
STATUTORY INSTRUMENTS

2000 No. 1937

**GAS
PETROLEUM
PIPE-LINES**

The Gas (Third Party Access and Accounts) Regulations 2000

Made - - - - - *19th July 2000*
Laid before Parliament *20th July 2000*
Coming into force - - - *10th August 2000*

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to natural gas and oil, in exercise of the powers conferred on him by that section, hereby makes the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Gas (Third Party Access and Accounts) Regulations 2000 and shall come into force on 10th August 2000.

Amendment of the Pipe-lines Act 1962, the Gas Act 1986, the Gas Act 1995 and the Petroleum Act 1998

- 2.—(1) The Pipe-lines Act 1962⁽³⁾ is amended as set out in Schedule 1 to these Regulations.
(2) The Gas Act 1986⁽⁴⁾ is amended as set out in Schedule 2 to these Regulations.
(3) The Gas Act 1995⁽⁵⁾ is amended as set out in Schedule 3 to these Regulations.
(4) The Petroleum Act 1998⁽⁶⁾ is amended as set out in Schedule 4 to these Regulations.

(1) S.I. 2000/738.

(2) 1972 c. 68.

(3) 1962 c. 58; sections 9, 10 and 66(1) were amended by S.I. 1999/742, Schedule, paragraphs 6, 8 and 15 respectively, and sections 9A and 10A inserted by paragraphs 7 and 9 respectively.

(4) 1986 c. 44; section 22 was amended by the Gas Act 1995 (c. 45), Schedule 3, paragraph 20.

(5) 1995 c. 45.

(6) 1998 c. 17.

19th July 2000

Helen Liddell,
Minister for Energy and Competitiveness in
Europe,
Department of Trade and Industry

SCHEDULE 1

Regulation 2(1)

AMENDMENTS TO THE PIPE-LINES ACT 1962

1.—(1) After section 9(1) there shall be inserted—

“(1A) Subsections (2), (3) and (5) of this section apply only to pipe-lines constructed pursuant to a pipe-line construction authorisation which are neither upstream petroleum pipe-lines nor gas pipe-lines, and references in those subsections to “pipe-line” and “line” shall be construed accordingly.”

(2) In section 9(2), for the words “the foregoing subsection” there shall be substituted “subsection (1)”.

(3) After section 9(6) there shall be inserted—

“(7) Where a gas pipe-line is proposed to be constructed pursuant to a pipe-line construction authorisation to which a condition is attached by virtue of subsection (1), any person other than the applicant for the pipe-line construction authorisation may make applications under section 10 and, if applicable, section 10C in respect of the proposed pipe-line, and those sections and section 10B shall have effect as if references to a pipe-line were references to the pipe-line as it would be once constructed in accordance with the condition, and as if references to the owner of the pipe-line were references to the proposed owner of it.

(8) Where an upstream petroleum pipe-line is proposed to be constructed pursuant to a pipe-line construction authorisation to which a condition is attached by virtue of subsection (1), any person other than the applicant for the pipe-line construction authorisation may make applications under section 10E in respect of the proposed pipe-line, and sections 10E and 10F shall have effect as if references to a pipe-line were references to the pipe-line as it would be once constructed in accordance with the condition, and as if references to the owner of the pipe-line were references to the proposed owner of it.”

2.—(1) After section 9A(1) there shall be inserted—

“(1A) Subsections (2), (3) and (5) apply only to additional pipe-lines which are neither upstream petroleum pipe-lines nor gas pipe-lines, and references in those subsections to “pipe-line” and “line” shall be construed accordingly.”

(2) After section 9A(6) there shall be inserted—

“(7) Where a gas pipe-line which is an additional pipe-line is proposed to be constructed, and the Secretary of State has served a notice in respect of the pipe-line under subsection (1) on the person who made the application for planning permission, any other person may make applications under section 10 and, if applicable, section 10C in respect of the proposed pipe-line, and those sections and section 10B shall have effect as if references to a pipe-line were references to the pipe-line as it would be once constructed in accordance with the condition, and as if references to the owner of the pipe-line were references to the proposed owner of it.

(8) Where an upstream petroleum pipe-line which is an additional pipe-line is proposed to be constructed, and the Secretary of State has served a notice in respect of the pipe-line under subsection (1) on the person who made the application for planning permission, any other person may make applications under section 10E in respect of the pipe-line; and sections 10E and 10F shall have effect as if references to a pipe-line were references to the pipe-line as it would be once constructed in accordance with the notice, and as if references to the owner of the pipe-line were references to the proposed owner of it.”

3. In section 10(1), for the words “a pipe-line constructed pursuant to a pipe-line construction authorisation may” there shall be substituted—

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- “(a) a gas pipe-line; or
- (b) any pipe-line other than a gas pipe-line which—
 - (i) is constructed pursuant to a pipe-line construction authorisation; and
 - (ii) is not an upstream petroleum pipe-line;may, subject in the case of a gas pipe-line to which section 10C applies to the provisions of that section,”.

4. In section 10(7), after the words “additional pipe-line” there shall be inserted “other than a gas pipe-line”.

5. In section 10A(2), for the words “notice served under section 9(2), 9A(2) or 10(4)”, there shall be substituted “notice served under section 9(2), 9A(2), 10(4) or 10E(9)”.

6. After section 10A there shall be inserted—

“Application of section 10C to certain gas pipe-lines.

10B.—(1) Section 10C applies to gas pipe-lines other than exempt interconnectors.

(2) An owner of an interconnector may apply in writing to the Secretary of State for an exemption for the interconnector.

(3) An exemption shall be given in writing and may be given—

- (a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
- (b) unconditionally or subject to such conditions as the Secretary of State considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the interconnector concerned not less than four months before the coming into force of the revocation.

(5) The Secretary of State shall give an exemption with respect to an interconnector where he is satisfied that the requirements of section 10C(1), (3) and (6) are already met with respect to the interconnector concerned by existing market arrangements which promote competition.

Additional provisions relating to certain gas pipe-lines.

10C.—(1) The owner of a gas pipe-line to which this section applies (a “relevant gas pipe-line”)—

- (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas conveyed in the pipe-line on that person’s behalf; and
- (b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9 August.

(3) The owner of a relevant gas pipe-line shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas conveyed in the pipe-line.

(4) Any person who seeks a right to have gas conveyed on his behalf in a relevant gas pipe-line (“the applicant”) shall, before making an application to the Secretary of State under section 10, apply to the owner of the pipe-line by giving him notice of what is being sought.

- (5) Such a notice shall, in particular, specify—
- (a) the kind of gas to be conveyed (which must be of the kind the pipe-line is designed to convey); and
 - (b) the quantities of gas to be conveyed.

(6) Where an applicant gives notice under subsection (4), he and the owner of the pipe-line shall negotiate in good faith and endeavour to reach agreement on the application.

(7) If the owner and the applicant do not reach any such agreement, the applicant may make an application to the Secretary of State under section 10 with respect to the pipe-line.

(8) The Secretary of State shall not entertain such an application under section 10 unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (6).

(9) For the purpose of considering an application under section 10 with respect to a relevant gas pipe-line, the Secretary of State may by notice require the owner or the applicant to provide him with such financial information relating to the owner's or applicant's activities with respect to relevant gas pipe-lines as he may specify or describe in the notice.

(10) The Secretary of State shall not disclose to any person information obtained under subsection (9) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

- (11) In this section “main commercial conditions” means—
- (a) such information as would enable a potential applicant for a right to have gas conveyed in a relevant gas pipe-line to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
 - (b) the other significant terms on which such a right would be granted; and
 - (c) such other information as the Secretary of State may from time to time specify by notice.

Enforcement of certain duties in section 10C.

10D.—(1) The duty in section 10C(6) shall be a duty owed to any person who may be affected by a failure to comply with it.

(2) Where a duty is owed by virtue of subsection (1) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(3) In any proceedings brought against a person in pursuance of subsection (2), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the duty.

(4) Compliance with the duties in section 10C(1) and (3) shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or other appropriate relief or remedy.

Provisions for securing that upstream petroleum pipe-lines are so used as to reduce necessity for construction of others.

10E.—(1) This section applies to upstream petroleum pipe-lines.

(2) Any person who seeks a right to have things conveyed by an upstream petroleum pipe-line of which he is not the owner (“the applicant”) shall, before making an application

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to the Secretary of State under subsection (5), apply to the owner of the pipe-line for the right.

(3) An application under subsection (2) shall be made by giving notice to the owner specifying what is being sought.

(4) Such a notice shall, in particular, specify—

- (a) the kind of things to be conveyed (which must be of a kind the pipe-line is designed to convey); and
- (b) the quantities to be conveyed.

(5) If the owner and the applicant do not reach agreement on the application, the applicant may apply to the Secretary of State for a notice under subsection (9) securing to the applicant the right to have conveyed by the pipe-line in respect of which he has made an application to the owner under subsection (2) the quantities specified in the notice under subsection (3) of things of a kind so specified.

(6) The Secretary of State shall not entertain an application under subsection (5) unless he is satisfied that the parties have had a reasonable time in which to reach agreement between themselves on the application under subsection (2).

(7) Where a person applies to the Secretary of State under subsection (5) and the Secretary of State is satisfied as mentioned in subsection (6), the Secretary of State shall serve on the owner of the pipe-line and the applicant notice of the time (being some time not less than twenty-one days from the date of the service of the notice) at which the question of conferring on the applicant the right sought by him will be considered by the Secretary of State, and the owner and the applicant shall be entitled to be heard when that question is so considered.

(8) When considering the application, the Secretary of State shall (so far as relevant) take into account—

- (a) capacity which is or can reasonably be made available in the pipe-line in question;
- (b) any incompatibilities of technical specification which cannot reasonably be overcome;
- (c) difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future production of petroleum;
- (d) the owner's reasonable needs for the transport and processing of petroleum;
- (e) the interests of all users and operators of the pipe-line;
- (f) the need to maintain security and regularity of supplies of petroleum; and
- (g) the number of parties involved in the dispute.

(9) Where the Secretary of State is satisfied that, if he served a notice under this subsection, the pipe-line in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of conveying, on behalf of its owner, the quantities of things which the owner requires or may reasonably be expected to require, the Secretary of State may serve such a notice on the owner and the applicant.

(10) A notice under subsection (9) may contain such provisions as the Secretary of State considers appropriate for any of the following purposes—

- (a) to secure to the applicant the right to have conveyed by the pipe-line the quantities specified in the notice under subsection (3) of the things of a kind so specified;
- (b) to secure that the exercise of the right is not prevented or impeded;
- (c) to regulate the charges which may be made for the conveyance of things by virtue of the right; and

(d) to secure to the applicant the right to have a pipe-line of his connected to the pipe-line by the applicant or owner.

(11) A notice under subsection (9) may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in subsection (10)(a) or (d) of amounts specified in the notice or determined in accordance with the notice.

Section 10E: supplemental.

10F.—(1) For the purpose of considering an application under section 10E(5), the Secretary of State may by notice require the owner or the applicant to provide him with such information relevant to the application as may be specified or described in the notice.

(2) The information mentioned in subsection (1) may, in particular, include financial information relevant to the owner's or the applicant's activities with respect to petroleum production projects and upstream petroleum pipe-lines.

(3) The Secretary of State shall not disclose to any person any information obtained under subsection (1) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(4) If the owner of a pipe-line fails to comply with a requirement imposed by a notice served under section 10E(9) with reference to the pipe-line he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale; and, if the failure continues after his conviction, he shall be guilty of a further offence and liable, in respect thereof, to a fine not exceeding twenty-five pounds for each day on which the failure continues."

7. After section 58(4) there shall be inserted—

"(4A) References in sections 9A and 10 of this Act to an additional pipe-line shall be construed as not including references to a pipe-line constructed by and vested in, or proposed to be constructed by and proposed to be vested in, a public gas transporter within the meaning of Part I of the Gas Act 1986."

8. At the end of section 65(2), there shall be inserted—

"and

(g) for the purposes of sections 9(8), 9A(8), 10E and 10F only, apparatus for treating and cooling petroleum which is to flow through, or through any part of, the pipe or system".

9. In section 66(1)—

(a) after the definition of "diversion", there shall be inserted—

"“foreign sector of the continental shelf” means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;

“gas” means any substance which consists wholly or mainly of—

(a) methane ethane, propane, butane, hydrogen or carbon monoxide;

(b) a mixture of two or more of those gases; or

(c) a combustible mixture of one or more of those gases and air;

“gas pipe-line” means—

(a) a pipe-line, other than an upstream petroleum pipe-line, which is used to convey gas to premises or to a pipe-line system operated by a public gas

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transporter and in respect of which an exemption has been granted by or under the Gas Act 1986 from the requirement for a public gas transporter's licence; or

(b) an interconnector;

“gas processing facility” means any facility in Great Britain operated otherwise than by a public gas transporter (within the meaning of Part I of the Gas Act 1986) which carries out gas processing operations;

“gas processing operation” means any of the following operations, namely—

(a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipe-line system operated by a public gas transporter (within the meaning of Part I of the Gas Act 1986) or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain;

(b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and

(c) 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;”

(b) after the definition of “in”, there shall be inserted—

““interconnector” means a pipe-line, other than an upstream petroleum pipe-line or a pipe-line operated by a public gas transporter (within the meaning of Part I of the Gas Act 1986), which is used to convey gas to or from a place outside Great Britain;”

(c) in the definition of “owner”, at the end of paragraph (c), there shall be added—

“and, for the purposes of section 10 in the case of gas pipe-lines only (other than section 10(1)), and for the purposes of sections 10B to 10F (other than the first reference in section 10E(2)), includes a person who has the right to use capacity in the pipe-line, where such right has been acquired by that person on terms that—

(i) he is entitled to use the capacity for a period of one year or more; and

(ii) the right is capable of being assigned or otherwise disposed of to another person;”

(d) after the definition of “owner” there shall be inserted—

““petroleum” includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, whether or not it has undergone any processing; but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

“petroleum production project” means a project carried out by virtue of a licence granted under section 3 of the Petroleum Act 1998, or an equivalent project in a foreign sector of the continental shelf, and includes such a project which is used for the storage of gas;”

(e) after the definition of “street works consent” there shall be inserted—

““terminal” includes—

(a) facilities for such initial blending and other treatment as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;

(b) gas processing facilities; and

(c) a facility for the reception of gas prior to its conveyance to a place outside Great Britain;

“upstream petroleum pipe-line” means a pipe-line or one of a network of pipe-lines operated or constructed as part of a petroleum production project or used to convey petroleum from the site of one or more such projects—

- (a) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;
- (b) directly to a terminal; or
- (c) 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.”

SCHEDULE 2

Regulation 2(2)

AMENDMENTS TO THE GAS ACT 1986

1. After section 19, there shall be inserted—

“Application of section 19B to storage facilities.

19A.—(1) Section 19B applies to storage facilities other than exempt storage facilities.

(2) An owner of a storage facility may apply in writing to the Director for an exemption for the facility or for facilities of a particular description.

(3) An exemption shall be given in writing and may be given—

- (a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
- (b) unconditionally or subject to such conditions as the Director considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the facility or facilities concerned not less than four months before the coming into force of the revocation.

(5) The Director shall give an exemption with respect to a facility or description of facility where he is satisfied that either—

- (a) the requirements of section 19B(1), (3) and (7) and section 19E(3) are already met with respect to the facility or facilities concerned by existing market arrangements which promote competition; or
- (b) use of the facility or facilities concerned by other persons is not necessary for the operation of an economically efficient gas market.

Acquisition of rights to use storage facilities.

19B.—(1) The owner of a storage facility to which this section applies (a “relevant facility”)—

- (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas stored in the facility on that person’s behalf; and
- (b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9th August.

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(3) The owner of a relevant facility shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas stored in the facility.

(4) Any person who seeks a right to have gas stored on his behalf in a relevant facility (“the applicant”) shall, before making an application to the Director under subsection (8), apply to the owner of the facility for the right.

(5) An application under subsection (4) shall be made by giving notice to the owner specifying what is being sought.

(6) Such a notice shall, in particular, specify—

- (a) the period during which the gas is to be stored in the facility;
- (b) the kind of gas to be stored (which must be of, or similar to, the kind which the facility is designed to store); and
- (c) the quantities of gas to be stored.

(7) Where an applicant gives notice under subsection (5), he and the owner of the facility shall negotiate in good faith and endeavour to reach agreement on the application.

(8) If the owner and the applicant do not reach any such agreement, the applicant may apply to the Director for directions under subsection (11) which would secure to the applicant the right specified in the notice under subsection (5).

(9) The Director shall not entertain an application under subsection (8) unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (7).

(10) Where a person applies to the Director under subsection (8) and the Director is satisfied as mentioned in subsection (9), the Director shall—

- (a) decide whether the application is to be adjourned (so as to enable further negotiations to take place), considered further or rejected;
- (b) give notice of his decision to the applicant; and
- (c) in the case of a decision that the application is to be considered further, give to the owner of the facility, the Health and Safety Executive and any person who has a right to have gas stored in the facility notice that the application is to be so considered and an opportunity of being heard on the matter.

(11) Where, after considering an application under subsection (8), the Director is satisfied that the giving of directions under this subsection would not prejudice the efficient operation of the facility, or the storage in the facility of—

- (a) the quantities of gas which the owner of the facility requires or may reasonably be expected to require to be stored in the facility; and
- (b) the quantities of gas which any person who has a right to have gas stored in the facility is entitled to require to be so stored in the exercise of that right;

the Director may give such directions to the owner of the facility.

(12) Directions under subsection (11) may—

- (a) specify the terms on which the Director considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
 - (i) for securing to the applicant the right to have stored in the facility, for the period specified in the directions and in the quantities so specified or determined by or under the directions, gas which is of a kind so specified;

- (ii) for securing that the exercise of that right is not prevented or impeded;
- (iii) for regulating the charges which may be made for the storage of gas by virtue of that right;
- (iv) for securing to the applicant such ancillary or incidental rights as the Director considers necessary or expedient (which may include, in particular, a right to have a pipeline of his connected to the facility by the owner);
- (b) specify the sums or the method of determining the sums which the Director considers should be paid by way of consideration for any such right; and
- (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.

Application of section 19D to LNG facilities.

19C.—(1) Section 19D applies to LNG facilities other than exempt LNG facilities.

(2) An owner of an LNG facility may apply in writing to the Director for an exemption for the facility or for facilities of a particular description.

(3) An exemption shall be given in writing and may be given—

- (a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
- (b) unconditionally or subject to such conditions as the Director considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the facility or facilities concerned not less than four months before the coming into force of the revocation.

(5) The Director shall give an exemption with respect to a facility or description of facility where he is satisfied that the requirements of section 19D(1), (3) and (7) and section 19E(3) are already met with respect to the facility or facilities concerned by existing market arrangements which promote competition.

Acquisition of rights to use LNG facilities.

19D.—(1) The owner of an LNG facility to which this section applies (a “relevant facility”)—

- (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have LNG treated in the facility on that person’s behalf; and
- (b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9th August.

(3) The owner of a relevant facility shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have LNG treated in the facility.

(4) Any person who seeks a right to have LNG treated on his behalf in a relevant facility (“the applicant”) shall, before making an application to the Director under subsection (8), apply to the owner of the facility for the right.

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(5) An application under subsection (4) shall be made by giving notice to the owner specifying what is being sought.

(6) Such a notice shall, in particular, specify—

- (a) the period during which LNG is to be treated in the facility;
- (b) the kind of LNG to be treated (which must be of, or similar to, the kind which the facility is designed to treat); and
- (c) the quantities of LNG to be treated.

(7) Where an applicant gives notice under subsection (5), he and the owner of the facility shall negotiate in good faith and endeavour to reach agreement on the application.

(8) If the owner and the applicant do not reach any such agreement, the applicant may apply to the Director for directions under subsection (11) which would secure to the applicant the right specified in the notice under subsection (5).

(9) The Director shall not entertain an application under subsection (8) unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (7).

(10) Where a person applies to the Director under subsection (8) and the Director is satisfied as mentioned in subsection (9), the Director shall—

- (a) decide whether the application is to be adjourned (so as to enable further negotiations to take place), considered further or rejected;
- (b) give notice of his decision to the applicant; and
- (c) in the case of a decision that the application is to be considered further, give to the owner of the facility, the Health and Safety Executive and any person who has a right to have LNG treated in the facility notice that the application is to be so considered and an opportunity of being heard about the matter.

(11) Where, after considering an application under subsection (8), the Director is satisfied that the giving of directions under this subsection would not prejudice the efficient operation of the facility, or the treatment in the facility of—

- (a) the quantities of LNG which the owner of the facility requires or may reasonably be expected to require to be treated in the facility; and
- (b) the quantities of LNG which any person who has a right to have LNG treated in the facility is entitled to require to be so treated in the exercise of that right;

the Director may give such directions to the owner of the facility.

(12) Directions under subsection (11) may—

- (a) specify the terms on which the Director considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
 - (i) for securing to the applicant the right to have treated in the facility, for the period specified in the directions and in the quantities so specified or determined by or under the directions, LNG which is of a kind so specified;
 - (ii) for securing that the exercise of that right is not prevented or impeded;
 - (iii) for regulating the charges which may be made for the treatment of LNG by virtue of that right;
 - (iv) for securing to the applicant such ancillary or incidental rights as the Director considers necessary or expedient (which may include, in particular, a right to have a pipeline of his connected to the facility by the owner);

- (b) specify the sums or the method of determining the sums which the Director considers should be paid by way of consideration for any such right; and
- (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.

Sections 19A to 19D: supplemental.

19E.—(1) In sections 19A to 19D and this section—

“accounting information” means such accounting records as would be required by section 221 of the Companies Act 1985 in respect of each of the storage or (as the case may be) treatment activities undertaken by the owner of the facility if those activities were the only business undertaken by the owner and the owner were a person to whom that section applied;

“LNG” means liquid gas, and gas which has been, or is to be, treated in an LNG facility;

“LNG facility” means a facility for any or all of the following: the liquefaction of gas, the storage of LNG in its liquid form and the re-gasification of liquid gas;

“main commercial conditions” means—

- (a) such information as would enable a potential applicant for a right to have gas stored or (as the case may be) treated in a relevant facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) the other significant terms on which such a right would be granted; and
- (c) such additional information as the Director may from time to time specify by notice;

“owner” in relation to a storage facility or an LNG facility includes any person occupying or having control of the facility;

“significant transaction” means—

- (a) any transaction which relates to rights to have gas stored in a gas storage facility, or (as the case may be) treated in an LNG facility; and
- (b) any other transaction which is of a description specified from time to time by the Director by notice;

“storage facility” means a facility in Great Britain (excluding the territorial sea adjacent to the United Kingdom) for the storage of gas in cavities in strata or in porous strata, provided that the facility is used for the storage of gas which has previously been conveyed in a pipeline system operated by a public gas transporter; and

“treatment” in relation to LNG in an LNG facility, includes liquefaction, storage in liquid form and regasification of the LNG, and “treat” shall be construed accordingly.

(2) For the purpose of considering an application under section 19B(8) or 19D(8), the Director may by notice require the owner of the relevant facility to provide him with accounting information and details of the main commercial terms of any significant transactions with associated undertakings.

(3) Owners of relevant facilities shall keep their internal accounts in such manner as will enable them to provide accounting information if required to do so by a notice under subsection (2).

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(4) For the purposes of sections 19B and 19D, an undertaking is an associated undertaking of another undertaking if one of the undertakings has control of the other, or both undertakings are under the control of the same person or persons; and subsections (2) to (5) of section 416 of the Income and Corporation Taxes Act 1988 shall apply with any necessary modifications for the purposes of this subsection as they apply for the purposes of Part XI of that Act.

(5) Any reference in section 19B to a right to have gas or gas of any kind stored in a storage facility includes a reference to a right to introduce into, or take out of, such a facility gas or gas of that kind.

(6) Any reference in section 19D to a right to have LNG or LNG of any kind treated in an LNG facility includes a reference to a right to introduce into, or take out of, such a facility LNG or LNG of that kind.”

2. In section 22—

- (a) in subsection (1), for the words “section 19 or 21(1) above”, there shall be substituted “section 19, 19B(11), 19D(11) or 21(1)”;
- (b) in subsection (1), for the words “is a duty”, there shall be substituted—
“and the obligation to comply with any duty in section 19B(7) and 19D(7) (in this section referred to as “relevant duties”) are duties”;
- (c) at the end of subsection (3), there shall be inserted “or relevant duties ”; and
- (d) at the end of the section, there shall be inserted—

“(5) Compliance with the duties in sections 19B(1) and (3), 19D(1) and (3) and section 19E(3) shall be enforceable by civil proceedings by the Director for an injunction or interdict or for any other appropriate relief.”

SCHEDULE 3

Regulation 2(3)

AMENDMENTS TO THE GAS ACT 1995

1. For section 12(1) there shall be substituted—

“(1) The owner of a gas processing facility—

- (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas processed by the facility on that person’s behalf; and
- (b) shall publish any changes to the published conditions as soon as they become effective.

(1A) In subsection (1) “year” means any year ending with 9th August.

(1B) Any person who seeks a right to have gas processed on his behalf by a gas processing facility (“the applicant”) shall, before making an application to the Secretary of State under subsection (1F), apply to the owner of the facility for the right.

(1C) An application under subsection (1B) shall be made by giving notice in writing to the owner specifying what is being sought.

(1D) The notice shall, in particular, specify—

- (a) the period during which the gas is to be processed by the facility;
- (b) the kind of gas to be processed (which must be of, or similar to, the kind which the facility is designed to process); and

(c) the quantities of gas to be processed.

(1E) Where a person gives notice under subsection (1C), he and the owner of the gas processing facility shall negotiate in good faith and endeavour to reach agreement on the application.

(1F) If the owner and the applicant do not reach any such agreement, the applicant may apply to the Secretary of State for directions under this section which would secure to the applicant the right specified in the notice under subsection (1C).

(1G) The Secretary of State shall not entertain such an application unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (1E).”

2. In section 12(2)—

- (a) for the words “subsection (1) above” there shall be substituted “ subsection (1F)”; and
- (b) in paragraph (a), the words “negotiations or” shall be repealed.

3. In section 12(3) for the words “subsection (1) above” there shall be substituted “subsection (1F)”.

4. For section 12(5) there shall be substituted—

“(5) Section 22 of the 1986 Act (effect of directions) shall apply in relation to—

- (a) any directions under this section as it applies in relation to any directions under section 19, 19B(11), 19D(11) or 21(1) of that Act; and
- (b) any obligation to comply with the duty in subsection (1E) as it applies in relation to any obligation to comply with the duties in sections 19B(7) and 19D(7) of that Act;

and in subsection (4) of section 22 of the 1986 Act as applied by this subsection the reference to the Director shall be to the Secretary of State.

(5A) Compliance with the duty in subsection (1) shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or for any other appropriate relief or remedy.”

5. In section 12(6)—

- (a) at the end of the definition of “gas processing facility”, there shall be added the words “and which is operated otherwise than by a public gas transporter”; and
- (b) before the definition of owner, there shall be inserted—

““main commercial conditions” means—

- (a) such information as would enable a potential applicant for a right to have gas processed by a gas processing facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) the other significant terms on which such a right would be granted; and
- (c) such other information as the Secretary of State may from time to time specify by notice;”.

6. After section 12(6) there shall be inserted—

“(6A) Subsections (1) to (3) of section 49 of the Pipe-lines Act 1962 (service of documents) shall apply for the purposes of this section as they apply for the purposes of that Act.”

SCHEDULE 4

Regulation 2(4)

AMENDMENTS TO THE PETROLEUM ACT 1998

1. In section 15(6), after the words “section 17(7)”, there shall be inserted “or 17G(6)”.
2. In section 16(1), after the words “section 17(8)”, there shall be inserted “or 17G(7)”.
3. After section 17(1) there shall be inserted—

“(1A) This section does not apply to controlled petroleum pipelines, and, in the case of a downstream gas pipeline to which section 17B applies, is subject to that section.”
4. After section 17 there shall be inserted—

“Application of section 17B to certain downstream gas pipelines.

17A.—(1) Section 17B applies to downstream gas pipelines, other than exempt pipelines.

(2) An owner of a downstream gas pipeline may apply in writing to the Secretary of State for an exemption for the pipeline.

(3) An exemption shall be given in writing and may be given—

- (a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
- (b) unconditionally or subject to such conditions as the Secretary of State considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the pipeline concerned not less than four months before the coming into force of the revocation.

(5) The Secretary of State shall give an exemption with respect to a pipeline where he is satisfied that the requirements of section 17B(1), (3) and (6) are already met with respect to the pipeline concerned by existing market arrangements which promote competition.

Additional provisions relating to certain downstream gas pipelines.

17B.—(1) The owner of a downstream gas pipeline to which this section applies (a “relevant downstream gas pipeline”)—

- (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas conveyed in the pipeline on that person’s behalf; and
- (b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9th August.

(3) The owner of a relevant downstream gas pipeline shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas conveyed in the pipeline.

(4) Any person who seeks a right to have gas conveyed on his behalf in a relevant downstream gas pipeline (“the applicant”) shall, before making an application to the Secretary of State under section 17, apply to the owner of the pipeline by giving him notice of what is being sought.

(5) Such a notice shall, in particular, specify—

(a) the kind of gas to be conveyed (which must be of the kind the pipeline is designed to convey); and

(b) the quantities of gas to be conveyed.

(6) Where an applicant gives notice under subsection (4), he and the owner of the pipeline shall negotiate in good faith and endeavour to reach agreement on the application.

(7) If the owner and the applicant do not reach any such agreement, the applicant may make an application to the Secretary of State under section 17 with respect to the pipeline.

(8) The Secretary of State shall not entertain such an application under section 17 unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (6).

(9) For the purpose of considering an application under section 17 with respect to a relevant downstream gas pipeline, the Secretary of State may by notice require the owner or the applicant to provide him with such financial information relating to the owner's or applicant's activities with respect to relevant downstream gas pipelines as he may specify or describe in the notice.

(10) The Secretary of State shall not disclose to any person information obtained under subsection (9) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(11) In this section, "main commercial conditions" means—

(a) such information as would enable a potential applicant for a right to have gas conveyed in a relevant downstream gas pipeline to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;

(b) the other significant terms on which such a right would be granted; and

(c) such other information as the Secretary of State may from time to time specify by notice.

Application of section 17D to certain offshore gas storage facilities.

17C.—(1) Section 17D applies to offshore gas storage facilities other than exempt offshore gas storage facilities.

(2) An owner of an offshore gas storage facility may apply in writing to the Director for an exemption for the facility.

(3) An exemption shall be given in writing and may be given—

(a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;

(b) unconditionally or subject to such conditions as the Director considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the facility concerned not less than four months before the coming into force of the revocation.

(5) The Director shall give an exemption with respect to a facility where he is satisfied that the requirements of section 17D(1), (3) and (7) and section 17E(2) are already met with respect to the facility concerned by existing market arrangements which promote competition.

(6) In this section and sections 17D and 17E "the Director" means the Director General of Gas Supply.

Provisions relating to certain offshore gas storage facilities.

17D.—(1) The owner of an offshore gas storage facility to which this section applies (a “relevant facility”)—

- (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas stored in the facility on that person’s behalf; and
- (b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9th August.

(3) The owner of a relevant facility shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas stored in the facility.

(4) Any person who seeks a right to have gas stored on his behalf in a relevant facility (“the applicant”) shall, before making an application to the Director under subsection (8), apply to the owner of the facility for the right.

(5) An application under subsection (4) shall be made by giving notice to the owner specifying what is being sought.

(6) Such a notice shall, in particular, specify—

- (a) the period during which the gas is to be stored in the facility;
- (b) the kind of gas to be stored (which must be of, or similar to, the kind which the facility is designed to store); and
- (c) the quantities of gas to be stored.

(7) Where an applicant gives a notice under subsection (5), he and the owner of the facility shall negotiate in good faith and endeavour to reach agreement on the application.

(8) If the owner and the applicant do not reach any such agreement, the applicant may apply to the Director for a notice under subsection (11) securing to the applicant the right specified in the notice given under subsection (5).

(9) The Director shall not entertain an application under subsection (8) unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (7).

(10) Where a person applies to the Director under subsection (8) and the Director is satisfied as mentioned in subsection (9), the Director shall—

- (a) give notice to the owner of the facility and the applicant that he proposes to consider the application; and
- (b) after the expiry of 21 days beginning with the date on which notice under paragraph (a) was served, but before considering the application, give them an opportunity of being heard with respect to the application.

(11) Where the Director is satisfied that, if he served a notice under this subsection, the relevant facility in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of storing, on behalf of its owner, the quantities of gas which the owner requires or may reasonably be expected to require, the Director may serve such a notice on the owner and the applicant.

(12) A notice under subsection (11) may contain such provisions as the Director considers appropriate for any of the following purposes—

- (a) for securing to the applicant the right to have stored in the facility, for the period specified in the notice and in the quantities so specified or determined by or under the notice, gas which is of a kind so specified;
- (b) to secure that the exercise of the right is not prevented or impeded;
- (c) to regulate the charges which may be made for the storage of gas by virtue of that right; and
- (d) to secure to the applicant such ancillary or incidental rights as may be necessary or expedient (which may, in particular, include a right to have a pipeline of his connected to the facility by the owner).

(13) A notice under subsection (11) may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in subsection (12)(a) or (d) of amounts specified in the notice or determined in accordance with the notice.

Section 17D: supplemental.

17E.—(1) For the purpose of considering an application under section 17D(8), the Director may by notice require the owner to provide him with accounting information and details of the main commercial terms of any significant transactions with associated undertakings.

(2) Owners of relevant facilities shall keep their internal accounts in such manner as will enable them to provide accounting information if required to do so by notice under subsection (1).

(3) The Director shall not disclose to any person information obtained under subsection (1) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(4) Any reference in this section to a right to have gas or gas of any kind stored in a relevant facility includes a reference to a right to introduce into, or take out of, such a facility gas or gas of that kind.

(5) In section 17D “main commercial conditions” means—

- (a) such information as would enable a potential applicant for a right to have gas stored in a relevant facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) the other significant terms on which such a right would be granted; and
- (c) such other information as the Director may from time to time specify by notice.

(6) In this section—

“accounting information” means such accounting records as would be required by section 221 of the Companies Act 1985 in respect of the storage activities undertaken by an owner of a relevant facility, if those activities were the only business undertaken by the owner and the owner were a person to whom that section applied; and

“significant transaction” means—

- (a) any transaction which relates to rights to have gas stored in a relevant facility; or
- (b) any other transaction which is of a description specified by the Director from time to time by notice.

(7) For the purposes of this section an undertaking is an associated undertaking of another undertaking if one of the undertakings has control of the other, or both undertakings are under the control of the same person or persons; and subsections (2) to (5) of section 416 of

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the Income and Corporation Taxes Act 1988 shall apply with any necessary modifications for the purposes of this subsection as they apply for the purposes of Part XI of that Act.

Acquisition of rights to use controlled petroleum pipelines.

17F.—(1) This section applies to controlled petroleum pipelines.

(2) Any person who seeks a right to have things conveyed by a controlled petroleum pipeline of which he is not the owner (“the applicant”) shall, before making an application to the Secretary of State under subsection (5), apply to the owner of the pipeline for the right.

(3) An application under subsection (2) shall be made by giving notice to the owner specifying what is being sought.

(4) Such a notice shall, in particular, specify—

- (a) the kind of things to be conveyed (which must be of a kind the pipeline is designed to convey); and
- (b) the quantities to be conveyed.

(5) If the owner and the applicant do not reach agreement on the application, the applicant may apply to the Secretary of State for a notice under subsection (9) securing to the applicant the right to have conveyed by the pipeline in respect of which he has made an application to the owner under subsection (2) the quantities specified in the notice under subsection (3) of things of a kind so specified.

(6) The Secretary of State shall not entertain an application under subsection (5) unless he is satisfied that the parties have had a reasonable time in which to reach agreement between themselves on the application under subsection (2).

(7) Where a person applies to the Secretary of State under subsection (5) and the Secretary of State is satisfied as mentioned in subsection (6), the Secretary of State shall—

- (a) give notice to the owner of the pipeline and the applicant that he proposes to consider the application; and
- (b) after the expiry of 21 days beginning with the date on which notice under paragraph (a) was served, but before considering the application, give them an opportunity of being heard with respect to the application.

(8) When considering the application, the Secretary of State shall (so far as relevant) take into account—

- (a) capacity which is or can reasonably be made available in the pipeline in question;
- (b) any incompatibilities of technical specification which cannot reasonably be overcome;
- (c) difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future production of petroleum;
- (d) the owner’s reasonable needs for the transport and processing of petroleum;
- (e) the interests of all users and operators of the pipeline;
- (f) the need to maintain security and regularity of supplies of petroleum; and
- (g) the number of parties involved in the dispute.

(9) Where the Secretary of State is satisfied that, if he served a notice under this subsection, the pipeline in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of conveying, on behalf of its owner, the quantities of permitted substances which the owner requires or may reasonably be expected to require, the Secretary of State may serve such a notice on the owner and the applicant.

(10) A notice under subsection (9) may contain such provisions as the Secretary of State considers appropriate for any of the following purposes—

- (a) to secure to the applicant the right to have conveyed by the pipeline the quantities specified in the notice under subsection (3) of the things of a kind so specified;
- (b) to secure that the exercise of the right is not prevented or impeded;
- (c) to regulate the charges which may be made for the conveyance of things by virtue of the right; and
- (d) to secure to the applicant the right to have a pipeline of his connected to the pipeline by the applicant or owner.

(11) A notice under subsection (9) may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in subsection (10)(a) or (d) of amounts specified in the notice or determined in accordance with the notice.

Section 17F: supplemental.

17G.—(1) Where an application is made to the Secretary of State under section 17F(5) in respect of a pipeline which is situated partly in, under or over controlled waters and partly in a foreign sector of the continental shelf, the Secretary of State shall consult the relevant authorities in the other country with respect to the application before considering it himself.

(2) For the purpose of considering an application under section 17F(5), the Secretary of State may by notice require the owner or the applicant to provide him with such information relevant to the application as may be specified or described in the notice.

(3) The information mentioned in subsection (2) may, in particular, include financial information relevant to the owner's or the applicant's activities with respect to petroleum production projects and controlled petroleum pipelines.

(4) The Secretary of State shall not disclose to any person any information obtained under subsection (2) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(5) In section 17F(9), "permitted substances" means the things which may be conveyed by the pipeline in accordance with an authorisation (or, if no authorisation for the use of the pipeline is required by section 14(1), means the things which the pipeline is designed to convey).

(6) Before serving a notice under section 15(6) on a person other than the holder of the relevant authorisation, the Secretary of State shall give that person an opportunity to make applications under section 17F in respect of the proposed pipeline to which the authorisation relates; and section 17F and subsections (1) to (5) above shall have effect for this purpose as if references to a pipeline and the owner of it were references to the proposed pipeline and the proposed owner of it.

(7) Before serving a notice under section 16(1) on a person other than the owner of the relevant pipeline, the Secretary of State shall give that person particulars of the modifications which he proposes to specify in the notice and an opportunity to make applications under section 17F in respect of the pipeline; and section 17F and subsections (1) to (5) above shall have effect for this purpose as if references to a pipeline were references to the pipeline as it would be with those modifications.

(8) The use of a pipeline by any person in accordance with a right secured to him by the Secretary of State by virtue of section 17F is not a contravention of section 14(1); but a person to whom a right is so secured may not assign the right to any other person.

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Enforcement of certain duties in sections 17B, 17D and 17E.

17H.—(1) The duties in section 17B(6) and section 17D(7) shall be duties owed to any person who may be affected by a failure to comply with them.

(2) Where a duty is owed by virtue of subsection (1) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(3) In any proceedings brought against a person in pursuance of subsection (2), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the duty.

(4) Compliance with the duties in sections 17B(1) and (3), 17D(1) and (3) and 17E(2) shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or other appropriate relief or remedy.”

5. In section 18(6)(b), for the words “section 16 or 17” there shall be substituted “section 16, 17 or 17F(9)”.

6. In section 19(1)(b), after the words “section 17”, there shall be inserted “or section 17F(9)”.

7. In section 21(1)(b), for the words “section 16 or 17”, there shall be substituted “section 16, 17 or 17F(9)”.

8. After section 27(1) there shall be inserted—

“(1A) For the purposes of this Part of this Act (other than section 16, section 17(1) and the first reference in section 17F(2)), in the case of downstream gas pipelines and controlled petroleum pipelines—

“owner” in relation to a pipeline includes a person in whom the pipeline is vested; and a person who has the right to use capacity in the pipeline, where such right has been acquired by that person on terms that—

- (a) he is entitled to use the capacity for a period of one year or more; and
- (b) the right is capable of being assigned or otherwise disposed of to another person; and

“proposed owner” in relation to a proposed pipeline includes a person in whom the pipeline is proposed to be vested.”

9. In section 28(1)—

(a) after the definition of “construction” there shall be inserted—

““controlled petroleum pipeline” means any controlled pipeline or one of a network of controlled pipelines operated or constructed as part of a petroleum production project or used to convey petroleum from the site of one or more such projects—

- (a) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;
- (b) directly to a place outside Great Britain;
- (c) directly to a terminal; or
- (d) 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;”

(b) after the definitions of “controlled pipeline” and “controlled waters” there shall be inserted—

““downstream gas pipeline” means a controlled pipeline, other than a controlled petroleum pipeline, which is used to convey gas to or from a place outside Great Britain;”

(c) after the definition of “enactment”, there shall be inserted—

““gas” means any substance which consists wholly or mainly of—

(a) methane, ethane, propane, butane, hydrogen or carbon monoxide;

(b) a mixture of two or more of those gases; or

(c) a combustible mixture of one or more of those gases and air;

“gas processing facility” means any facility in Great Britain operated otherwise than by a public gas transporter which carries out gas processing operations;

“gas processing operation” means any of the following operations, namely—

(a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a public gas transporter or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain;

(b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and

(c) 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;”

(d) after the definition of “notice” there shall be inserted—

““offshore gas storage facility” means the facility for the storage of gas known as the “Rough” facility, situated to the east of Hull in the Southern North Sea at grid reference 0° 27'E 53° 50'N;

“petroleum” has the same meaning as in Part I of this Act, and includes petroleum which has undergone any processing;

“petroleum production project” means a project carried out by virtue of a licence granted under section 3, or an equivalent project in a foreign sector of the continental shelf, and includes such a project which is used for the storage of gas;” and

(e) after the definition of “prescribed” there shall be inserted—

““public gas transporter” means a public gas transporter within the meaning of Part I of the Gas Act 1986;

“terminal” includes—

(a) onshore facilities in the United Kingdom for such initial blending and other treatment as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;

(b) gas processing facilities; and

(c) a facility for the reception of gas prior to its conveyance to a place outside Great Britain;”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in respect of Great Britain certain articles of Directive [98/30/EC](#) of the European Parliament and of the Council of 22nd June 1998 concerning common rules for the internal market in natural gas (O.J. L204, 21.7.1998, p. 1) (“the Directive”). They amend the Pipelines Act 1962, the Gas Act 1986, the Gas Act 1995 and the Petroleum Act 1998.

The amendments to those Acts implement articles 7.2, 10.2, 12 to 15, 21 and 23 of the Directive in relation to those gas facilities and pipelines in respect of which there is no, or insufficient, pre-existing implementing legislation. Articles 14 and 15 require procedures to be put in place enabling natural gas undertakings and customers to be able to negotiate access to gas pipelines, certain gas storage facilities, liquid natural gas (“LNG”) treatment facilities and gas processing facilities on the basis of publication by the owner of the pipeline or facility of his main commercial conditions for access. Article 21.1 requires such negotiations to be conducted in good faith. Articles 7.2 and 10.2 impose on gas transmission and distribution pipeline owners and gas storage and LNG facility owners a duty not to discriminate between system users or classes of system users. Article 21.2 requires Member States to designate a competent authority to settle disputes relating to access to the system and article 23 contains separate requirements in respect of access to upstream pipelines. Articles 12 and 13 relate to accounts and require integrated natural gas undertakings to keep separate internal accounts in respect of transmission, distribution, storage and non-gas activities.

Schedule 1—amendments to the Pipelines Act 1962 (“the 1962 Act”)

This Schedule amends sections 9, 9A, 10, 58, 65(2) and 66(1) of the 1962 Act and inserts five new sections, 10B to 10F. The effect of the amendments to sections 9 and 9A (paragraphs 1 and 2) is that an application for a right to have substances conveyed in a proposed upstream petroleum pipe-line should be made under new section 10E, rather than under section 9 or 9A, and an application for a right to have gas conveyed in a proposed gas pipe-line should be made under sections 10 and 10C.

Paragraph 3 amends section 10(1) of the 1962 Act, so that applications for a right to have gas conveyed in a gas pipe-line may be made under section 10. “Gas pipe-line” is defined in paragraph 9 to include all gas pipe-lines which fall within the definition, regardless of their length, so that gas pipe-lines under 16.093km in length which are not additional pipes will now be covered by section 10. As a result of this, gas pipe-lines which are also additional pipe-lines do not need to be included in section 10(7) as being treated as constructed pursuant to a pipe-line construction authorisation (paragraph 4). Paragraph 5 adds a notice served under new section 10E(9) (granting a right to have substances conveyed in an upstream petroleum pipe-line) to section 10A(2), so that if a pipe-line in respect of which such a notice has been served is subsequently diverted, the notice applies to the diverted pipe-line.

New section 10B allows for the possibility of exemption from the requirements of section 10C where they are already satisfied by market arrangements which promote competition. New section 10C imposes duties on owners of, and applicants for rights in respect of, gas pipe-lines, which are additional to the provisions in section 10, in order to implement articles 15 and 21.2 of the Directive. Section 10D provides enforcement mechanisms for the duties in section 10C(1), (3) and (6).

New section 10E implements article 23 of the Directive and inserts a free-standing provision dealing with access by third parties to upstream petroleum pipelines. Such pipelines are now excluded from section 10 by the amendment in paragraph 3. Upstream petroleum pipelines are defined, in accordance with the definition in article 2.2 of the Directive, in paragraph 9 as pipelines forming

part of a petroleum production project (which includes such a project used to store gas), or used to convey petroleum from such a project to a terminal, that is, gas processing facilities (other than those owned by public gas transporters), facilities for the initial treatment and blending of petroleum or international interconnector reception facilities (paragraph 6).

The amendment in paragraph 7 ensures that sections 9A and 10 do not apply to additional pipe-lines which are owned by public gas transporters. Paragraph 8 amends section 65(2) of the 1962 Act (definition of “pipe-line”), so that, for the purposes of access to upstream petroleum pipe-lines, it includes cooling and treating apparatus. Paragraph 9 amends the definition of “owner” of pipe-lines in section 66(1) of the 1962 Act, so that for the purposes of third party access to upstream petroleum pipe-lines and gas pipe-lines, it also includes those persons who own capacity in a pipe-line, where they hold that capacity for a year or more and are entitled to dispose of it to others.

Schedule 2—amendments to the Gas Act 1986 (“the 1986 Act”)

Schedule 2 inserts five new sections into the 1986 Act, sections 19A to 19E (paragraph 1), and amends section 22(1) of that Act (paragraph 2). Section 19B provides a way for applicants to gain access to gas storage facilities, in order to implement articles 15 and 21.2 of the Directive in respect of such facilities and section 19D does this in respect of LNG facilities. The possibility of exemption from the requirements of the new sections exists for gas storage facilities and LNG facilities, where such requirements are already met by market arrangements, and for storage facilities to which access is not necessary for the operation of an economically efficient gas market (sections 19A and 19C). Section 19E contains interpretative provisions in respect of both new sections and enforcement provisions for the new duties. The section also requires owners of storage facilities to keep separate accounts for their storage activities in order to implement articles 12 and 13 of the Directive. The amendment in paragraph 2 applies section 22 of the 1986 Act to directions made under new sections 19B and 19D and to the new duties in sections 19B and 19D. Section 22 makes the obligation to comply with such directions and duties a duty owed to any person who may be affected by the contravention of them, and the breach of that duty actionable by such persons. The Director General of Gas Supply may also take civil proceedings to enforce the directions made under sections 19B or 19D and certain duties in those sections.

Schedule 3—amendments to the Gas Act 1995 (“the 1995 Act”)

Schedule 3 amends section 12 of the 1995 Act, which provides for access by third parties to gas processing facilities. Paragraph 1 substitutes for subsection (1) of section 12 eight new subsections in order to impose an additional duty on owners of gas processing facilities to publish the main commercial conditions for access to their facility and an additional duty on owners, and applicants for rights in respect of such facilities, to negotiate in good faith. The dispute settlement authority is the Secretary of State, who would consider any disputes under the remaining provisions of section 12 of the 1995 Act. Section 22 of the 1986 Act (enforcement) is applied to the new duty in section 12(1E), and the Secretary of State may enforce the duty in subsection 12(1) by civil proceedings (paragraph 4).

Schedule 4—amendments to the Petroleum Act 1998 (“the 1998 Act”)

Schedule 4 amends sections 15 to 18, 21, 27 and 28 of the 1998 Act and inserts seven new sections into it, sections 17A to 17G. Paragraphs 1 and 2 insert references to new sections 17G(6) and 17G(7) into sections 15(6) and 16(1) respectively, so that before serving a notice varying the capacity or the route of a controlled petroleum pipeline (section 15) or increasing the capacity of, or modifying a controlled petroleum pipeline (section 16), on someone other than the owner of the pipeline, the Secretary of State must give that person an opportunity to make applications under section 17F.

Paragraph 3 amends section 17 of the 1998 Act (which provides that applicants for access to submarine pipelines may apply to the Secretary of State for a notice granting a right to have things

Status: This is the original version (as it was originally made).

conveyed by such a pipeline) so that it does not apply to controlled petroleum pipelines. Access to such pipelines is dealt with in new section 17F, which implements article 23 on submarine upstream petroleum pipelines. Paragraph 3 also makes section 17 subject to new section 17B where applicable. Section 17B makes additional provision in respect of applications to the Secretary of State under section 17 for access to submarine downstream gas pipelines (defined as those submarine pipelines conveying gas to or from a place outside Great Britain), to implement articles 15 and 21.2 of the Directive. Section 17A provides for exemption from section 17B. New section 17D provides a way for applicants to obtain access to offshore downstream gas storage facilities, with the possibility of exemption from that section by the Director General of Gas Supply (who would also be the dispute settlement authority for access to offshore storage) in section 17C. New section 17H contains enforcement provisions in respect of the new duties imposed in sections 17B and 17D.

Paragraph 5 adds a reference to section 17F(9) to section 18(6)(b) of the 1998 Act, so that failure to comply with a notice under section 17F(9) granting third party access to a controlled petroleum pipeline may result in the withdrawal of the authorisation for the pipeline. Paragraph 6 makes the vesting of pipelines in the Secretary of State on termination of an authorisation subject to a notice under section 17F(9). Paragraph 7 makes failure by an owner of a pipeline in respect of which no authorisation for the use of the pipeline is required by section 14(1) to comply with a notice served on him under section 17F(9) an offence. Paragraph 8 amends the definition of “owner” of a pipeline in section 27(1) of the 1998 Act, so that, for the purposes of third party access to downstream gas pipelines and controlled petroleum pipelines, as well as meaning those persons designated as owner of the pipeline by an order made by the Secretary of State, it also includes persons in whom the pipeline is vested and those persons who own capacity in a pipeline, where they hold that capacity for a year or more and are entitled to dispose of it to others.

Implementation of remaining provisions of the Directive

The remainder of the Directive is largely already implemented in Great Britain by pre-existing legislation, notably the 1986 Act, and by conditions in licences issued by the Director General of Gas Supply under section 7 and 7A of that Act. The central requirement of the Directive in article 18 to enable certain customers to contract for, or be sold natural gas in accordance with articles 15 and 16 of the Directive has already been exceeded in Great Britain as a result of the provisions of the 1986 Act and the 1995 Act, which enable all final customers on public distribution systems to choose their gas supplier. Access to the majority of the pipeline system in Great Britain may be obtained in accordance with article 16 of the Directive by any person who holds a shipper’s licence under section 7A of the 1986 Act and who contracts with a licensed public gas transporter on the terms set out in the network code which such transporters are obliged by their licence conditions to publish.

A regulatory impact assessment of the costs and benefits that will result from these Regulations will be available in the Libraries of the Houses of Parliament when the Regulations are laid before Parliament, and from the Energy Utilities Directorate, Bay 2119, 1 Victoria Street, London SW1H 0ET.