



Gas Act 1986

1986 CHAPTER 44

PART I

GAS SUPPLY

[^{F1}Enforcement of obligations of regulated persons]

28 Orders for securing compliance with certain provisions.

- (1) Subject to subsections (2)[^{F1}, [^{F2}(4A) to] (5A)] and section 29 below, where the Director is satisfied that a [^{F3}regulated person] is contravening, or [^{F4}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 [^{F5}subsections [^{F2}(4A) to] (5A)] below, where it appears to the Director—
 - (a) that a [^{F3}regulated person] is contravening, or [^{F4}is likely] to contravene, any relevant condition or requirement; and
 - (b) that it is requisite that a provisional order be made,the Director shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition or requirement.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the Director shall have regard, in particular—
 - (a) to the extent to which any person is likely to sustain loss or damage in consequence anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and
 - (b) to the fact that the effect of the provisions of this section and section 30 below is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.

Status: Point in time view as at 01/04/2014.

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- (4) Subject to ^{F5}subsections ^{F6}(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 ^{F3}regulated person] is contravening, or ^{F4}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.

^{F7}(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 ^{F8}section ^{F9}4AA, 4AB or 4A] preclude the making or, as the case may be, the confirmation of the order
 - ^{F10}(aa)
 - ^{F10}(b)
 - ^{F11}(c)

^{F12}(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 ^{F3}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 ^{F3}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 ^{F13}decides that it would be more appropriate to proceed under the Competition Act 1998 or] is satisfied as mentioned in ^{F5}subsections (5) ^{F14}or] (5A)] above, he shall—

- (a) give notice that he ^{F15}has so decided or] is so satisfied to the ^{F3}regulated person] ; and
- (b) publish a copy of the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

- (7) A final or provisional order—
 - (a) shall require the ^{F3}regulated 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.

^{F16}(7A)

(8) In this section and sections 29 to ^{F17}30O] below—

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“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;

[^{F18}“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 [^{F3}regulated person] , means any condition of [^{F19}any licence held by that person] ;

[^{F20}“relevant requirement”, in relation to a [^{F3}regulated person] , means any requirement imposed on [^{F21}that person under a provision specified in Schedule 4B as a relevant provision in respect of that person]

^{F22}(9)]]

Textual Amendments

- F1** 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)
- F2** 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.)
- F3** 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)
- F4** 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.
- F5** 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)
- F6** 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.)
- F7** 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.)
- F8** 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
- F9** 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)
- F10** 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)
- F11** 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.)
- F12** 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)
- F13** 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.)

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- F14** 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.
- F15** 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.)
- F16** 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)
- F17** Word in s. 28(8) substituted (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 1(3)**
- F18** 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)**
- F19** 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)**
- F20** 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**
- F21** 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)**
- F22** 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)

- C1** 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))

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