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STATUTORY INSTRUMENTS

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**1996 No. 385**

**RESTRICTIVE TRADE PRACTICES**

**The Restrictive Trade Practices (Gas  
Conveyance and Storage) Order 1996**

*Made* - - - - 22nd February 1996  
*Laid before Parliament* 23rd February 1996  
*Coming into force* - - 25th February 1996

The Secretary of State, in exercise of the powers conferred on him by section 62 of the Gas Act 1986<sup>(1)</sup> and after consultation with the Director General of Fair Trading and the Director General of Gas Supply<sup>(2)</sup> hereby makes the following Order:—

**1.—(1)** This Order may be cited as the Restrictive Trade Practices (Gas Conveyance and Storage) Order 1996 and shall come into force on 25th February 1996.

(2) In this Order—

“agreement”, “restriction” and “information provision” have the same meaning as in the Restrictive Trade Practices Act 1976;

“appointed day” means the day appointed under section 18(2) of the Gas Act 1995<sup>(3)</sup>;

“claims validation agreement” means an agreement between two or more persons relating to the engagement or employment of the same person to act in connection with the provision of information to a public gas transporter relating to delivery of gas to the public gas transporter’s pipeline system at a particular delivery point (as provided for by the standard conditions determined under section 8(2)(c) of the Gas Act 1995 for the purposes of gas shippers’ licences);

“the Director” means the Director General of Gas Supply;

“network code” means the code established by a public gas transporter (or, before the appointed day, by a public gas supplier to have effect from that day in relation to its transport successor as defined in paragraph 18(2) of Schedule 5 to the Gas Act 1995 for the purposes of Part II of that Schedule) for the purposes of the provisions relating to the establishment of transportation arrangements in the standard conditions determined under section 8(2)(a) of the Gas Act 1995

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(1) 1986 c. 44 section 62 was amended by section 11 of the Gas Act 1995 (c. 45) by insertion of subsections (2A) and (2B).

(2) See section 62(2B) of the Gas Act 1986.

(3) The day appointed under section 18(2) of the Gas Act 1995 was appointed by The Gas Act 1995 (Appointed Day and Commencement) Order 1996 (S.I.1996/218 (C.4)) as 1st March 1996.

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for the purposes of public gas transporters' licences, together with any documents referred to in the code.

2. An agreement which meets the conditions of section 62(2A) (a) and (b) of the Gas Act 1986 and is of a description specified in the Schedule to this Order and which satisfies the condition specified in connection with that description is specified as an agreement to which by virtue of section 62(2A) of the Gas Act 1986 the Restrictive Trade Practices Act 1976 does not apply and is deemed never to have applied.

Department of Trade and Industry  
22nd February 1996

*John Taylor*  
Parliamentary Under Secretary of State for  
Competition and Consumer Affairs,

## SCHEDULE

## Article 2

1.—(1) Any agreement consisting only of a network code together with any agreement which contains restrictions or information provisions only relating to a requirement to abide by or to implement the code.

(2) Any agreement which incorporates terms of a network code and which contains restrictions or information provisions only relating to that code.

(3) Any agreement, other than one falling under sub-paragraph (2) above, required by or expressly envisaged by a network code for the purpose of giving effect to that code.

(4) Any claims validation agreement.

(5) The condition which must be satisfied by an agreement of a description specified in sub-paragraph (1), (2), (3) or (4) above is that—

- (a) it is in the terms of a draft of which a copy is, on or before the appointed day, approved, by notice in writing given to the party providing it, by the Director as satisfying the criterion specified in sub-paragraph (6) below; or
- (b) if made on or before the appointed day, it contains a provision that any restrictions or information provisions which it contains shall not take effect until after the Director approves, by notice in writing given to the party providing it, the agreement as satisfying the criterion specified in sub-paragraph (6) below; or
- (c) it is in the terms of a draft of which a copy is provided to the Director at least 42 days before the date on which the agreement is made and within 28 days the Director does not give notice in writing, to the party providing it, that he does not approve the agreement because it does not satisfy the criterion specified in sub-paragraph (6) below; or
- (d) it contains a provision that any restrictions or information provisions which it contains shall not take effect—
  - (i) if a copy of the agreement is not provided to the Director within 28 days of the date on which the agreement is made, or
  - (ii) if, within 28 days of the provision of the copy, the Director gives notice in writing, to the party providing it, that he does not approve the agreement because it does not satisfy the criterion specified in sub-paragraph (6) below.

(6) The criterion referred to in sub-paragraph (5) above is that the Director considers that—

- (a) in relation to an agreement made on or before the appointed day, the agreement is necessary to secure the effective operation on that day of any network code; or
- (b) the agreement is not likely to have any significant effect in restricting, distorting or preventing competition; or
- (c) to the extent that the agreement has such an effect, the effect is not greater than is necessary to—
  - (i) promote effective competition between gas suppliers in the supply of gas which has been conveyed through pipes or between gas shippers in arranging with a public gas transporter for gas to be introduced into, conveyed by means of, or taken out of a pipeline system operated by that public gas transporter by providing for access to and use of the pipeline or storage system, or
  - (ii) protect consumers in particular in relation to the safety and security of gas supply, or

- (iii) promote economy or efficiency on the part of persons undertaking activities licensed under section 7, 7A(1) or 7A(2)(4) of the Gas Act 1986.

2.—(1) Any agreement which constitutes a variation of or an amendment to any agreement to which any provision of paragraph 1(1) to (4) above applies or which constitutes a variation of or an amendment to any such agreement.

(2) The condition which must be satisfied by an agreement of a description specified in sub-paragraph (1) above is that—

- (a) it is in the terms of a draft of which a copy is provided to the Director at least 42 days before the date on which the agreement is made and within 28 days the Director does not give notice in writing, to the party providing it, that he does not approve the agreement because it does not satisfy the criterion specified in paragraph (3) below; or
- (b) it contains a provision that any restrictions or information provisions which it contains shall not take effect—
  - (i) if a copy of the agreement is not provided to the Director within 28 days of the date on which the agreement is made, or
  - (ii) if, within 28 days of the provision of the copy, the Director gives notice in writing to the party providing it that he does not approve the agreement because it does not satisfy the criterion specified in sub-paragraph (3) below.

(3) The criterion referred to in sub-paragraph (2) above is that the Director considers that either—

- (a) the agreement is not likely to add to or extend any effect in restricting, distorting or preventing competition caused by the agreement which it varies or amends; or
- (b) to the extent that the agreement adds to or extends such an effect, the effect of the agreement is not greater than is necessary to—
  - (i) promote effective competition between gas suppliers in the supply of gas which has been conveyed through pipes or between gas shippers in arranging with a public gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipeline system operated by that public gas transporter by providing for access to and use of the pipeline or storage system, or
  - (ii) protect consumers in particular in relation to the safety and security of gas supply, or
  - (iii) promote economy or efficiency on the part of persons undertaking activities licensed under section 7, 7A(1) or 7A(2) of the Gas Act 1986.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order specifies descriptions of agreements which are exempted from the Restrictive Trade Practices Act 1976 (“the 1976 Act”) by virtue of section 62(2A) of the Gas Act 1986 (as amended

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(4) Section 7 of the Gas Act 1986 was substituted by section 5 of the Gas Act 1995 and section 7A of the 1986 Act was inserted by section 6 of the 1995 Act.

by the Gas Act 1995). Such agreements must have been made on or after 2nd March 1995 and must contain provisions relating to or to activities connected with—

- (a) the introduction of gas into;
- (b) the taking out of gas from; or
- (c) the use by gas shippers of;

a gas pipe-line system or storage facility operated by a public gas transporter.

The Order provides that, for the 1976 Act not to apply, and be deemed never to have applied, an agreement must fall within one of the descriptions specified in the Order and satisfy the specified condition.