

## SCHEDULES

### SCHEDULE 13

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### PART IV

##### ON AND AFTER THE STARTING DATE

##### CHAPTER IV

##### THE UTILITIES

###### *General*

- 27 In this Chapter “the relevant period” means the period beginning with the starting date and ending immediately before the fifth anniversary of that date.

###### *Electricity*

- 28 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of subparagraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of a section 100 order.

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- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of a section 100 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) is subject to paragraph 20.
- (7) In this paragraph and paragraph 29—  
“section 100 order” means an order made under section 100 of the Electricity Act 1989; and  
expressions which are also used in Part I of the Electricity Act 1989 have the same meaning as in that Part.

*Electricity: power to make transitional orders*

- 29
- (1) There is a transitional period for an agreement (whether made before or after the starting date) relating to the generation, transmission or supply of electricity which—
    - (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
    - (b) satisfies such conditions as may be specified in the order.
  - (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
  - (3) The transitional period for such an agreement ends at the end of the relevant period.
  - (4) But if the agreement—
    - (a) ceases to be one to which a transitional order applies, or
    - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
the transitional period ends on the date on which the agreement so ceases.
  - (5) Before making a transitional order, the Secretary of State must consult the Director General of Electricity Supply and the Director.
  - (6) The conditions specified in a transitional order may include conditions which refer any matter to the Secretary of State for determination after such consultation as may be so specified.
  - (7) In the application of this paragraph to Northern Ireland, the reference in sub-paragraph (5) to the Director General of Electricity Supply is to be read as a reference to the Director General of Electricity Supply for Northern Ireland.

*Gas*

- 30
- (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of section 62 or a section 62 order, there is a transitional period—
    - (a) beginning on the starting date; and
    - (b) ending at the end of the relevant period.
  - (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is

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- made have applied by virtue of section 62 or a section 62 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of section 62 or a section 62 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of section 62 or a section 62 order.
- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of section 62 or a section 62 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) also applies in relation to a modification which is treated as an agreement made on or after 28th November 1985 by virtue of section 62(4).
- (7) Sub-paragraph (3) is subject to paragraph 20.
- (8) In this paragraph and paragraph 31—
- “section 62” means section 62 of the Gas Act 1986;
  - “section 62 order” means an order made under section 62.

*Gas: power to make transitional orders*

- 31 (1) There is a transitional period for an agreement of a description falling within section 62(2)(a) and (b) or section 62(2A)(a) and (b) which—
- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
  - (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date when the agreement so ceases.

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- (5) Before making a transitional order, the Secretary of State must consult the Director General of Gas Supply and the Director.
- (6) The conditions specified in a transitional order may include—
  - (a) conditions which are to be satisfied in relation to a time before the coming into force of this paragraph;
  - (b) conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Secretary of State, the Director or the Director General of Gas Supply for determination after such consultation as may be so specified.

*Gas: Northern Ireland*

- 32 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of an Article 41 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of an Article 41 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of an Article 41 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of an Article 41 order.
- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of an Article 41 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) is subject to paragraph 20.
- (7) In this paragraph and paragraph 33—
- “Article 41 order” means an order under Article 41 of the Gas (Northern Ireland) Order 1996;
  - “Department” means the Department of Economic Development.

*Gas: Northern Ireland – power to make transitional orders*

- 33 (1) There is a transitional period for an agreement of a description falling within Article 41(1) which—

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- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Department (whether before or after the making of the agreement but before the end of the relevant period); and
  - (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date when the agreement so ceases.
- (5) Before making a transitional order, the Department must consult the Director General of Gas for Northern Ireland and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Department for determination after such consultation as may be so specified.

#### *Railways*

- 34 (1) In this paragraph—
- “section 131” means section 131 of the Railways Act 1993 (“the 1993 Act”);
  - “section 131 agreement” means an agreement—
    - (a) to which the RTPA does not apply immediately before the starting date by virtue of section 131(1); or
    - (b) in respect of which a direction under section 131(3) is in force immediately before that date;
  - “non-exempt agreement” means an agreement relating to the provision of railway services (whether made before or after the starting date) which is not a section 131 agreement; and
  - “railway services” has the meaning given by section 82 of the 1993 Act.
- (2) For a section 131 agreement there is a transitional period of five years.
- (3) There is a transitional period for a non-exempt agreement to the extent to which the agreement is at any time before the end of the relevant period required or approved—
- (a) by the Secretary of State or the Rail Regulator in pursuance of any function assigned or transferred to him under or by virtue of any provision of the 1993 Act;
  - (b) by or under any agreement the making of which is required or approved by the Secretary of State or the Rail Regulator in the exercise of any such function; or
  - (c) by or under a licence granted under Part I of the 1993 Act.
- (4) The transitional period conferred by sub-paragraph (3)—
- (a) is to be taken to have begun on the starting date; and

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- (b) ends at the end of the relevant period.
- (5) Sub-paragraph (3) is subject to paragraph 20.
- (6) Any variation of a section 131 agreement on or after the starting date is to be treated, for the purposes of this paragraph, as a separate non-exempt agreement.

*The regulators*

- 35 (1) Subject to sub-paragraph (3), each of the regulators may exercise, in respect of sectoral matters and concurrently with the Director, the functions of the Director under paragraph 3, 7, 19(3), 36, 37, 38 or 39.
- (2) In sub-paragraph (1) “sectoral matters” means—
- (a) in the case of the Director General of Telecommunications, the matters referred to in section 50(3) of the Telecommunications Act 1984;
  - (b) in the case of the Director General of Gas Supply, the matters referred to in section 36A(3) and (4) of the Gas Act 1986;
  - (c) in the case of the Director General of Electricity Supply, the matters referred to in section 43(3) of the Electricity Act 1989;
  - (d) in the case of the Director General of Electricity Supply for Northern Ireland, the matters referred to in Article 46(3) of the Electricity (Northern Ireland) Order 1992;
  - (e) in the case of the Director General of Water Services, the matters referred to in section 31(3) of the Water Industry Act 1991;
  - (f) in the case of the Rail Regulator, the matters referred to in section 67(3) of the Railways Act 1993;
  - (g) in the case of the Director General of Gas for Northern Ireland, the matters referred to in Article 23(3) of the Gas (Northern Ireland) Order 1996.
- (3) The power to give directions in paragraph 7(2) is exercisable by the Director only but if the Director is preparing directions which relate to a matter in respect of which a regulator exercises concurrent jurisdiction, he must consult that regulator.
- (4) Consultations conducted by the Director before the enactment date, with a view to preparing directions which have effect on or after that date, are to be taken to satisfy sub-paragraph (3).
- (5) References to enactments in sub-paragraph (2) are to the enactments as amended by or under this Act.