

**EXPLANATORY MEMORANDUM TO
THE GAS ACT 1986 (EXEMPTION FROM THE REQUIREMENT FOR AN
INTERCONNECTOR LICENCE) ORDER 2006**

2006 No.2000

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This Order grants an exemption to the operators of upstream pipelines (that is, pipelines carrying gas from an offshore production field to a processing terminal or generating station in the United Kingdom) from section 5(1)(aa) of the Gas Act 1986 (“the 1986 Act”), (which prohibits participation in the operation of a gas interconnector without a licence). The exemption is granted in respect of upstream pipelines that fall under the definition in the 1986 Act of “gas interconnector”.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 Section 5(1)(aa) of the 1986 Act is inserted by section 149(2) of the Energy Act 2004 (“the 2004 Act”). Section 149(2) commences on the date on which this Order comes into force.

- 3.2 The power to grant exemption from section 5(1)(aa) of the 1986 Act is to be found in section 6A of the 1986 Act as amended by section 149(4) of the 2004 Act. Section 149(4), like section 149(2), commences on the date on which this Order comes into force.

- 3.3 Subsections (2) and (4) of section 149 of the 2004 Act are two sides of the same coin. To have a comprehensive legislative code dealing with gas interconnector operators, both are required. The amendment made by subsection (2) ensures that gas interconnector operators require a licence; the amendment made by subsection (4) ensures that, in appropriate cases, an operator can be exempted from that requirement. Plainly, it makes sense for both amendments to be commenced at the same time; and any interconnector operator who does not require to be licensed at the point at which they are commenced clearly requires the benefit of an exemption at that time. In other words, the power conferred by virtue of the amendment to be made by subsection (4) needs to be exercised in relation to such an operator before subsection (4) commences. This is permitted by section 13 of the Interpretation Act 1978.

4. **Legislative Background**

- 4.1 The prohibition of participation in the operation of a gas interconnector without the authorisation of a licence or a relevant Exemption Order was introduced into sections 5(1) and 6A(1) of the 1986 Act by section 149(2) and (4) of the 2004 Act

from 14th August 2006, the same date as this order will come into force. The definition of “gas interconnector” in section 5(8) of the 1986 Act is wide enough to include some upstream pipelines and this Order grants an exemption to persons operating them from the requirement to hold a gas interconnector licence.

5. Extent

5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Gas interconnectors are the pipelines linking the gas network in Great Britain to gas networks in other countries and territories. Hitherto these have not been regulated under the 1986 Act. However, in order to comply with the requirements of the 2003 Gas Directive (2003/55/EC), the 2004 Act amended the 1986 Act to require those operating interconnectors to do so under the terms of either a licence or an exemption order.

7.2 To secure compliance with the 2003 Gas Directive, it is settled Government policy that the gas interconnector licensing regime introduced by the 2004 Act should apply only to pipelines primarily used to convey gas in either direction between the national gas transmission system in Great Britain and a gas transmission system in another country or territory. As matters stand, there is no legal or policy reason to include upstream gas pipelines in the interconnector licensing regime. The Government’s position is as stated, for example, in the Explanatory Notes to the Energy Act¹ and in the paper on the licensing of liquefied natural gas terminals and interconnectors published jointly by the Department and Ofgem in November 2003².

7.3 However the definition of “gas interconnector” in section 5(8) of the 1986 Act (as inserted by section 149 of the 2004 Act) is wide enough to cover certain upstream pipelines which are expressly excluded from the definition of interconnector in Article 2(17) of the 2003 Gas Directive.

7.4 The Department of Trade and Industry has discussed the implications of this with those potentially affected and has decided that it would be appropriate to exempt the operators of upstream gas pipelines from the interconnector licensing requirements. (As noted above, as matters stand, there is no legal or policy reason to include upstream gas pipelines in the interconnector licensing regime.) The purpose of this order is to put this exemption in place.

¹ The Explanatory Notes are at <http://www.opsi.gov.uk/acts/en2004/04en20-g.htm> (paragraph 330 of which states “An interconnector is a connection between the electricity or gas system in Great Britain and such a system in another country”)

² See paragraph 4.69 of “LNG facilities and interconnectors – EU legislation and regulatory regime. DTI /Ofgem final views” at http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/5158_LNG_facilities_intercntrs_EU_legis_reg_25nov03.pdf?wtfrom=/ofgem/whats-new/archive.jsp

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Sue Harrison at the Department of Trade and Industry (tel: 020 7215 2778 or e-mail: sue.harrison@dti.gov.uk) can answer any queries regarding the instrument.

19 July 2007