

EXPLANATORY MEMORANDUM TO
THE COUNTER-TERRORISM ACT 2008 (DESIGNATION OF A GAS
TRANSPORTER) ORDER 2009

2009 No. 2195

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

2. Purpose of the instrument

2.1 In this Order the Secretary of State designates for the purposes of the Counter Terrorism Act 2008 (“the Act”) a gas transporter for the payment of extra policing costs at key gas installations in the UK.

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

3.1 None.

4. Legislative Context

4.1 This Order designates National Grid Gas plc (“NGG”) as a gas transporter for the purposes of sections 85 to 90 of the Act. These sections relate to the costs of policing at gas facilities in Great Britain. These provisions were discussed during the recent passage of the Counter Terrorism Act 2008 through Parliament. Details of the debates in both Houses can be found at the following Hansard references:

House of Commons	Second Reading, 1 April 2008 Vol.474 Col 737 Committees on 22 April 2008 and 15 May 2008
House of Lords	Second Reading, 8 July 2008 Vol. 703 Col 634

4.2 No gas transporter has previously been designated under these provisions.

4.3 Section 85 (in respect of a gas facility in England or Wales), or section 86 (in respect of a gas facility in Scotland), applies where the Secretary of State considers that the provision of extra police services at the gas facility in question is necessary because of a risk of loss of or disruption to the supply of gas connected with it, and that the loss or disruption would have a serious impact on the United Kingdom or any part of it. Each section provides for the Secretary of State to require a designated gas transporter to pay all or part of the costs incurred in respect of the extra police services in or around the gas facility if that gas transporter has an interest in it.

4.4 Section 88 provides for the recovery by the designated gas transporter of costs paid under section 85 or 86. Section 89 requires consultation with a designated gas transporter and the Gas and Electricity Markets Authority (the Authority) before the Secretary of State first requires that designated gas transporter to pay any costs under section 85 or 86, and in certain

other specified circumstances. By virtue of section 90, sections 85 to 86 apply to costs incurred between 16th January 2007 and the day before those provisions came into force as they would apply in relation to costs incurred on or after that date.

5. Territorial Extent and Application

5.1 This instrument applies 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 The security of the UK's gas supply is essential to the nation. Armed police were deployed to key installations in January 2007. Payment for the provision of these additional police services is the subject of a 2007 Memorandum of Understanding between the Authority, Home Office, the Department for Business Enterprise and Regulatory Reform (the Energy part of which was transferred to the Department of Energy and Climate Change), the Ministry of Defence Police Guarding Agency and NGG. This Order enables existing funding arrangements to be put on a legislative basis.

The gas pipeline network is a natural monopoly and as such the amount it can charge its users for the transportation of gas is regulated by the Authority. Pipeline networks are operated to conditions specified in gas transporter licences that are issued and monitored by the Authority.

NGG have been designated as the relevant gas transporter for the purposes of sections 85 – 90 of the Act as they are the common gas network operator present at all the key gas sites. The designation of NGG in this Order is required in order to enable directions to be issued to that company and the Authority to formalise existing funding arrangements.

NGG will in the first instance meet the costs incurred of providing extra police services, the Authority will then allow National Grid to take these costs into account in determining its gas transmission charges. Ultimately, gas consumers will pay. Dedicated policing of this kind is funded along similar lines in other industry sectors, such as transport. The policy has been agreed with both National Grid and the Authority.

8. Consultation outcome

8.1 There is no statutory requirement to consult on this Order. However, the Government has generally consulted on the policy behind this Order and more recently have specifically consulted both National Grid and the Authority on this Order, both of whom support this legislation.

9. Guidance

9.1 Given the nature of the Order, no guidance has been provided to stakeholders.

10. Impact

10.1 An Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 DECC with interested other Government Departments will continually monitor the requirement to maintain extra policing at the major gas facilities. The costs will undergo scrutiny by the National Audit Office and will remain capped unless legislation or changes in terms and conditions for Police Officers nationally lead to the cap being insufficient to cover police costs.

13. Contact

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