

## SCHEDULE 2

Regulation 8

### Essential Services and Threshold Requirements

#### The electricity subsector

1.—(1) This paragraph describes the threshold requirements which apply to specified kinds of essential services in the electricity subsector.

(2) For the essential service of electricity supply the threshold requirements are—

(a) in Great Britain—

- (i) electricity undertakings that carry out the function of supply to more than 250,000 final customers; or
- (ii) electricity undertakings that carry out the function of supply, and generation via generators that when cumulated with the generators operated by affiliated undertakings would have a total capacity, in terms of input to a transmission system, greater than or equal to 2 gigawatts;

(b) in Northern Ireland—

- (i) the holder of a supply licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992<sup>(1)</sup> who supplies electricity to more than 8,000 consumers; and
- (ii) the holder of a generation licence under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 with a generating capacity equal to or greater than 350 megawatts.

(3) For the essential service of the single electricity market in Northern Ireland, the threshold requirement is the holder of a Single Electricity Market operator licence under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992<sup>(2)</sup>.

(4) For the essential service of electricity transmission, the threshold requirements are—

(a) in Great Britain—

- (i) transmission system operators with a potential to disrupt delivery of electricity to more than 250,000 final customers;
- (ii) holders of offshore transmission licences where the offshore transmission systems of that licence holder and its affiliated undertakings are directly connected to generators that have a total cumulative capacity, in terms of input to a transmission system, greater than or equal to 2 gigawatts; or
- (iii) holders of interconnector licences where the electricity interconnector to which the licence relates has a capacity, in terms of input to a transmission system, greater than or equal to 1 gigawatt;

(b) in Northern Ireland, the holder of a transmission licence under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992<sup>(3)</sup>.

(5) For the essential service of electricity distribution, the threshold requirements are—

(a) in Great Britain, distribution system operators with the potential to disrupt delivery of electricity to more than 250,000 final customers;

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(1) [S.I. 1992/231 \(N.I. 1\)](#). Article 10(1)(c) was substituted by regulation 6(1) of [S.R. 2007 No. 321](#); there are other amendments to this instrument but none are relevant.

(2) Article 10(1)(d) was inserted by article 4(4)(b) of [S.I.2007/913 \(N.I. 7\)](#).

(3) Article 10(1)(b) was substituted by article 28(4) of [S.I. 2003/419 \(N.I. 6\)](#) and was amended by article 4(4)(a) of [S.I. 2007/913 \(N.I. 7\)](#).

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- (b) in Northern Ireland, the holder of a distribution licence under Article 10(1)(bb) of the Electricity (Northern Ireland) Order 1992(4).
- (6) Nuclear electricity generators and generators that are not connected to a transmission system are excluded from the threshold described in sub-paragraph (2)(a)(ii).
- (7) Transmission systems for which an offshore transmission licence or interconnector licence applies are excluded from the threshold described in sub-paragraph (4)(a)(i).
- (8) In this paragraph—
- (a) “affiliated undertaking” has the meaning given by Article 2(12) of [Directive 2013/34/EU](#)(5) of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending [Directive 2006/43/EC](#) of the European Parliament and of the Council and repealing Council Directives [78/660/EEC](#) and [83/349/EEC](#);
  - (b) “distribution” has the meaning given by Article 2(5) of [Directive 2009/72/EC](#) of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing [Directive 2003/54/EC](#)(6), (“the Electricity Directive”);
  - (c) “distribution system operator” has the meaning given by Article 2(6) of the Electricity Directive;
  - (d) “electricity undertaking” has the meaning given by Article 2(35) of the Electricity Directive;
  - (e) “final customer” has the meaning given by Article 2(9) of the Electricity Directive;
  - (f) “generation” has the meaning given by Article 2(1) of the Electricity Directive and includes the generation of electricity from stored energy, and “generator” must be interpreted accordingly;
  - (g) “interconnector licence” means a licence granted under section 6(1)(e) of the Electricity Act 1989(7);
  - (h) “offshore transmission licence” and “offshore transmission” have the meaning given by section 6C(5) and (6) of the Electricity Act 1989(8), respectively;
  - (i) “stored energy” means energy that—
    - (aa) was converted from electricity, and
    - (bb) is stored for the purpose of its future reversion into electricity;
  - (j) “supply” has the meaning given by Article 2(19) of the Electricity Directive;
  - (k) “transmission” has the meaning given by Article 2(3) of the Electricity Directive; and
  - (l) “transmission system operator” has the meaning given by Article 2(4) of the Electricity Directive.

### **The oil subsector**

2.—(1) This paragraph describes the threshold requirements which apply to specified kinds of essential services in the oil subsector.

(2) For the essential service of the conveyance of oil through relevant upstream petroleum pipelines, the threshold requirement, in the United Kingdom is the operator of a relevant upstream

(4) Article 10(1)(bb) was inserted by regulation 19(a) of [S.R. 2011 No. 155](#).

(5) OJ No. L 182, 29.6.2013, p. 19.

(6) OJ No. L 211, 14.08.2009, p. 55.

(7) [1989 c. 29](#). Section 6 of the Electricity Act 1989 was substituted by the Utilities Act 2000 ([c. 30](#)) and amended by the Energy Act 2004 ([c. 20](#)). There are other amendments not relevant to this instrument.

(8) Section 6C of the Electricity Act [1989 \(c. 29\)](#) was inserted by section 92 of the Energy Act [2004 \(c. 20\)](#).

petroleum pipeline which has a throughput of more than 3,000,000 tonnes of oil equivalent per year excluding natural gas, if that operator does not fall within another threshold requirement in relation to this pipeline under this Schedule.

- (3) For the essential service of oil transmission by pipeline, the threshold requirements are—
- (a) in Great Britain, operators of any pipeline with throughput capacity of more than 500,000 tonnes of crude oil based fuel per year; and
  - (b) in Northern Ireland, operators of any pipeline with throughput capacity of more than 50,000 tonnes of crude oil based fuel per year.

(4) For the essential service of the operation of relevant oil processing facilities, the threshold requirement in the United Kingdom is in the case of—

- (a) a relevant oil processing facility, or
- (b) a relevant upstream petroleum pipeline which is connected to and operated from a relevant oil processing facility,

an operator of a facility or pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year.

(5) For the essential service of oil production, refining, treatment, storage and transmission the threshold requirements are—

- (a) in Great Britain, operators of any facility where that facility has a capacity greater than any of the following values—
  - (i) storage of 500,000 tonnes of crude oil based fuel;
  - (ii) production of 500,000 tonnes of crude oil based fuel per year; or
  - (iii) supply of 500,000 tonnes of crude oil based fuel per year;
- (b) in Northern Ireland, the operator of a facility which has a storage capacity of greater than 50,000 tonnes of crude oil based fuel.

(6) For the essential service of the operation of petroleum production projects (other than projects which are primarily used for the storage of gas), the threshold requirement in the United Kingdom is, in the case of—

- (i) a relevant offshore installation which is part of a petroleum production project (other than a project which is primarily used for the storage of gas), or
- (ii) a relevant upstream petroleum pipeline which is connected to and operated from such an installation,

an operator of an installation or pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year.

(7) In sub-paragraph (5), the following are included within the description of the essential service—

- (a) storage of crude oil based fuel;
- (b) production of crude oil based fuels through a range of refining or blending processes, but excluding processes for rendering the oil suitable for transportation; and
- (c) supply of crude oil based fuels to retail sites, airports or other users within the United Kingdom.

(8) In this paragraph—

- (a) “carbon dioxide pipeline” has the meaning given by section 90(2) of the Energy Act 2011<sup>(9)</sup>;

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(9) 2011 c. 16. There are no amendments relevant to this instrument.

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- (b) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—
  - (i) crude oils from which distillate fractions have been removed, and
  - (ii) crude oils to which distillate fractions have been added;
- (c) “crude oil based fuel” means any fuel wholly or mainly comprised of crude oil or substances derived from crude oil;
- (d) “foreign sector of the continental shelf” has the meaning given by section 90(1) of the Energy Act 2011<sup>(10)</sup>;
- (e) “gas processing facility” means any facility which—
  - (i) carries out gas processing operations in relation to piped gas;
  - (ii) is operated otherwise than by a gas transporter; and
  - (iii) is not an LNG import or export facility (within the meaning of section 12 of the Gas Act 1995<sup>(11)</sup>);
- (f) “gas processing operation” means any of the following operations—
  - (i) purifying, blending, odorising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a gas transporter or to be conveyed to an electricity generating station, a gas storage facility or any place outside the United Kingdom;
  - (ii) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water;
  - (iii) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by, or on behalf of, a particular person;
  - (iv) separating, purifying, blending, odorising or compressing gas for the purpose of—
    - (aa) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
    - (bb) enabling it to be loaded for conveyance to another place (whether inside or outside the United Kingdom); or
  - (v) loading gas—
    - (aa) at a facility which carries out operations of a kind mentioned in paragraph (iv), or
    - (bb) piped from such a facility
 for the purpose of enabling the gas to be conveyed to another place (whether inside or outside the United Kingdom);
- (g) “gas transporter” has the meaning given by section 7(1) of the Gas Act 1986<sup>(12)</sup>;
- (h) “oil equivalent” means petroleum and, for the purposes of assessments of throughput, where petroleum is in a gaseous state 1,100 cubic meters of this petroleum at a temperature of 15 degrees Celsius and pressure of one atmosphere is counted as equivalent to one tonne;
- (i) “oil processing facility” means any facility which carries out oil processing operations;
- (j) “oil processing operations” means any of the following operations—

<sup>(10)</sup> 2011 c. 16. There are no amendments relevant to this instrument.

<sup>(11)</sup> 1995 c. 45. Section 12 of the Gas Act 1995 was amended by the Energy Act 2011 (c. 16) and the Utilities Act 2000 (c. 27). There are other amendments not relevant to this instrument.

<sup>(12)</sup> 1986 c. 44. Section 7(1) was substituted by section 76 of the Utilities Act 2000 (c. 27). There are other amendments not relevant to this instrument.

- (i) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil to the point at which a seller could reasonably make a delivery to a purchaser of such oil;
  - (ii) receiving stabilised crude oil piped from an oil processing facility carrying out operations of a kind mentioned in sub-paragraph (i), or storing oil so received, prior to their conveyance to another place (whether inside or outside the United Kingdom);
  - (iii) loading stabilised crude oil piped from a facility carrying out operations of a kind mentioned in sub-paragraph (i) or (ii) for conveyance to another place (whether inside or outside the United Kingdom);
- (k) “petroleum” has the same meaning as in section 1 of the Petroleum Act 1998(13), and includes petroleum that has undergone any processing;
- (l) “petroleum production project” means a project carried out by virtue of a licence granted under—
- (i) section 3 of the Petroleum Act 1998(14),
  - (ii) section 2 of the Petroleum (Production) Act 1934(15), or
  - (iii) section 2 of the Petroleum (Production) Act (Northern Ireland) 1964(16),
- and includes such a project which is used for the storage of gas;
- (m) “piped gas” means gas which—
- (i) originated from a petroleum production project (or an equivalent project in a foreign sector of the continental shelf), and
  - (ii) has been conveyed only by means of pipes;
- (n) “pipeline” means a pipe or system of pipes for the conveyance of anything;
- (o) “relevant offshore installation” means an offshore installation within the meaning of section 44 of the Petroleum Act 1998(17) which carries on the activities mentioned in subsection (3)(a) or (c) of that section and is a relevant offshore installation only to the extent it is used to carry on those activities;
- (p) “terminal” includes—
- (i) facilities for such initial blending and other treatment as may be required to produce stabilised crude oil to the point at which a seller could reasonably make a delivery to a purchaser of such oil;
  - (ii) oil processing facilities;
  - (iii) gas processing facilities; and
  - (iv) a facility for the reception of gas prior to its conveyance to a place outside the United Kingdom;
- (q) “upstream petroleum pipeline” means a pipeline or one of a network of pipelines which is—
- (i) operated or constructed as part of a petroleum production project (or an equivalent project in a foreign sector of the continental shelf) and is not a carbon dioxide pipeline;
  - (ii) used to convey petroleum from the site of one or more such projects—

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(13) 1998 c. 17.

(14) Section 3 of the Petroleum Act 1998 (c. 17) was amended by the Scotland Act 2016 (c. 11) and S.I. 2016/898.

(15) 1934 c. 36. This Act was repealed by section 51 of and Schedule 5 to the Petroleum Act 1998 (c. 17), subject to the savings provisions set out in Schedule 3.

(16) 1964 c. 28 (N.I.).

(17) There are amendments to section 44 of the Petroleum Act 1998 (c. 17) not relevant to this instrument.

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- (aa) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;
  - (bb) directly to a place outside the United Kingdom;
  - (cc) directly to a terminal; or
  - (dd) indirectly to a terminal by way of one or more other terminals, whether or not such intermediate terminals are of the same kind as the final terminal; or
- (iii) used to convey gas directly from a terminal to a pipeline system operated by a gas transporter or to any premises.

(9) In sub-paragraph (8)(f), (l), (m), (p) and (q) “gas” means any substance which is or, if it were in a gaseous state, would be gas within the meaning of Part 1 of the Gas Act 1986<sup>(18)</sup>.

(10) In this paragraph an upstream petroleum pipeline, oil processing facility, or gas processing facility is “relevant” if and in so far as it is situated in—

- (a) the United Kingdom;
- (b) the territorial sea adjacent to the United Kingdom; or
- (c) the sea in any area designated under section 1(7) of the Continental Shelf Act 1964<sup>(19)</sup>.

### **The gas subsector**

**3.—**(1) This paragraph describes the threshold requirements which apply to specified kinds of essential services in the gas subsector.

(2) For the essential service of gas supply the threshold requirements are—

- (a) in Great Britain, supply undertakings that supply gas to more than 250,000 final customers;
- (b) in Northern Ireland, the holder of a supply licence under Article 8(1)(c) of the Gas (Northern Ireland) Order 1996<sup>(20)</sup> who supplies gas to more than 2,000 customers.

(3) For the essential service of gas transmission the threshold requirements are—

- (a) in Great Britain—
  - (i) transmission system operators with a potential to disrupt delivery to more than 250,000 final customers; or
  - (ii) holders of interconnector licences where the gas interconnector to which the licence relates has the technological capacity to input more than 20 million cubic metres of gas per day to a transmission system; and
- (b) in Northern Ireland, the holder of a gas conveyance licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996.

(4) For the essential service of gas distribution the threshold requirements are—

- (a) in Great Britain, distribution system operators with a potential to disrupt delivery to more than 250,000 final customers; and
- (b) in Northern Ireland the holder of a licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996.

(5) For the essential service of the operation of gas storage facilities, the threshold requirements are—

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<sup>(18)</sup> 1986 c. 44.

<sup>(19)</sup> 1964 c. 29. Section 1(7) of the Continental Shelf Act 1964 was amended by section 37 of, and Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23), and section 103 of the Energy Act 2011 (c. 16).

<sup>(20)</sup> S.I. 1996/275 (N.I. 2). Article 8(1)(c) was amended by regulation 17(1) of S.R. 2013 No. 92. There are other amendments to this instrument but none are relevant.

- (a) in Great Britain, storage system operators where the storage facility has the technological capacity to input more than 20 million cubic metres of gas per day to a transmission system; and
  - (b) in Northern Ireland the holder of a licence under Article 8(1)(b) of the Gas (Northern Ireland) Order 1996**(21)**.
- (6) For the essential service of the operation of LNG facilities, the threshold requirements are—
- (a) in Great Britain, LNG system operators where the LNG facility has the technological capacity to input more than 20 million cubic metres of gas per day to a transmission system; and
  - (b) in Northern Ireland the holder of a licence under Article 8(1)(d) of the Gas (Northern Ireland) Order 1996**(22)**.
- (7) For the essential service of the operation of relevant gas processing facilities, the threshold requirement in the United Kingdom is in the case of—
- (a) a relevant gas processing facility, or
  - (b) a relevant upstream petroleum pipeline which is connected to and operated from a relevant gas processing facility,

an operator of a facility or pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year.

(8) For the essential service of the operation of petroleum production projects (other than projects which are primarily used for the storage of gas), the threshold requirement in the United Kingdom is—

- (a) in the case of—
  - (i) a relevant offshore installation which is part of a petroleum production project (other than a project which is primarily used for the storage of gas), or
  - (ii) a relevant upstream petroleum pipeline which is connected to and operated from such an installation,

an operator of an installation or pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year.

(9) In sub-paragraph (3)(a)(i) the threshold requirement does not include transmission systems for which an interconnector licence applies.

(10) In this paragraph—

- (a) “carbon dioxide pipeline” has the meaning given by section 90(2) of the Energy Act 2011**(23)**;
- (b) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—
  - (i) crude oils from which distillate fractions have been removed, and
  - (ii) crude oils to which distillate fractions have been added;
- (c) “distribution” has the meaning given by Article 2(5) of [Directive 2009/73/EC](#) of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing [Directive 2003/55/EC](#)**(24)**, “the Gas Directive”;
- (d) “distribution system operator” has the meaning given by Article 2(6) of the Gas Directive;

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**(21)** There are no relevant amendments.

**(22)** Article 8(1)(d) was added by regulation 17(1) of [S.R. 2013 No. 92](#).

**(23)** [2011 c. 16](#). There are no amendments relevant to this instrument.

**(24)** OJ No. L 211, 14.8.2009, p. 94.

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- (e) “final customer” has the meaning given by Article 2(27) of the Gas Directive;
- (f) “foreign sector of the continental shelf” has the meaning given by section 90(1) of the Energy Act 2011**(25)**;
- (g) “gas processing facility” means any facility which—
  - (i) carries out gas processing operations in relation to piped gas;
  - (ii) is operated otherwise than by a gas transporter; and
  - (iii) is not an LNG import or export facility (within the meaning of section 12 of the Gas Act 1995**(26)**);
- (h) “gas processing operation” means any of the following operations—
  - (i) purifying, blending, odorising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a gas transporter or to be conveyed to an electricity generating station, a gas storage facility or any place outside the United Kingdom;
  - (ii) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water;
  - (iii) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by, or on behalf of, a particular person;
  - (iv) separating, purifying, blending, odorising or compressing gas for the purpose of—
    - (aa) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
    - (bb) enabling it to be loaded for conveyance to another place (whether inside or outside the United Kingdom); or
  - (v) loading gas—
    - (aa) at a facility which carries out operations of a kind mentioned in paragraph (iv), or
    - (bb) piped from such a facility,
 for the purpose of enabling the gas to be conveyed to another place inside or outside the United Kingdom;
- (i) “gas transporter” has the meaning given by section 7(1) of the Gas Act 1986**(27)**;
- (j) “interconnector licence” means a licence granted under section 7ZA of the Gas Act 1986**(28)**;
- (k) “LNG facility” has the meaning given by Article 2(11) of the Gas Directive;
- (l) “LNG system operator” has the meaning given by Article 2(12) of the Gas Directive;
- (m) “oil equivalent” means petroleum and, for the purposes of assessments of throughput, where petroleum is in a gaseous state 1,100 cubic meters of this petroleum at a temperature of 15 degrees Celsius and pressure of one atmosphere is counted as equivalent to one tonne;
- (n) “oil processing facility” means any facility which carries out oil processing operations;
- (o) “oil processing operations” means any of the following operations—

**(25)** 2011 c. 16. There are no amendments relevant to this instrument.

**(26)** 1995 c. 45. Section 12 of the Gas Act 1995 was amended by the Energy Act 2011 (c. 16) and the Utilities Act 2000 (c. 27). There are other amendments not relevant to this instrument.

**(27)** 1986 c. 44. Section 7(1) was substituted by section 76 of the Utilities Act 2000 (c. 27). There are other amendments not relevant to this instrument.

**(28)** 1986 c. 44. Section 7ZA of the Gas Act 1986 was inserted by section 149 of the Energy Act 2004 (c. 20).



- (i) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil to the point at which a seller could reasonably make a delivery to a purchaser of such oil;
  - (ii) receiving stabilised crude oil piped from an oil processing facility carrying out operations of a kind mentioned in sub-paragraph (i), or storing oil so received, prior to their conveyance to another place (whether inside or outside the United Kingdom);
  - (iii) loading stabilised crude oil piped from a facility carrying out operations of a kind mentioned in sub-paragraph (i) or (ii) for conveyance to another place (whether inside or outside the United Kingdom);
- (p) “petroleum” has the same meaning as in section 1 of the Petroleum Act 1998(29), and includes petroleum that has undergone any processing;
- (q) “petroleum production project” means a project carried out by virtue of a licence granted under—
- (i) section 3 of the Petroleum Act 1998(30);
  - (ii) section 2 of the Petroleum (Production) Act 1934(31); or
  - (iii) section 2 of the Petroleum (Production) Act (Northern Ireland) 1964(32);
- and includes such a project which is used for the storage of gas;
- (r) “piped gas” means gas which—
- (i) originated from a petroleum production project (or an equivalent project in a foreign sector of the continental shelf); and
  - (ii) has been conveyed only by means of pipes;
- (s) “pipeline” means a pipe or system of pipes for the conveyance of anything;
- (t) “relevant offshore installation” means an offshore installation within the meaning of section 44 of the Petroleum Act 1998(33) which carries on the activities mentioned in subsection (3)(a) or (c) of that section and is a relevant offshore installation only to the extent it is used to carry on those activities;
- (u) “storage facility” has the meaning given by Article 2(9) of the Gas Directive;
- (v) “storage system operator” has the meaning given by Article 2(10) of the Gas Directive;
- (w) “supply” has the meaning given by Article 2(7) of the Gas Directive;
- (x) “supply undertaking” has the meaning given by Article 2(8) of the Gas Directive;
- (y) “terminal” includes—
- (i) facilities for such initial blending and other treatment as may be required to produce stabilised crude oil to the point at which a seller could reasonably make a delivery to a purchaser of such oil;
  - (ii) oil processing facilities;
  - (iii) gas processing facilities; and
  - (iv) a facility for the reception of gas prior to its conveyance to a place outside the United Kingdom;
- (z) “transmission” has the meaning given by Article 2(3) of the Gas Directive; and

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(29) 1998 c. 17.

(30) Section 3 of the Petroleum Act 1998 (c.17) was amended by the Scotland Act 2016 (c.11) and S.I. 2016/898.

(31) 1934 c. 36. This Act was repealed by section 51 of and Schedule 5 to the Petroleum Act 1998 (c. 17), subject to the savings provisions set out in Schedule 3.

(32) 1964 c. 28 (N.I.).

(33) There are amendments to section 44 of the Petroleum Act (c. 17) not relevant to this instrument.

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- (aa) “transmission system operator” has the meaning given by Article 2(4) of the Gas Directive;
- (bb) “upstream petroleum pipeline” means a pipeline or one of a network of pipelines which is—
  - (i) operated or constructed as part of a petroleum production project (or an equivalent project in a foreign sector of the continental shelf) and is not a carbon dioxide pipeline;
  - (ii) used to convey petroleum from the site of one or more such projects—
    - (aa) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;
    - (bb) directly to a place outside the United Kingdom;
    - (cc) directly to a terminal; or
    - (dd) indirectly to a terminal by way of one or more other terminals, whether or not such intermediate terminals are of the same kind as the final terminal; or
  - (iii) used to convey gas directly from a terminal to a pipeline system operated by a gas transporter or to any premises.

(11) In—

- (a) sub-paragraphs 2(a), 3(a), 4(a), 5(a) and 6(a), or in any provision of the Gas Directive to which these sub-paragraphs cross-refer, any reference to “gas” or “natural gas” means any substance in a gaseous state which consists wholly or mainly of—
  - (i) methane or hydrogen;
  - (ii) a mixture of two or more of those gases; or
  - (iii) a combustible mixture of one or more of those gases and air;
- (b) sub-paragraphs 10(h), (q), (r), (y) and (bb), “gas” means any substance which is or, if it were in a gaseous state, would be gas within the meaning of Part 1 of the Gas Act 1986<sup>(34)</sup>.

(12) In this paragraph an upstream petroleum pipeline, oil processing facility, or gas processing facility is “relevant” if and in so far as it is situated in—

- (a) the United Kingdom;
- (b) the territorial sea adjacent to the United Kingdom; or
- (c) the sea in any area designated under section 1(7) of the Continental Shelf Act 1964<sup>(35)</sup>.

### **The air transport subsector**

4.—(1) This paragraph describes the threshold requirements which apply to specified kinds of essential services in the air transport subsector.

(2) For the essential service of the provision of services by the owner or manager of an aerodrome, the threshold requirement in the United Kingdom is an owner or manager of an aerodrome with annual terminal passenger numbers greater than 10 million.

(3) For the essential service of the provision of air traffic services (as defined in the Transport Act 2000), the threshold requirement in the United Kingdom is—

- (a) an entity which is granted a licence by the Secretary of State or the Civil Aviation Authority to provide en-route air traffic services in the United Kingdom; or

<sup>(34)</sup> 1986 c. 44.

<sup>(35)</sup> 1964 c. 29. Section 1(7) of the Continental Shelf Act 1964 was amended by section 37 of, and Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23), and section 103 of the Energy Act 2011 (c. 16).

- (b) an air-traffic service provider at any airport which has annual terminal passenger numbers greater than 10 million.
- (4) For the essential service of the provision of services by air carriers, the threshold requirement in the United Kingdom is an air carrier which has—
  - (a) more than thirty percent of the annual terminal passengers at any United Kingdom airport which has annual terminal passenger numbers greater than 10 million; and
  - (b) more than 10 million total annual terminal passengers across all United Kingdom airports.
- (5) In this paragraph—
  - (a) “an aerodrome” has the same meaning as in the Civil Aviation Act 1982<sup>(36)</sup>;
  - (b) “air carrier” has the same meaning as in Article 3(4) of Regulation (EC) No 300/2008 of the European Parliament and of the Council on common rules in the field of civil aviation security and repealing Regulation EC No 2320/2202<sup>(37)</sup>.

### **The water transport subsector**

5.—(1) This paragraph describes the threshold requirements which apply to specified kinds of essential services in the water transport subsector.

- (2) For the essential service of shipping in the United Kingdom, the threshold requirement is—
  - (a) a shipping company which handles—
    - (i) over 5 million tonnes of total annual freight at United Kingdom ports; and
    - (ii) over thirty percent of the freight at any individual United Kingdom port which fulfils at least one of the following criteria—
      - (aa) it handles more than fifteen percent of the total roll-on roll-off traffic in the United Kingdom;
      - (bb) it handles more than fifteen percent of the total lift-on lift-off traffic in the United Kingdom;
      - (cc) it handles more than ten percent of the total liquid bulk traffic in the United Kingdom; or
      - (dd) it handles more than twenty percent of the total biomass fuel traffic in the United Kingdom; or
  - (b) a shipping company with over thirty percent of the annual passenger numbers at any individual United Kingdom port which has annual passenger numbers greater than 10 million.
- (3) For the essential service of the provision of services by a harbour authority for a port in the United Kingdom, the threshold requirement is—
  - (a) a harbour authority for a port which has annual passenger numbers greater than 10 million; or
  - (b) a harbour authority for a port which fulfils at least one of the following criteria—
    - (i) it handles more than fifteen percent of the total roll-on roll-off traffic in the United Kingdom;
    - (ii) it handles more than fifteen percent of the total lift-on lift-off traffic in the United Kingdom;

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<sup>(36)</sup> 1982 c.16.

<sup>(37)</sup> OJ No. L 97, 9.4.2008, p72.

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- (iii) it handles more than ten percent of the total liquid bulk traffic in the United Kingdom;  
or
- (iv) it handles more than twenty percent of the total biomass fuel traffic in the United Kingdom.

(4) For the essential service of the provision of services by an operator of a port facility in the United Kingdom, the threshold requirement is—

- (a) an operator of a port facility which handles passengers at a port which has annual passenger numbers greater than 10 million; or
- (b) an operator of a port facility at a port which fulfils at least one of the following criteria—
  - (i) it handles more than fifteen percent of the total roll-on roll-off traffic in the United Kingdom;
  - (ii) it handles more than fifteen percent of the total lift-on lift-off traffic in the United Kingdom;
  - (iii) it handles more than ten percent of the total liquid bulk traffic in the United Kingdom;  
or
  - (iv) it handles more than twenty percent of the total biomass fuel traffic in the United Kingdom;

and where that port facility operator handles the same type of freight for which the port fulfils one of the criteria mentioned in sub-paragraphs (i)-(iv).

(5) For the essential service of vessel traffic services in the United Kingdom, the threshold requirement is—

- (a) an operator of vessel traffic services at a port which has annual passenger numbers greater than 10 million; or
- (b) an operator of vessel traffic services at a port which fulfils at least one of the following criteria—
  - (i) it handles more than fifteen percent of the total roll-on roll-off traffic in the United Kingdom;
  - (ii) it handles more than fifteen percent of the total lift-on lift-off traffic in the United Kingdom;
  - (iii) it handles more than ten percent of the total liquid bulk traffic in the United Kingdom;  
or
  - (iv) it handles more than twenty percent of the total biomass fuel traffic in the United Kingdom.

(6) In this paragraph—

- (a) “harbour authority” has the same meaning in section 313(1) of the Merchant Shipping Act 1995**(38)**;
- (b) “port facility” has the same meaning as in regulation 2 of the Port Security Regulations 2009**(39)**;
- (c) “vessel traffic services” has the same meaning as in regulation 2(1) of the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004**(40)**.

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**(38)** 1995 c. 21. The definition for “harbour authority” was substituted by section 29(1) of, and paragraph 19(2)(a) of Schedule 6 to, the Merchant Shipping and Maritime Security Act 1997 (c. 28). There are other amendments not relevant to this instrument.

**(39)** S.I. 2009/2048 as amended by S.I. 2013/2815.

**(40)** S.I. 2004/2110 as amended by S.I. 2011/2616. There are other amendments not relevant to this instrument.

## **The rail transport subsector**

6.—(1) This paragraph describes the threshold requirements which apply to specified kinds of essential services in the rail transport subsector.

(2) For the essential service of rail services the threshold requirements are—

- (a) in Great Britain, any operator of a mainline railway asset but excluding operators of—
  - (i) railway assets solely for the provision of international rail services;
  - (ii) railway assets for metro, tram and other light rail, including underground, systems;
  - (iii) heritage, museum or tourist railways, whether or not they are operating solely on their own network; and
  - (iv) networks which are privately owned and exist solely for use by the infrastructure owner for its own freight operations or other passenger or freight services for third parties and operators of passenger or freight services on those networks (including high speed rail services);
- (b) in Northern Ireland, any railway undertaking in Northern Ireland.

(3) For the essential service of high speed rail services the threshold requirement in the United Kingdom is an operator of a railway asset for high speed rail services.

(4) For the essential service of metros, trams and other light rail services (including underground services), the threshold requirement in the United Kingdom is an operator with more than 50 million annual passenger journeys.

(5) For the essential service of international rail services the threshold requirement in the United Kingdom is an operator of a Channel Tunnel train or the infrastructure manager of the Channel Fixed Link.

(6) In this paragraph—

- (a) “operator” and “railway asset” have the same meaning as in section 6 of the Railways Act 1993<sup>(41)</sup>;
- (b) “international rail service” means a rail service where all carriages on the train cross a border of the United Kingdom and that of a Member State, and where the principal purpose of the service is to carry passengers or goods between stations located in the United Kingdom and a station in at least one Member State;
- (c) “mainline railway” has the same meaning as in the Railways and Other Guided Transport Systems (Safety) Regulations 2006<sup>(42)</sup>;
- (d) “railway undertaking” has the same meaning as in section 55 of the Transport Act (Northern Ireland) 1967<sup>(43)</sup> but excludes heritage railways operating solely on their own network; and
- (e) “Channel Tunnel train” has the same meaning as in article 2(1) of the Channel Tunnel (Security) Order 1994<sup>(44)</sup> and “Channel Fixed Link” has the same meaning as in section 1 of the Channel Tunnel Act 1987<sup>(45)</sup>.

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<sup>(41)</sup> 1993 c. 43. There are amendments not relevant to this instrument.

<sup>(42)</sup> S.I. 2006/599 as amended by S.I.2013/950 and S.I. 2015/1682.

<sup>(43)</sup> 1967 c. 37.

<sup>(44)</sup> S.I. 1994/570.

<sup>(45)</sup> 1987 c. 53.

**The road transport subsector**

7.—(1) For the essential service of road transport services, the threshold requirement in the United Kingdom is a road authority responsible for roads in the United Kingdom that have vehicles travelling more than 50 billion miles in total on them.

(2) For the essential service of road services provided by Intelligent Transport Systems, the threshold requirement in the United Kingdom is a road authority that provides Intelligent Transport Systems services which covers roads in the United Kingdom that have vehicles travelling more than 50 billion miles in total on them, per year.

- (a) (3) (a) “road authority” has the same meaning in Article 2(12) of Commission Delegated Regulation (EU) 2015/962 supplementing [Directive 2010/40/EU](#) of the European Parliament and the Council with regard to the provision of EU-wide real-time traffic information services<sup>(46)</sup>; and
- (b) “Intelligent Transport Systems” has the same meaning as in Article 4(1) of [Directive 2010/40/EU](#) of the European Parliament and of the Council on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport<sup>(47)</sup>.

**The healthcare subsector**

8.—(1) This paragraph describes the threshold requirements which apply to specified kinds of essential services in the healthcare settings sector.

(2) For the essential service of healthcare services the threshold requirements are—

- (a) in England, an NHS Trust as defined in section 25 of the National Health Service Act 2006<sup>(48)</sup> or a Foundation trust as defined in section 30 of the National Health Service Act 2006<sup>(49)</sup>;
- (b) in Wales, a Local Health Board or NHS Trust as defined in the National Health Service (Wales) Act 2006<sup>(50)</sup>;
- (c) in Scotland—
  - (i) the Common Services Agency for the Scottish Health Service established under section 10 of the National Health Service (Scotland) Act 1978<sup>(51)</sup>;
  - (ii) a Health Board, constituted under section 2 of the National Health Service (Scotland) Act 1978<sup>(52)</sup>;
  - (iii) the National Waiting Times Centre Board established by article 3 of the National Waiting Times Centre Board (Scotland) Order 2002<sup>(53)</sup>;
  - (iv) NHS 24 established by article 3 of the NHS 24 (Scotland) Order 2001<sup>(54)</sup>;
  - (v) the Scottish Ambulance Service Board established by article 3 of the Scottish Ambulance Service Board Order 1999<sup>(55)</sup>; and

<sup>(46)</sup> OJ No. L 57, 23.6.2015, p. 21.

<sup>(47)</sup> OJ No. L 207, 6.8.2010, p. 1.

<sup>(48)</sup> 2006 c. 41.

<sup>(49)</sup> 2006 c. 41.

<sup>(50)</sup> 2006 c. 42.

<sup>(51)</sup> 1978 c. 29. Section 10 was amended by sections 25 and 26 of the Health Services Act 1980 (c. 53) and section 65 of the Health Act 1999 (c. 8).

<sup>(52)</sup> There are no amendments relevant to this instrument.

<sup>(53)</sup> S.S.I. 2002/305. There are amendments not relevant to this instrument.

<sup>(54)</sup> S.S.I. 2001/137. There are amendments not relevant to this instrument.

<sup>(55)</sup> S.I. 1999/686. There are amendments not relevant to this instrument.

- (vi) the State Hospitals Board for Scotland established by the State Hospitals Board for Scotland Order 1995<sup>(56)</sup>;
- (d) in Northern Ireland, the Health and Social Care Trusts within the meaning of “HSC Trust” in section 31 of the Health and Social Care (Reform) Act (Northern Ireland) 2009<sup>(57)</sup>.

### **The drinking water supply and distribution subsector**

9. The threshold requirement which applies to the essential service of the supply of potable water in the United Kingdom is the supply of water to 200,000 or more people.

### **The digital infrastructure subsector**

10.—(1) This paragraph describes the threshold requirements which apply to specified kinds of essential services in the digital infrastructure subsector.

(2) For the essential service of Top Level Domain (“TLD”) Name Registries the threshold requirement in the United Kingdom is TLD Registries who service an average of 2 billion or more queries in 24 hours for domains registered within the Internet Corporation for Assigned Names and Numbers.

(3) For the essential service of Domain Name System (“DNS”) Service providers the threshold requirement in the United Kingdom is—

- (a) DNS service providers with an establishment in the United Kingdom who provide DNS resolvers offered for use by publically accessible services, which service an average of 2,000,000 or more requesting DNS clients based in the United Kingdom in 24 hours; or
- (b) DNS service providers with an establishment in the United Kingdom who provide authoritative hosting of domain names, offered for use by publically accessible services, servicing 250,000 or more different active domain names.

(4) For the essential service of Internet Exchange Point (IXP) Operators the threshold requirement in the United Kingdom is IXP Operators who have 50% or more annual market share amongst IXP Operators in the United Kingdom, in terms of interconnected autonomous systems, or who offer interconnectivity to 50% or more of Global Internet routes.

(5) In this paragraph—

- (a) “DNS” is a reference to “domain name system” which means a hierarchical distributed naming system in a network which refers queries for domain names;
- (b) “DNS service provider” is a reference to “domain name system service provider” which means an entity which provides DNS services on the internet;
- (c) “IXP” is a reference to “internet exchange point” which means a network facility which—
  - (i) enables the interconnection of more than two independent autonomous systems, primarily for the purpose of facilitating the exchange of internet traffic;
  - (ii) provides interconnection only for autonomous systems; and
  - (iii) does not require the internet traffic passing between any pair of participating autonomous systems to pass through any third autonomous system nor does it alter or otherwise interfere with such traffic; and
- (d) “TLD Name Registry” is a reference to “top-level domain name registry” which means an entity which administers and operates the registration of internet domain names under a specific top-level domain.

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<sup>(56)</sup> S.I. 1995/574. There are amendments not relevant to this instrument.

<sup>(57)</sup> 2009 c. 1 (N.I.). There are amendments not relevant to this instrument.

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