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SCHEDULES

SCHEDULE 5

TRANSITIONAL PROVISIONS AND SAVINGS

PART II

OTHER TRANSITIONAL PROVISIONS AND SAVINGS

Approvals under section 5(3)

- 13 Any approval—
- (a) which has been given by the Secretary of State for the purposes of section 5(3) of the 1986 Act (approval of contract for supply of propane or butane); and
 - (b) which is in force immediately before the appointed day,
- shall have effect on and after that day as if it had been given for the purposes of paragraph 3 of Schedule 2A to that Act.

Notifications under section 6

- 14 (1) This paragraph applies where any notification given, or having effect as if given, to the Secretary of State under section 6(1) of the 1986 Act (exceptions to section 5) by any person (“the gas supplier”) is in force immediately before the appointed day.
- (2) The notification shall have effect on and after the appointed day as if it had been given to the Director under paragraph 5(1) of Schedule 2A to the 1986 Act (exceptions to prohibition on unlicensed activities).
- (3) Before the appointed day, such one or more of the following as may be requisite to meet the particular circumstances of the case, namely—
- (a) an exemption under section 6A of the 1986 Act (exemptions from prohibition) which is an exemption from section 5(1)(a) of that Act; and
 - (b) a licence under section 7A(2) of that Act (licensing of gas shippers),
- shall be granted to the gas supplier, to come into force on that day, by the Secretary of State or, as the case may be, by the Director.

Applications for authorisation under section 7

- 15 (1) This paragraph applies where—

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- (a) an application has been made to the Secretary of State under section 7 of the 1986 Act (authorisation of public gas suppliers) by any person (“the applicant”); and
 - (b) the application is not determined before the appointed day.
- (2) Subject to the following provisions of this paragraph, the application shall have effect on and after the appointed day as if it were an application to the Director (in such terms as may be specified by the applicant for the purposes of this sub-paragraph) for—
- (a) a licence under section 7 of the 1986 Act (licensing of public gas transporters) to be granted to one of the persons mentioned in sub-paragraph (3) below;
 - (b) a licence under subsection (1) of section 7A of that Act (licensing of gas suppliers) to be granted to the other of those persons; and
 - (c) a licence under subsection (2) of that section (licensing of gas shippers) to be granted to the person mentioned in paragraph (b) above.
- (3) The persons referred to in sub-paragraph (2) above are—
- (a) the applicant; and
 - (b) such one of his associates as may be nominated by him for the purposes of this sub-paragraph.
- (4) Sections 7, 7A and 7B of the 1986 Act shall apply in relation to the application, and any licence granted or proposed to be granted on the application, as if subsections (5) and (6) of section 7, and subsections (1) and (2) of section 7B, were omitted.
- (5) No licence shall be granted on the application except with the consent of the Secretary of State; and before giving his consent the Secretary of State shall consult—
- (a) the Health and Safety Executive; and
 - (b) any public gas transporter whose authorised area includes the whole or any part of the area to which the application relates.
- (6) For the purposes of this paragraph a company is an associate of the applicant if—
- (a) the company is registered under the ^{M1}Companies Act 1985 and is limited by shares; and
 - (b) either the company is wholly owned by the applicant or the applicant is wholly owned by the company.
- (7) Any reference in this paragraph to a licence of any description includes a reference to an extension of such a licence.

Marginal Citations

M1 1985 c. 6.

Individual authorisations under section 8

- 16 (1) The provisions of this paragraph have effect as respects each person who holds, or is treated as holding, an authorisation under section 8 of the 1986 Act (authorisation of persons other than public gas suppliers) which is in force immediately before the appointed day (a “gas supplier”) for the purpose of securing that the authorisation

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has effect on and after that day as if it were such one or more of the following as may be requisite to meet the particular circumstances of the case, namely—

- (a) an exemption from section 5(1)(a) of that Act granted under section 6A of that Act (exemptions from prohibition);
- (b) a licence granted under section 7A(1) of that Act (licensing of gas suppliers), or an exemption from section 5(1)(b) of that Act granted under section 6A of that Act; and
- (c) a licence granted under section 7A(2) of that Act (licensing of gas shippers).

(2) As soon as practicable after the passing of this Act, and in any event before the appointed day, the Secretary of State shall make a scheme providing for each gas supplier's authorisation under section 8 of the 1986 Act to have effect as mentioned in sub-paragraph (1) above.

(3) Subject to sub-paragraphs (4) and (5) below, a scheme under this paragraph shall provide that each condition which by virtue of section 8(2) of this Act is a standard condition for the purposes of—

- (a) licences under subsection (1) of section 7A of the 1986 Act; or
- (b) licences under subsection (2) of that section,

shall be incorporated in any licence treated as granted under that subsection.

(4) Sub-paragraph (3) above shall not apply in relation to a licence treated as granted under section 7A(1) of the 1986 Act which authorises only the supply to premises of gas which has been conveyed to the premises otherwise than by a public gas transporter.

(5) A scheme under this paragraph may provide that any licence which is treated as granted under section 7A(1) or (2) of the 1986 Act and any exemption which is treated as granted under section 6A of that Act (including the terms and conditions which are derived from the authorisation and, in the case of a licence, the standard conditions which are incorporated by virtue of sub-paragraph (3) above) shall have effect with—

- (a) such incidental, consequential and supplementary amendments as appear to the Secretary of State to be necessary or expedient;
- (b) such amendments relating to the revocation or suspension of the licence or exemption as the Secretary of State thinks fit; and
- (c) such other amendments (if any) as may be agreed between the Secretary of State and the gas supplier concerned;

and such a scheme may also make such transitional provision as appears to the Secretary of State to be necessary or expedient.

(6) A scheme under this paragraph may make different provisions for different cases or classes of cases determined by, or in accordance with, the provisions of the scheme.

(7) As soon as practicable after making a scheme under this paragraph, the Secretary of State shall publish, as respects each different case or class of case—

- (a) the text of any exemption which by virtue of the scheme is treated as granted under section 6A of the 1986 Act; and
- (b) the text of any licence which by virtue of the scheme is treated as granted under section 7A(1) or (2) of that Act;

and any text so published shall be treated as authoritative unless the contrary is shown.

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- (8) It shall be the duty of each gas supplier to provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the exercise of any function conferred on him by sub-paragraphs (1) to (6) above.
- (9) The Secretary of State shall not exercise any function conferred on him by sub-paragraphs (1) to (6) above except after consultation with such gas suppliers as he considers appropriate.
- (10) On the appointed day each gas supplier’s authorisation under section 8 of the 1986 Act shall have effect as provided for by the scheme under this paragraph.

Class authorisations under section 8

- 17 (1) Subject to sub-paragraph (2) below, any authorisation granted under section 8 of the 1986 Act to persons of a class which is in force immediately before the appointed day shall have effect on and after that day as if it—
- (a) were an exemption from such one or more of paragraphs (a), (b) and (c) of section 5(1) of that Act as may be requisite to meet the particular circumstances of the case; and
 - (b) had been granted under section 6A of that Act on the same terms and subject to the same conditions as those on or subject to which it had been granted as an authorisation under the said section 8.
- (2) If, in the case of any such authorisation as is mentioned in sub-paragraph (1) above, the Secretary of State is satisfied that exemption from such one or more of paragraphs (a), (b) and (c) of section 5(1) of the 1986 Act as may be requisite to meet the particular circumstances of the case will be granted under section 6A of that Act as from the appointed day, he may by order direct that that sub-paragraph shall not apply in relation to the authorisation.
- (3) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C1 Sch. 5 para. 17(1) excluded (29.2.1996) by S.I. 1996/449, arts. 1, 21.

Gas shipping arrangements already made

- 18 (1) Any arrangement—
- (a) which any person has made with a public gas supplier for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that supplier; and
 - (b) which is in force immediately before the appointed day,
- shall be treated for the purposes of section 5(1)(c) of the 1986 Act as if it had been made on that day with the supplier’s transport successor.
- (2) In this Part of this Schedule “transport successor”, in relation to a public gas supplier, means the person who becomes a public gas transporter by virtue of the scheme made by or in relation to that supplier under Part I of this Schedule.

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Former tariff customers

- 19 (1) This paragraph applies where immediately before the appointed day a public gas supplier (“the public gas supplier”) is supplying tariff customers with gas.
- (2) The supplier’s supply successor shall be deemed to have contracted with those customers for the supply of gas as from that day.
- (3) The express terms and conditions of a contract which, by virtue of sub-paragraph (2) above, is deemed to have been made shall be provided for by the scheme made under this paragraph.
- (4) Before such date as the Secretary of State may direct, the public gas supplier shall make a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of sub-paragraph (2) above, are to be deemed to have been made.
- (5) A scheme under this paragraph may—
- (a) make different provisions for different cases or classes of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme; and
 - (b) make such supplemental, incidental, consequential and transitional provisions as the public gas supplier considers appropriate.
- (6) A scheme under this paragraph shall not take effect unless it is approved by the Secretary of State; and the Secretary of State may modify such a scheme before approving it.
- (7) If, in relation to such a scheme—
- (a) the public gas supplier fails, before the date specified in the Secretary of State’s direction under sub-paragraph (4) above, to submit the scheme for the approval of the Secretary of State; or
 - (b) the Secretary of State decides not to approve the scheme that has been submitted to him by the supplier (either with or without modifications),
- the Secretary of State may himself make the scheme.
- (8) It shall be the duty of the public gas supplier to provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the exercise of any function conferred on him by sub-paragraph (6) or (7) above.
- (9) The Secretary of State shall not exercise any function conferred on him by sub-paragraph (6) or (7) above except after consultation with the public gas supplier.
- (10) A scheme made under this paragraph shall be published in the London and Edinburgh Gazettes before the appointed day and shall come into operation on that day; and conclusive evidence of a scheme so made may be given in all courts of justice and in all legal proceedings whatever by the production of a copy of either of those Gazettes purporting to contain it.
- (11) In this Part of this Schedule “supply successor”, in relation to a public gas supplier, means the person who becomes a gas supplier by virtue of a scheme made by or in relation to that public gas supplier under Part I of this Schedule.

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Connection charges

- 20 (1) Sub-paragraph (2) below applies where—
- (a) a public gas supplier has been required under subsection (1) (duty to supply certain premises) of section 10 of the 1986 Act to give a supply of gas to any premises; and
 - (b) the required supply is not given before the appointed day.
- (2) The requirement shall have effect on and after the appointed day as if it were—
- (a) a request made to the supplier's supply successor for a supply of gas; and
 - (b) if the premises are not connected to a relevant main, a requirement made of the supplier's transport successor under subsection (2)(a) of section 10 requiring him to connect the premises to such a main and supply and lay any pipe that may be necessary for that purpose.
- (3) Sub-paragraph (4) below applies to any regulations—
- (a) which have been made, or have effect as if made, by the Secretary of State under subsection (4) (connection charges) of section 10; and
 - (b) which are in force immediately before the appointed day.
- (4) Regulations to which this sub-paragraph applies shall have effect on and after the appointed day as if—
- (a) they had been made by the Director;
 - (b) any reference to a public gas supplier were a reference to a public gas transporter;
 - (c) any reference to a supply of gas were a reference to a connection to a relevant main;
 - (d) the reference to subsection (1) of section 10 were a reference to subsection (2) of that section; and
 - (e) anything done before the appointed day by or in relation to a public gas supplier had been done on that day by or in relation to the supplier's transport successor.
- (5) Expressions used in this paragraph have the same meanings as in section 10.

Promotion of efficient use of gas

- 21 Any determination or direction—
- (a) which has been made as respects a public gas supplier, or given to such a supplier, under section 15B of the 1986 Act (promotion of the efficient use of gas); and
 - (b) which is in force immediately before the appointed day,
- shall have effect on and after that day as if it had been made as respects, or given to, the supply successor of that supplier under section 33BB of that Act.

Meter testing and stamping

- 22 (1) Any regulations—
- (a) which have been made, or have effect as if made, by the Secretary of State under section 17 of the 1986 Act (meter testing and stamping); and
 - (b) which are in force immediately before the appointed day,

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shall have effect on and after that day as if they had been made by the Director and as if any reference in them to the Secretary of State were a reference to the Director.

- (2) Any approval, consent or authorisation—
- (a) which has been given by the Secretary of State under section 17 of the 1986 Act, or under regulations made, or having effect as if made, under that section; and
 - (b) which is in force immediately before the appointed day,
- shall have effect on and after that day as if it had been given by the Director.

Restrictions on use of certain information

- 23 Notwithstanding the repeal by this Act of section 63 of the 1986 Act (restrictions on use of certain information), any direction given by the Secretary of State to the holder of an authorisation under section 7 of that Act shall continue to have effect so far as it relates to any relevant negotiations (within the meaning of the said section 63) which took place before the appointed day.

Recovery of gas charges etc.

- 24 (1) Where—
- (a) such a demand as is mentioned in paragraph 7(5) of Schedule 5 to the 1986 Act (recovery of gas charges etc.) has been made by a public gas supplier; and
 - (b) the payment demanded is not made before the appointed day,
- paragraph 7(1) of Schedule 2B to the 1986 Act shall have effect as if the demand had been made by the supplier's supply successor on the day on which it was made by the supplier.
- (2) Where—
- (a) such a notice of intention as is mentioned in paragraph 7(5) of Schedule 5 to the 1986 Act has been given by a public gas supplier; and
 - (b) the supply of gas is not cut off before the appointed day,
- paragraph 7(3) of Schedule 2B to the 1986 Act shall have effect as if the notice had been given by the supplier's supply successor on the day on which it was given by the supplier.

Use of antifluctuators and valves

- 25 Any notice—
- (a) which has been given by a public gas supplier under sub-paragraph (1) or (2) of paragraph 8 (use of antifluctuators and valves) of Schedule 5 to the 1986 Act; and
 - (b) which is in force immediately before the appointed day,
- shall have effect on and after that day as if it had been given on that day under sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 17 of Schedule 2B to that Act by the supplier's transport successor.

Restoration of supply without consent

- 26 (1) Where—

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- (a) a supply of gas to any premises has been cut off by a public gas supplier under paragraph 8 (use of antifucltuators and valves) or paragraph 9 (improper use of gas) of Schedule 5 to the 1986 Act; and
 - (b) the supply is not restored before the appointed day,
- each of paragraphs 11 and 25 of Schedule 2B to that Act shall have effect as if those premises had been disconnected on that day by the supplier's transport successor otherwise than in the exercise of such a power as is mentioned in sub-paragraph (1) of that paragraph.

(2) Where—

- (a) a supply of gas to any premises has been cut off by a public gas supplier otherwise than under paragraph 8 or 9 of Schedule 5 to the 1986 Act and otherwise than in the exercise of a power conferred by regulations under section 18(2) of that Act; and
 - (b) the supply is not restored before the appointed day,
- each of paragraphs 11 and 25 of Schedule 2B to that Act shall have effect as if a supply of gas to those premises had been cut off on that day by the supplier's supply successor otherwise than in the exercise of such a power as is mentioned in sub-paragraph (1) of that paragraph.

Failure to notify connection or disconnection of service pipe

27

Any notice—

- (a) which has been given to a public gas supplier under sub-paragraph (1) of paragraph 12 (failure to notify connection or disconnection of service pipe) of Schedule 5 to the 1986 Act; and
- (b) which is in force immediately before the appointed day,

shall have effect on and after that day as if it had been given on that day under sub-paragraph (1) of paragraph 12 of Schedule 2B to that Act to the supplier's transport successor.

Entry warrants

28

(1) Any warrant—

- (a) which has been granted under section 2(1) of the ^{M2}Rights of Entry (Gas and Electricity Boards) Act 1954 (warrant to authorise entry) for the purpose of enabling an employee of a public gas supplier to enter any premises, in accordance with paragraph 15(1)(b) of Schedule 5 to the 1986 Act, in order to ascertain the quantity of gas supplied to those premises; and
- (b) which is in force immediately before the appointed day,

shall have effect on and after that day as if it had been granted for the purpose of enabling an employee of the supplier's supply successor who is authorised by him for the purpose to enter those premises, in accordance with paragraph 23(1)(b) of Schedule 2B to the 1986 Act, in order to ascertain the quantity of gas supplied to the premises.

(2) Sub-paragraph (3) below applies to any warrant—

- (a) which has been granted under section 2(1) of the ^{M3}Rights of Entry (Gas and Electricity Boards) Act 1954 for the purpose of enabling an employee of a public gas supplier to enter any premises in order to cut off or discontinue

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- the supply of gas to those premises in accordance with paragraph 16(1) of Schedule 5 to the 1986 Act; and
- (b) which is in force immediately before the appointed day.
- (3) Any warrant to which this sub-paragraph applies shall have effect on and after the appointed day as if it had been granted as two separate warrants—
- (a) one for the purpose of enabling an employee of the supplier’s transport successor who is authorised by him for the purpose to enter the premises, in accordance with sub-paragraph (2) of paragraph 24 of Schedule 2B to the 1986 Act, in order to disconnect the premises; and
- (b) the other for the purpose of enabling an employee of the supplier’s supply successor who is authorised by him for the purpose to enter the premises, in accordance with that sub-paragraph, in order to cut off or discontinue the supply to the premises.
- (4) In this paragraph “employee” has the same meaning as in the Rights of Entry (Gas and Electricity Boards) Act 1954.

Marginal Citations

- M2** 1954 c.21.
M3 1954 c.21.

Street works notices

- 29 Any notice—
- (a) which has been given by a public gas supplier in England and Wales under section 54, 55 or 57 of the ^{M4}New Roads and Street Works Act 1991, or in Scotland under section 113, 114 or 116 of that Act; and
- (b) which is in force immediately before the appointed day,
- shall have effect on and after that day as if it had been given by the public gas supplier’s transport successor.

Marginal Citations

- M4** 1991 c.22.

Restrictive trade practices

- 30 (1) In relation to any supply of gas before the appointed day, the reference in subsection (2) of section 62 of the 1986 Act (exclusion of agreements from ^{M5}Restrictive Trade Practices Act 1976) to a supply of gas otherwise than under a licence granted under section 7A(1) of the 1986 Act shall have effect—
- (a) in the case of a supply before 23rd August 1986, as a reference to a supply of gas otherwise than in performance of any duty imposed by the ^{M6}Gas Act 1972; and

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- (b) in the case of a supply on or after that date, as a reference to a supply of gas otherwise than under an authorisation granted under section 7 of the 1986 Act.
- (2) In relation to any introduction or taking out of gas, or any use of a system or facility, before the appointed day, subsection (2A) of section 62 of the 1986 Act shall have effect as if—
 - (a) the reference to a public gas transporter were a reference to a public gas supplier; and
 - (b) the reference to gas shippers were a reference to any persons.

Marginal Citations

M5 1976 c.34.

M6 1972 c.60.

Rating provisions

- 31 Nothing in this Act shall affect the operation of the following, namely—
- (a) sections 19 and 33 of and Schedules 3 and 6 to the ^{M7}General Rate Act 1967 and Schedule 3 to the ^{M8}Local Government Act 1974, so far as those provisions of those Acts continue to have effect in relation to periods ending before 1st April 1990;
 - (b) the ^{M9}Valuation for Rating (Plant and Machinery) Regulations 1989, so far as those Regulations continue to have effect for the purpose of determining the rateable values of hereditaments for days falling before 1st April 1995;
 - (c) the ^{M10}Central Rating Lists Regulations 1989, so far as those Regulations continue to have effect in relation to periods ending before 1st April 1995; and
 - (d) the ^{M11}Central Rating Lists Regulations 1994, so far as those Regulations have effect in relation to periods ending before the appointed day.

Marginal Citations

M7 1967 c.9.

M8 1974 c.7.

M9 S.I. 1989/441.

M10 S.I. 1989/2263.

M11 S.I. 1994/3121.

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