

“(1) Where the Gas and Electricity Markets Authority—

- (a) is proposing to carry out its functions under section 34(1) or (2) of the Gas Act 1986 in relation to a matter for the purposes mentioned in subsection (2), and
- (b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and

(b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with the carrying on of activities to which section 36A(2A) of the Gas Act 1986 applies”.]

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- [<sup>F532</sup>[<sup>F533</sup>(3) The Authority shall be entitled to exercise, concurrently with the [<sup>F534</sup>CMA] , the functions of the [<sup>F534</sup>CMA] under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) [<sup>F535</sup>, 40B(1) to (4)] and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
  - (b) conduct of the kind mentioned in section 18(1) of that Act,
  - (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
  - (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,
- 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 [<sup>F536</sup>the CMA] are to be read as including a reference to the Director ( [<sup>F537</sup>except in sections 31D(1) to (6) , 38(1) to (6)[<sup>F535</sup>, 40B(1) to (4)] , 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 [<sup>F538</sup>(2A)] 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).
- [<sup>F539</sup>(5) Before the [<sup>F540</sup>CMA] or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, it shall consult the other.
- (5A) Neither the [<sup>F540</sup>CMA] nor the Authority shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.]
- (6) It shall be the duty of the Director, for the purpose of assisting [<sup>F541</sup>a CMA group] in carrying out an investigation on a [<sup>F542</sup>market investigation reference made by the Authority (under section 131 of the Act of 2002)] by virtue of subsection (2) [<sup>F543</sup> . . . above, to give to the [<sup>F544</sup>group] —
- (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 [<sup>F544</sup>group] for that purpose; or
    - (ii) is information which in his opinion it would be appropriate for that purpose to give to the [<sup>F544</sup>group] without any such request; and
  - (b) any other assistance which the [<sup>F544</sup>group] may require and which it is within his power to give, in relation to any such matters,
- and the [<sup>F544</sup>group] shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.
- [<sup>F545</sup>(6A) In subsection (6) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

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(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) [F546Part 4 of the Enterprise Act 2002] ; or  
[F547(b) Part I of the Competition Act 1998 ( [F548other than sections 31D(1) to (6), 38(1) to (6) [F549, 40B(1) to (4)] and 51),]

by or in relation to the Director on the ground that it should have been done by or in relation to [F550the CMA] .

[F551(8) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the [F552CMA] included references to the Authority.]

F553(9) .....

(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 [F554[F555exercisable by the Authority by virtue of subsection (2) or (3) above] .].]

#### Textual Amendments

- F520** S. 36A inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**
- F521** S. 36A(1) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 15(10)(a), **Sch. 26**; S.I. 2003/766, **art. 2, Sch.** (with **art. 3**) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F522** Ss. 36A(2)-(2B) substituted for s. 36A(2) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 17(2)**; S.I. 2003/1397, **art. 2(1), Sch.**
- F523** Word in s. 36A(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1), Sch. 1 para. 50(2)** (with **art. 3**)
- F524** Word in s. 36A(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1), Sch. 1 para. 50(3)(a)** (with **art. 3**)
- F525** Words in s. 36A(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1), Sch. 1 para. 50(3)(b)** (with **art. 3**)
- F526** Words in s. 36A(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1), Sch. 1 para. 50(3)(c)** (with **art. 3**)
- F527** Words in s. 36A(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1), Sch. 1 para. 50(4)(a)** (with **art. 3**)
- F528** Word in s. 36A(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1), Sch. 1 para. 50(4)(b)** (with **art. 3**)
- F529** Words in s. 36A(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1), Sch. 1 para. 50(4)(c)** (with **art. 3**)
- F530** Words in s. 36A substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1), Sch. 1 para. 50(4)(d)** (with **art. 3**)

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- F531** S. 36A(2C) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(5)** (with art. 3)
- F532** S. 36A(3) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 1(2)(a)**
- F533** 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.**
- F534** Word in s. 36A(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(6)** (with art. 3)
- F535** Words in s. 36A(3)(3A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 2**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F536** Words in s. 36A(3A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(7)** (with art. 3)
- F537** Words in s. 36A(3A) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 1(2)(b)**
- F538** Word in s. 36A(4) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 17(3)**; S.I. 2003/1397, art. 2(1), Sch.
- F539** S. 36A(5)(5A) substituted for s. 36A(5) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 17(4)**; S.I. 2003/1397, art. 2(1), Sch.
- F540** Word in s. 36A(5)(5A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(8)** (with art. 3)
- F541** Words in s. 36A(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(9)(a)(i)** (with art. 3)
- F542** Words in s. 36A(6) substituted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(9)(a)(ii)** (with art. 3)
- F543** 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.**
- F544** Word in s. 36A(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(9)(b)** (with art. 3)
- F545** S. 36A(6A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(10)** (with art. 3)
- F546** Words in s. 36A(7)(a) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 17(5)**; S.I. 2003/1397, art. 2(1), Sch.
- F547** 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.**
- F548** Words in s. 36A(7)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 1(2)(c)**
- F549** Words in s. 36A(7)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 2**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F550** Words in s. 36A(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(11)** (with art. 3)
- F551** S. 36A(8) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 17(6)**; S.I. 2003/1397, art. 2(1), Sch.

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- F552** Word in s. 36A(8) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 50\(12\)](#) (with art. 3)
- F553** S. 36A(9) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 9 para. 17\(7\)](#), [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#)
- F554** 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.](#)
- F555** Words in s. 36A(10) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 9 para. 17\(8\)](#); S.I. 2003/1397, art. 2(1), [Sch.](#)

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

- C46** 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.](#)

[<sup>F556</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>M10</sup>Weights and Measures Act 1985 (testing of standards and equipment) so far as relating to—
- any article used or proposed to be used as a standard of a unit of measurement in relation to gas;
  - any measuring equipment, or other metrological equipment, for use in relation to gas; or
  - 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**

- F556** 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**

- M10** [1985 c.72.](#)

[<sup>F557</sup>**36C Power to direct a modification of the UNC**

- (1) The Authority may direct the operator of the gas National Transmission System to make a modification to which this section applies and which is specified in the direction to the Uniform Network Code.
- (2) This section applies to a modification—
- which relates to the arrangements contained in the Code in respect of a Gas Supply Emergency, and
  - which the Authority considers is a market-based modification.
- (3) The Authority may give a direction under this section only if it considers that the modification will do either or both of the following—
- decrease the likelihood of a Gas Supply Emergency occurring;

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- (b) decrease the duration or severity of a Gas Supply Emergency which occurs.
- (4) In the exercise of the power under this section the Authority must have regard to the purposes of Standard Special Condition A11 of licences granted under section 7 of this Act.
- (5) For the purposes of subsection (2), a modification is “market-based” if it relates to the creation of financial incentives for gas shippers or gas transporters.
- (6) Before giving a direction under this section the Authority must consult such persons as it considers appropriate.
- (7) In this section—
  - “Gas Supply Emergency” and “National Transmission System” have the meaning given by the Uniform Network Code;
  - “the Uniform Network Code” means the document of that title required to be prepared pursuant to Standard Special Condition A11 of licences granted under section 7 of this Act.]

#### Textual Amendments

**F557** S. 36C inserted (18.10.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 81(1), 121(4)** (with s. 81(2))

#### [<sup>F558</sup>37 **Maximum prices for reselling gas.**

- (1) The Director [<sup>F559</sup>may] from time to time direct that the maximum prices at which gas supplied by [<sup>F559</sup>authorised 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 [<sup>F560</sup>an authorised 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 [<sup>F560</sup>an authorised 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

- F558** S. 37 substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 45**; S.I. 1996/218, **art. 2**
- F559** Words in s. 37(1) substituted (1.10.2001) by 2000 c. 27, **s. 102(a)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F560** Words in s. 37(2)(4) substituted (1.10.2001) by 2000 c. 27, **s. 102(b)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

### 38 Power to require information etc.

- (1) Where it appears to the [<sup>F561</sup>Authority] that a [<sup>F562</sup>regulated person] may be contravening, or may have contravened, any relevant condition or requirement [<sup>F563</sup> or may be failing, or may have failed, to achieve any standard of performance prescribed under section 33A or 33AA,], the [<sup>F561</sup>Authority] may, for any purpose connected with the exercise of [<sup>F564</sup> its functions under section 28 or 30A to [<sup>F565</sup>30O]] in relation to that matter, by notice in writing—
- (a) require any person to produce, at a time and place specified in the notice, to the [<sup>F561</sup>Authority] or to any person appointed by [<sup>F566</sup>it] 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 [<sup>F561</sup>Authority] 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;

F567 . . .

- [<sup>F568</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 [<sup>F569</sup>4AA, 4AB or 4A], 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 [<sup>F562</sup>regulated person] 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 [<sup>F562</sup>regulated person] 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.]

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- (2) A person who without reasonable excuse fails to do anything duly required of him by a notice under subsection (1) [<sup>F570</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 [<sup>F571</sup>or records]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.
- (4) If a person makes default in complying with a notice under subsection (1) [<sup>F570</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

- F561** Words in s. 38(1) substituted (1.10.2001) by 2000 c. 27, s. 95(5)(a); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F562** Words in s. 38(1) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 37(4)(h)
- F563** Words in s. 38(1) substituted (1.10.2001) by 2000 c. 27, s. 95(5)(b); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F564** Words in s. 38(1) substituted (1.10.2001) by 2000 c. 27, s. 95(5)(c); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F565** Word in s. 38(1) substituted (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 1(6)**
- F566** Word in s. 38(1) substituted (1.10.2001) by 2000 c. 27, s. 95(5)(d); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F567** 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**
- F568** 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**
- F569** Words in s. 38(1A) substituted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 17(a)**; S.I. 2000/3343, **art. 2, Sch.** (subject to transitional provisions in arts. 3-15)
- F570** 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**
- F571** Words in s. 38(3) substituted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 17(b)**; S.I. 2000/3343, **art. 2, Sch.** (subject to transitional provisions in arts. 3-15)

#### [<sup>F572</sup>38A Reasons for decisions.

- (1) This section applies to the following decisions of the Authority or the Secretary of State, namely—
- (a) the revocation of a licence;
  - (b) the modification of the conditions of a licence;

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- (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of section 7B(5)(a)(i) or (ii);
  - (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of section 7B(5)(a)(iii);
  - (e) the determination of a dispute referred under section 27A(1);
  - (f) the making of a final order, the making or confirmation of a provisional order or the revocation of a final order or of a provisional order which has been confirmed.
- (2) As soon as reasonably practicable after making such a decision the Authority or the Secretary of State shall publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.
- (3) The Authority shall send a copy of a notice published in respect of a decision mentioned in paragraph (a), (b), (c), (d) or (f) of subsection (1) to the licence holder to whose licence, or to whom, the decision relates.
- (4) In preparing a notice under subsection (2) the Authority or the Secretary of State shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.
- (5) This section does not apply to a decision resulting in any provision which the Secretary of State has under section 36(3) directed the Authority not to enter in the register required to be kept under that section.
- (6) In this section “final order” and “provisional order” have the same meanings as in section 28.]

**Textual Amendments**

**F572** S. 38A substituted (1.10.2001) by 2000 c. 27, s. 87; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

F573 **39** .....

**Textual Amendments**

**F573** S. 39 repealed (1.10.2001) by 2000 c. 27, ss. 5(10), 108, Sch. 8; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

*Other functions of Council*

F574 **40** .....

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#### Textual Amendments

**F574** S. 40 repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

<sup>F575</sup>**41** .....

#### Textual Amendments

**F575** S. 41 repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

*[<sup>F576</sup> Adjustment of charges]*

#### Textual Amendments

**F576** 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>F577</sup>**41A Adjustment of charges to help disadvantaged groups of customers.**

.....

#### Textual Amendments

**F577** S. 41B omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), s. 38(3), **Sch. para. 3**

<sup>F577</sup>**41B Orders: supplementary.**

.....

#### Textual Amendments

**F577** S. 41B omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), s. 38(3), **Sch. para. 3**

*[<sup>F578</sup> Alteration of activities requiring licence]*

#### Textual Amendments

**F578** 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)

**41C** [<sup>F579</sup> Power to alter activities requiring licence.]

(1) The Secretary of State may by order provide—

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- (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;
  - [<sup>F580</sup>(aa) participation in the operation of a gas interconnector;]
  - (b) the supply to premises of gas conveyed through pipes; <sup>F581</sup>...
  - (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 [<sup>F582</sup>; or
  - (d) the provision of a smart meter communication service.]
- [<sup>F583</sup>(4A) For the purposes of subsection (4), activities connected with the supply of gas include the following activities, whether or not carried on by a person supplying gas—
  - (a) giving advice, information or assistance in relation to contracts for the supply of gas to persons who are or may become customers under such contracts, and
  - (b) the provision of any other services to such persons in connection with such contracts.]
- (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.
- (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.

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### Textual Amendments

- F579** 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)
- F580** S. 41C(4)(aa) inserted (14.8.2006) by Energy Act 2004 (c. 20), ss. 149(10), 198(2); S.I. 2006/1964, art. 2, Sch.
- F581** Word in s. 41C(4) omitted (19.9.2012) by virtue of The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 26(a)
- F582** S. 41C(4)(d) and word inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 26(b)
- F583** S. 41C(4A) inserted (18.2.2014) by Energy Act 2013 (c. 32), ss. 143(1), 156(2)

### [<sup>F584</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 [<sup>F585</sup>Citizens Advice and Citizens Advice Scotland] 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 [<sup>F586</sup>shall, before making the application, make a reference under section 41E to the CMA] .
- (4) In any other case where the Authority considers it appropriate to make a reference to the [<sup>F587</sup>CMA] under section 41E before making the application, the Authority may make such a reference.
- (5) If a reference is made to the [<sup>F587</sup>CMA] , the application shall not be made unless the [<sup>F587</sup>CMA] 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.
- (6) The application shall set out—
  - (a) the activities which the Authority considers should become licensable activities; and

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- (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.

<sup>F588</sup> [ The functions of the CMA with respect to a reference under section 41E (including (7) functions under sections 109 to 115 of the Enterprise Act 2002, as applied by section 41EB) are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

#### Textual Amendments

- F584** 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)
- F585** Words in s. 41D(2) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 4(13)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F586** Words in s. 41D(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 23(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F587** Word in s. 41D(4)(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 23(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F588** S. 41D(7) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 23(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### <sup>F589</sup> 41E References to <sup>F590</sup> CMA ] .

- (1) A reference to the <sup>F591</sup> CMA] under this section shall require <sup>F592</sup>the CMA] 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 <sup>F593</sup> CMA] 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 <sup>F593</sup> CMA] 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 <sup>F593</sup> CMA] 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 <sup>F594</sup>Citizens Advice and Citizens Advice Scotland] and publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of—

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- (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 [F595CMA] in carrying out the investigation on the reference, give to the [F595CMA] —
- (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 by the [F595CMA] for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the [F595CMA] without any such request; and
  - (b) any other assistance which the [F595CMA] may require, and which it is within its power to give, in relation to any such matters,
- and the [F595CMA] 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 [F595CMA] 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 [F596the Health and Safety Executive] under section 4A (advice about health and safety in relation to gas).

F597(7) .....

F597(8) ..... ]

#### Textual Amendments

- F589** 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)
- F590** Word in s. 41E heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 24(4); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F591** Word in s. 41E(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 24(2)(a); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F592** Words in s. 41E(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 24(2)(b); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F593** Word in s. 41E(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 24(3); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F594** Words in s. 41E(4) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(14) (with Sch. 1 para. 28, 2 paras. 13-15)
- F595** Word in s. 41E(5)(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 24(3); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F596** Words in s. 41E(6)(c) substituted (1.4.2008) by The Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, Sch. 3 (with art. 21, Sch. 2)
- F597** S. 41E(7)(8) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 15(11), Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)



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#### [<sup>F598</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 [<sup>F599</sup>CMA] 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 [<sup>F599</sup>CMA] 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**

**F598** S. 41EA, 41EB inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 15\(12\)](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

**F599** Word in s. 41EA(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 25](#); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

#### [<sup>F598</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 [<sup>F600</sup>(1A),] (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).

[ Section 109 shall, in its application by virtue of subsection (1) above, have effect as <sup>F601</sup>(1A) if—

- (a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 41E of the Gas Act 1986.”, and

- (b) subsection (8A) were omitted.]

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- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; <sup>F602</sup> ...
  - <sup>F603</sup> [ after subsection (3), there were inserted—
    - (aa) “(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]
    - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- <sup>F604</sup>(3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.”.]
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the <sup>F605</sup>[CMA] 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) <sup>F606</sup>—
- (a) the words “, OFCOM or the Secretary of State” were omitted; and
  - (b) for the words “their functions” there were substituted “ its functions ”.]
- (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

**F598** S. 41EA, 41EB inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 15(12)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**F600** Word in s. 41EB(1) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 51(2)** (with art. 3, Sch. 2 para. 2)

**F601** S. 41EB(1A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 51(3)** (with art. 3, Sch. 2 para. 2)

**F602** Word in s. 41EB(2)(a) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 51(4)(a)** (with art. 3, Sch. 2 para. 2)

**F603** S. 41EB(2)(aa) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 51(4)(b)** (with art. 3, Sch. 2 para. 2)

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- F604** S. 41EB(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 51(5)** (with art. 3, Sch. 2 para. 2)
- F605** Word in s. 41EB(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 26(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F606** Words in s. 41EB(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 26(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### **[<sup>F607</sup>41F Reports on references.**

- (1) In making a report on a reference under section 41E, the [<sup>F608</sup>CMA] 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 [<sup>F609</sup>CMA] 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 [<sup>F609</sup>CMA] 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.
- [ For the purposes of section 41D(5), a conclusion contained in a report of the [<sup>F611</sup>CMA]  
<sup>F610</sup>(3A) is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [<sup>F612</sup>by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference] .
- (3B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 41E as the conclusions of the [<sup>F613</sup>CMA] , the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]
- [<sup>F614</sup>(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [<sup>F613</sup>CMA] on a reference under section 41E.
- (4A) In making any report on a reference under section 41E the [<sup>F613</sup>CMA] must have regard to the following considerations before disclosing any information.
  - (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [<sup>F613</sup>CMA] thinks is contrary to the public interest.
  - (4C) The second consideration is the need to exclude from disclosure (so far as practicable)
    - (a) commercial information whose disclosure the [<sup>F613</sup>CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
    - (b) information relating to the private affairs of an individual whose disclosure the [<sup>F613</sup>CMA] thinks might significantly harm the individual's interests.

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- (4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.]
- (5) A report of the [<sup>F615</sup>CMA] 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, [<sup>F616</sup>send a copy of the report to Citizens Advice and Citizens Advice Scotland] and publish [<sup>F617</sup>the copy sent to Citizens Advice and Citizens Advice Scotland] 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 [<sup>F618</sup>Citizens Advice and Citizens Advice Scotland] and published under that subsection.]

#### Textual Amendments

- F607** 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. 6** (subject to transitional provisions in arts. 3-20)
- F608** Word in s. 41F(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 27(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F609** Word in s. 41F(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 27(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F610** S. 41F(3A)(3B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 15(13)(a)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F611** Word in s. 41F(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 27(4)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F612** Words in s. 41F(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 27(4)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F613** Words in ss. 41F(3B)-(4C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 27(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F614** Ss. 41F(4)-(4D) substituted for s. 41F(4) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 15(13)(b)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F615** Word in s. 41F(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 27(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F616** Words in s. 41F(7) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 4(15)(a)(i)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F617** Words in s. 41F(7) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 4(15)(a)(ii)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F618** Words in s. 41F(8) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 4(15)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

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### **[<sup>F619</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 [<sup>F620</sup>, Citizens Advice and Citizens Advice Scotland] ; 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—
  - (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**

**F619** 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)

**F620** Words in s. 41G(2)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(16) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

### **[<sup>F621</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 [<sup>F622</sup>, Citizens Advice and Citizens Advice Scotland] ; 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.]

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### Textual Amendments

- F621** 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)
- F622** Words in s. 41H(2)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 4(17) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

### [<sup>F623</sup>41HA] New licensable activities: smart meters

- (1) The Secretary of State may by order amend this Part so as to provide—
  - (a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or
  - (b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.
- (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) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.
- (4) In this section—
  - (a) “relevant meter” means a meter of a kind prescribed by the order;
  - (b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.
- (5) 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;
  - (b) 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 the activities;
  - (c) provision modifying any standard conditions of licences.
- (6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision—
  - (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;
  - (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;
  - (c) specifying that a licence, and any modification of a licence, must be in writing;
  - (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  - (e) conferring functions on the Secretary of State or the Authority.

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- (7) An order under this section may provide that it is to remain in force only for the period specified in the order.

#### Textual Amendments

**F623** Ss. 41HA-41HC inserted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), s. 110(1)(b), [Sch. 4 para. 1](#)

### 41HB Section 41HA: supplemental

- (1) Before making an order under section 41HA, the Secretary of State must consult—
- the Authority, and
  - such other persons as the Secretary of State thinks appropriate.
- (2) The power to make such an order may not be exercised after [<sup>F624</sup>1 November 2018] .
- (3) An order under section 41HA may not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Subsections (1) to (3) of section 47 apply in relation to orders under section 41HA as they apply in relation to regulations under this Part.

#### Textual Amendments

**F623** Ss. 41HA-41HC inserted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), s. 110(1)(b), [Sch. 4 para. 1](#)

**F624** Words in s. 41HB(2) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), [ss. 73\(8\)](#), 121(3)

### 41HC Competitive tenders for licences for new licensable activities

- (1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.
- (2) In this section “new licensable activities” means one or more activities which are the subject of an order under section 41HA(1)(a).
- (3) The regulations may—
- provide for the determination to be made by the Secretary of State or the Authority;
  - provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;
  - provide for the inclusion in such a proposal of an invitation to apply for such a licence;
  - impose conditions in relation to the making of an application for a licence;
  - impose restrictions in relation to persons who may apply for a licence;
  - impose requirements as to the period within which applications must be made;
  - make provision for regulating the manner in which applications are to be considered or determined;

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- (h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person's suitability for being granted both the licence and an electricity licence;
  - (i) confer on the Authority or the Secretary of State functions in connection with tender exercises.
- (4) The regulations may also include provision—
- (a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;
  - (b) about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (5) In this section—
- “electricity licence” means a licence for an activity to which an order under section 56FA(1)(a) of the Electricity Act 1989 applies;
  - “prescribed” means prescribed in or determined under regulations under this section;
  - “tender costs”, in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;
  - “tender exercise” means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.
- (6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.]

#### Textual Amendments

**F623** Ss. 41HA-41HC inserted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), s. 110(1)(b), [Sch. 4 para. 1](#)

#### [<sup>F625</sup>41I Service by Authority of certain notices on [<sup>F626</sup>Citizens Advice and Citizens Advice Scotland] .

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 [<sup>F627</sup>Citizens Advice and Citizens Advice Scotland] .]

#### Textual Amendments

**F625** 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](#))

**F626** Words in s. 41I heading substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), [Sch. 1 para. 4\(18\)\(a\)](#) (with [Sch. 1 para. 28](#), [Sch. 2 paras. 13-15](#))

**F627** Words in s. 41I substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), [Sch. 1 para. 4\(18\)\(b\)](#) (with [Sch. 1 para. 28](#), [Sch. 2 paras. 13-15](#))



*Status: Point in time view as at 30/11/2016.*

*Changes to legislation: Gas Act 1986, Part I is up to date with all changes known to be in force on or before 22 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)*

## Miscellaneous

F628 **42** .....

### Textual Amendments

**F628** S. 42 repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

## 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>F629</sup>(1A) Any person who with intent to deceive—

- (a) impersonates an officer of a [<sup>F630</sup>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,

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

**F629** S. 43(1A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 51**; S.I. 1996/218, **art. 2**

**F630** Words in s. 43 substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 2(1)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

## 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.

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- (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.

#### **<sup>F631</sup>46 Service of notices etc.**

- (1) <sup>F632</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—
  - (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>F633</sup>(2) Without prejudice to subsection (1) above, where this subsection applies in relation to a [<sup>F634</sup>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,

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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 [<sup>F634</sup>gas transporter] if he divides [<sup>F635</sup>any authorised area of his] 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

- F631** 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))
- F632** 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
- F633** 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
- F634** Words in s. 46 substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. I para. 2(1); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F635** Words in s. 46(1) substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6, Pt. I para. 18; S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### 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>F636</sup>before and be heard by] the Secretary of State, the Director and other authorities; and
  - (d) as to awarding costs [<sup>F637</sup>or expenses] of proceedings for the determination of such questions, determining the amount thereof and the enforcement of awards thereof.

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- (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>F638</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>F639</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>F640</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>F641</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.
- [<sup>F642</sup>(7) Any power to make regulations conferred by this Part on the Secretary of State or the Authority shall be exercisable by statutory instrument.
- (8) Any statutory instrument containing regulations under this Part made by the Secretary of State shall, except as otherwise provided by this Act, be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F636** 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.
- F637** 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.
- F638** 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](#)
- F639** 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](#)
- F640** 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](#)

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**F641** 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**

**F642** S. 47(7)(8) substituted (20.12.2000) for sub (7) by 2000 c. 27, s. 100; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in **arts. 3-15**)

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

**C47** 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**)

**48 Interpretation of Part I and savings.**

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

[<sup>F643</sup>“the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;]

[<sup>F643</sup>“the Agency Regulation” means Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators;]

[<sup>F643</sup>“associated undertaking”, in relation to a person (“person A”), means a person who—

(a) has control of person A; or

(b) is under the control of a person who controls person A,

and sections 450 and 451(1) to (3) of the Corporation Tax Act 2010 (meaning of “control”) apply, with any necessary modifications, for the purposes of this definition as they apply for the purposes of Part 10 of that Act;]

“authorised area”, in relation to a [<sup>F644</sup>gas transporter], has the meaning given by section 7(2) above;

[<sup>F645</sup>“authorised supplier” means a person authorised by a licence or exemption to supply to any premises gas which has been conveyed to those premises through pipes;]

[<sup>F646</sup>“authorised transporter” means a person authorised by a licence or exemption to convey gas through pipes to any premises or to a pipe-line system operated by a gas transporter;]

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

[<sup>F647</sup>“the CMA ” means the Competition and Markets Authority;]

<sup>F648</sup>

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

[<sup>F643</sup>“designated regulatory authority” means an authority designated in accordance with Article 39 of the Gas Directive;]

[<sup>F643</sup>“designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A of the Utilities Act 2000;]

[<sup>F643</sup>“distribution exemption holder” means a person who—

(a) is carrying on an activity such as is mentioned in section 5(1)(a), the whole or part of which is also an activity of distribution within the meaning given by Article 2(5) of the Gas Directive; and

(b) is authorised to carry on that activity by an exemption;]

“distribution main”, in relation to a [<sup>F644</sup>gas transporter], means any main of the [<sup>F649</sup>transporter] through which the [<sup>F649</sup>transporter] is for the time being distributing gas and which is not being used only for the purpose of conveying gas in bulk;

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F650

[<sup>F643</sup>“exempt distribution system” means a distribution system operated or controlled by a distribution exemption holder who is covered by an exemption granted to it in relation to that system;]

[<sup>F651</sup>“exemption” means an exemption under section 6A;]

“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
- (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;

[<sup>F643</sup>“the Gas Directive” means [Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC](#);]

“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>F652</sup>“gas interconnector” has the meaning given by section 5(8);]

[<sup>F643</sup>“the Gas Regulation” means [Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation 2005/1775/EC](#), as amended by the 2010 Amending Decision<sup>F653</sup>, the 2012 Amending Decision and the 2013 Amending Regulation];]

[<sup>F654</sup>“gas supplier” and “gas shipper” have the meanings given by section 7A(11) above;]

[<sup>F643</sup>“gas undertaking” has the meaning given by section 8Q;]

“holding company” [<sup>F655</sup>has the meaning given by][<sup>F656</sup>section 1159 of the Companies Act 2006];

“information” includes accounts, estimates and returns;

[<sup>F657</sup>“kilowatt hour” means 3.6 megajoules;]

[<sup>F658</sup>“licence” means a licence under section 7<sup>F659</sup>, 7ZA][<sup>F660</sup>, 7A or 7AB] and “licence holder” shall be construed accordingly;]

[<sup>F643</sup>“LNG import or export facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for—

- (a) the importation into Great Britain and regasification of liquid gas prior to its conveyance to a pipeline system operated by the holder of a licence under section 7 or section 7ZA, or the liquefaction of gas for the purpose of its export from Great Britain; and
- (b) any activity, including temporary storage of gas or liquid gas, which is necessary for that importation, regasification or liquefaction;]

F661

[<sup>F643</sup>“main commercial conditions” means—

- (a) in the case of a storage facility, such information as would enable a potential applicant for a right to have gas or liquid gas stored in the

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facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;

- (b) in the case of an LNG import or export facility, the terms setting out the cost or the method of determining the cost of acquiring the right to have gas or liquid gas treated in the facility;
- (c) the other significant terms on which such a right as is mentioned in paragraph (a) or (b) would be granted; and
- (d) such additional information as the Authority may from time to time specify by notice;]

“notice” means notice in writing;

[<sup>F662</sup>“officer”, in relation to any person, includes any servant or agent of that person, and any officer or servant of such an agent;

[<sup>F663</sup>“owner”—

- (a) in relation to any premises or other property, includes a lessee;
- (b) in relation to a storage facility or an LNG import or export facility, includes a person occupying or having control of the facility,

and cognate expressions shall be construed accordingly;:]

“prescribed” means prescribed by regulations [<sup>F664</sup>made, unless the context otherwise requires, by the Secretary of State];

[<sup>F665</sup> providing a smart meter communication service ” has the meaning given in section 5(11) above, and cognate expressions shall be construed accordingly;]

[<sup>F643</sup>“relevant producer or supplier” has the meaning given by section 8Q;]

[<sup>F666</sup>[<sup>F644</sup>“gas transporter”] has the meaning given by section 7(1) above;]

<sup>F667</sup>

[<sup>F643</sup>“senior officer” means—

- (a) in relation to a company, a director;
- (b) in relation to a partnership, a partner;
- (c) in any other case, a person holding a position equivalent to that of a director or partner;]

<sup>F668</sup> [“service pipe” means a pipe, other than a distribution main of a [<sup>F644</sup>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;

[<sup>F665</sup> smart meter communication licence ” has the meaning given to that term in section 7AB(1);]

“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 [<sup>F644</sup>gas transporter];

[<sup>F643</sup>“storage”, in relation to liquid gas in a storage facility, includes any liquefaction of gas or regasification of liquid gas ancillary to the storage of liquid gas, and “stored”, in relation to liquid gas in a storage facility, shall be construed accordingly;]

[<sup>F643</sup>“storage facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for either or both of the following—

- (a) the storage in porous strata, or in cavities in strata, of gas which has been, or will be, conveyed in a pipeline system operated by the holder of a licence under section 7 or 7ZA;

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(b) the storage of liquid gas which, if regasified, would be suitable for conveyance through pipes to premises in accordance with a licence under section 7,

but the reference in paragraph (b) to the storage of liquid gas does not include such temporary storage as is mentioned in the definition of “LNG import or export facility”;

“subsidiary” <sup>F655</sup>has the meaning given by section 736 of] the Companies Act 1985;

<sup>F643</sup>“supply exemption holder” means a person who—

- (a) is carrying on the activity mentioned in section 5(1)(b); and
- (b) is authorised to carry on that activity by an exemption;

<sup>F643</sup>“treatment”, in relation to gas or liquid gas in an LNG import or export facility, includes importation, regasification, liquefaction and temporary storage, and “treat” shall be construed accordingly;

<sup>F643</sup>“the 2010 Amending Decision” means Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation 2009/715/EC of the European Parliament and of the Council on conditions for access to the natural gas transmission networks;

<sup>F669</sup>“the 2012 Amending Decision” means Commission Decision 2012/490/EU of 24 August 2012 amending Annex I to Regulation 2009/715/EC of the European Parliament and of the Council on conditions for access to the natural gas transmission networks;

“the 2013 Amending Regulation” means Regulation 2013/347/EU of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision 2006/1364/EC and amending Regulations 2009/713/EC, 2009/714/EC and 2009/715/EC;

<sup>F670</sup> .....  
<sup>F671</sup> .....

<sup>F672</sup>(1ZA) Until section 75 of the Utilities Act 2000 comes into force the references to an exemption in the definitions in subsection (1) above of “distribution exemption holder”, “exempt distribution system” and “supply exemption holder” to an exemption include an exception under Schedule 2A.]

<sup>F673</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>F674</sup>to the supply of gas (directly or indirectly) to a <sup>F644</sup>gas transporter], gas supplier or gas shipper].

<sup>F675</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
- (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—



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- (a) he has attained pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 4 to the <sup>M11</sup>Pensions Act 1995); or
- (b) in the case of a man born before [<sup>F676</sup>6th December 1953], he is the same age as a woman who has attained pensionable age (within the meaning so given).

<sup>F677</sup>(3) . . . . . ]

<sup>F677</sup>(4) . . . . .

### Textual Amendments

- F643** Words in s. 48(1) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **47(2)(b)**
- F644** Words in s. 48 substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F645** Definition of “authorised supplier” in s. 48(1) inserted (7.11.2000 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 19(a)**; 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)
- F646** Definition of “authorised transporter” in s. 48(1) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 19(a)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F647** Words in s. 48(1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 28**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F648** Definition of “the council” in s. 48(1) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F649** 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
- F650** Definition of “domestic customer” in s. 48(1) repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 6, Pt. I para. 19(c), **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F651** Definition of “exemption” in s. 48(1) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6**, Pt. I para. 19(b); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F652** Words in s. 48(1) inserted (1.12.2004) by [Energy Act 2004 \(c. 20\)](#), ss. **149(11)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F653** Words in s. 48(1) inserted (14.1.2015) by [The Electricity and Gas \(Internal Markets\) Regulations 2014 \(S.I. 2014/3332\)](#), regs. 1(1), **2(b)**
- F654** Words 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
- F655** 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. 1990/1392art. 2(d))
- F656** Words in s. 48(1) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 70(3)** (with art. 10)
- F657** Definition in s. 48(1) inserted (1.4.1992) by S.I. 1992/450, **reg. 3(2)**.
- F658** Definition of “licence” in s. 48(1) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6**, Pt. I para. 19(d); S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F659** Word in s. 48(1) inserted (1.12.2004) by [Energy Act 2004 \(c. 20\)](#), ss. **149(8)(a)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F660** Words in s. 48(1) substituted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **27(a)**
- F661** Words in s. 48(1) repealed (1.4.1999) by S.I. 1999/506, **art. 20(d)**
- F662** Words 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

*Status: Point in time view as at 30/11/2016.*

*Changes to legislation: Gas Act 1986, Part 1 is up to date with all changes known to be in force on or before 22 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)*

- F663** Words in s. 48(1) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), [47\(2\)\(a\)](#)
- F664** Words 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](#)
- F665** Words in s. 48(1) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, [27\(b\)](#)
- F666** Words 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](#)
- F667** Words 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](#)
- F668** Words 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](#)
- F669** Words in s. 48(1) inserted (14.1.2015) by [The Electricity and Gas \(Internal Markets\) Regulations 2014 \(S.I. 2014/3332\)](#), regs. 1(1), [2\(a\)](#)
- F670** Words 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](#)
- F671** Definition of "therm" in s. 48(1) omitted (1.1.2000) by virtue of S.I. 1992/450, [reg. 3\(5\)\(e\)](#).
- F672** S. 48(1ZA) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), [47\(3\)](#)
- F673** 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](#)
- F674** Words in s. 48(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), [Sch. 3 para. 54\(3\)](#); S.I. 1996/218, [art. 2](#)
- F675** 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](#)
- F676** Words in s. 48(2B)(b) substituted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), s. 38(3)(a), [Sch. 1 para. 1](#)
- F677** S. 48(3)(4) repealed (1.10.2001) by 2000 c. 27, s. 108, [Sch. 8](#); S.I. 2001/3266, [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

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

- C48** S. 48(1) amended (temp. until 31.12.1999) (1.4.1992) by S.I. 1992/450, [reg. 3\(4\)\(b\)](#).

#### Marginal Citations

- M11** 1995 c.26.

**Status:**

Point in time view as at 30/11/2016.

**Changes to legislation:**

Gas Act 1986, Part I is up to date with all changes known to be in force on or before 22 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.