
STATUTORY INSTRUMENTS

2011 No. 2704

The Electricity and Gas (Internal Markets) Regulations 2011

PART 1

Introductory provisions

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity and Gas (Internal Markets) Regulations 2011 and come into force on the day after the day on which they are made.

(2) These Regulations, except regulation 3, do not extend to Northern Ireland.

Interpretation

2. In these Regulations, “standard condition” in relation to—

- (a) a licence granted under section 7, 7ZA or 7A(1) of the Gas Act 1986⁽¹⁾, means a condition which by virtue of section 81(2) of the Utilities Act 2000⁽²⁾ or section 137(3) or 150(5) of the Energy Act 2004⁽³⁾ is a standard condition for the purposes of that licence;
- (b) a licence granted under section 6(1)(b) to (e) of the Electricity Act 1989⁽⁴⁾, means a condition which by virtue of section 33(1) of the Utilities Act 2000⁽⁵⁾ or section 146(5) of the Energy Act 2004 is a standard condition for the purposes of that licence.

PART 2

Consumer protection

National Consumer Council to provide guidance to energy consumers

3.—(1) The Consumers, Estate Agents and Redress Act 2007⁽⁶⁾ is amended as follows.

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- (1) 1986 c. 44. Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45). Relevant amendments were made by sections 3(2), 76(1) and (3) and 108 of, and paragraphs 1 and 4 of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27). Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004 (c. 20). Section 7A(1) was inserted by section 6(1) of the Gas Act 1995 and a relevant amendment made by section 3(2) of the Utilities Act 2000.
 - (2) 2000 c.27. Section 81(2) was amended by sections 107 and 168(10) of, and paragraphs 12 and 14 of Schedule 5 to, the Energy Act 2004 (c. 20); and was subsequently amended by section 35 of, and paragraphs 11 and 14 of the Schedule to, the Energy Act 2010 (c. 27).
 - (3) 2004 c. 20.
 - (4) 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and a relevant amendment was made by section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20). Section 8A was inserted by section 33 of the Utilities Act 2000 and amended by section 137(5) and (6) and section 146(6) of the Energy Act 2004.
 - (5) Section 33(1) was amended by sections 143(1) and 197(9) of, paragraphs 20(a) and (c) of Schedule 19 to, and paragraph 20(b) of part 1 of Schedule 23 to, the Energy Act 2004 (c. 20). Subsection (1) was subsequently amended by section 7(7) of the Climate Change and Sustainable Energy Act 2006 (c. 19); section 107 and 108 of, paragraphs 12 and 13(b) of Schedule 5 to, and paragraphs 12 and 13(b) of Schedule 6 to, the Energy Act 2008 (c. 32); and section 35 of, and paragraphs 11 and 12 of the Schedule to, the Energy Act 2010 (c. 27).
 - (6) 2007 c. 17.

(2) After section 19 insert—

“19A Guidance for energy consumers

(1) The Council must prepare, and keep under review—

- (a) guidance for energy consumers (the “energy consumer guidance”), and
- (b) a summary prepared in accordance with subsection (4) (the “concise guidance”).

(2) The energy consumer guidance must address the matters included in any document published by the European Commission pursuant to Article 3(16) of the Electricity Directive or Article 3(12) of the Gas Directive.

(3) The energy consumer guidance may include any other information relating to the rights of energy consumers which the Council thinks appropriate.

(4) The concise guidance must—

- (a) summarise any information in the energy consumer guidance which in the Council’s view is particularly relevant to the interests of energy consumers, and
- (b) state where a copy of the energy consumer guidance can be obtained.

(5) In preparing and reviewing the energy consumer guidance and the concise guidance the Council must consult—

- (a) the Secretary of State,
- (b) the Gas and Electricity Markets Authority, and
- (c) any other person the Council considers appropriate.

(6) The Council must publish the first version of the energy consumer guidance and the concise guidance on its website by 1 December 2011.

(7) If, following a review, the Council considers it necessary to amend the energy consumer guidance or the concise guidance, the Council must, as soon as is reasonably practicable—

- (a) publish the amended version on its website, and
- (b) inform any person it consulted in accordance with subsection (5) that it has done so.

(8) The Council may also make the first and any amended version of the energy consumer guidance and the concise guidance available in any other manner the Council thinks appropriate for the purpose of bringing that guidance to the attention of those likely to be interested.

(9) In this section—

“the Electricity Directive” means Directive [2009/72/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive [2003/54/EC](#)([7](#));

“energy consumer” means an individual who is—

- (a) a consumer in relation to gas supplied by an authorised supplier for consumption by the consumer’s own household;
- (b) a consumer in relation to electricity supplied by an authorised supplier for consumption by the consumer’s own household;

“the Gas Directive” means Directive [2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC](#)([8](#)).”.

(7) OJ No L 211, 14.08.2009, p.55.

(8) OJ No L 211, 14.08.2009, p94.

- (3) In section 29(4) (exceptions to restriction on disclosure of information)—
- (a) in paragraph (c) omit “or 24(8)”;
 - (b) after paragraph (c) insert—
 - “(ca) published or made available by the Council under any of subsections (6) to (8) of section 19A,
 - (cb) published by the Council under section 24(8),”.
- (4) In section 65(2) (provisions extending to England and Wales and Scotland only), after paragraph (b) insert—
- “(ba) section 19A (guidance for energy consumers);”.

PART 3

Transmission and the operation of interconnectors

Gas transmission and the operation of gas interconnectors: independence

4. After section 8B of the Gas Act 1986⁽⁹⁾ insert—

“Gas transmission and the operation of gas interconnectors: independence

8C Requirement for certain gas transporters and operators of gas interconnectors to be certified as independent

(1) A person who, for any period on or after the relevant date, holds a licence under section 7 and carries out transmission of gas must ensure that the person is certified by the Authority under section 8F throughout that period.

(2) A person who, for any period on or after the relevant date, holds a licence under section 7ZA and participates in the operation of a gas interconnector must ensure that the person is certified by the Authority under section 8F throughout that period.

(3) In subsections (1) and (2) the “relevant date” in respect of a person is 3 March 2012 or any later date before 4 March 2013 which the Authority specifies under subsection (4) or (5) in respect of the person.

(4) The Authority may specify a later date in respect of a person if—

- (a) the person has asked the Authority to specify a later date;
- (b) the person is not, and is not part of, a vertically integrated undertaking; and
- (c) no senior officer of the person is also a senior officer of a relevant producer or supplier.

(5) The Authority may also specify a later date in respect of a person if the Authority thinks that, for reasons beyond its and the person’s control, the Authority will not reasonably be able to make a final decision before 3 March 2012 as to whether to certify the person.

(6) In this section—

- (a) “transmission” has the meaning given by Article 2(3) of the Gas Directive; and
- (b) “vertically integrated undertaking” has the meaning given by Article 2(20) of that Directive.

⁽⁹⁾ Section 8B was inserted by section 9(1) of the Gas Act 1995 (c. 45).

8D Application for certification

- (1) Any person may apply for certification.
- (2) An application for certification—
 - (a) must be made in writing to the Authority; and
 - (b) must be made in such form and contain such information as the Authority may specify.
- (3) If the application is made on or after 3 March 2013 and the applicant is a person from a third country or a person controlled by a person from a third country, the Authority must, as soon as is reasonably practicable after receiving the application—
 - (a) notify the Secretary of State and the European Commission that an application has been made by such a person; and
 - (b) enclose with the notification to the Secretary of State any information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.
- (4) The Authority may ask an applicant for certification for any further information the Authority thinks is relevant to the application, and the applicant must supply that information if—
 - (a) it is in the applicant's possession; or
 - (b) it is information which the applicant could reasonably be expected to obtain.
- (5) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to an application for certification, and the relevant producer or supplier must supply that information if—
 - (a) it is in the relevant producer or supplier's possession; or
 - (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.
- (6) A person required to supply information under subsection (4) or (5) must do so by any deadline specified by the Authority.

8E Report where applicant connected with a country outside the European Economic Area

- (1) This section applies if the Secretary of State is notified by the Authority under section 8D(3) that an application has been made by a person from a third country or a person controlled by a person from a third country.
- (2) The Secretary of State must prepare a report on whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.
- (3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification under section 8D(3) is received.
- (4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 8D(4) or (5) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.
- (5) In preparing the report, the Secretary of State must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

8F Certification

(1) Where the Authority receives an application for certification, it must make a preliminary decision by the relevant deadline as to whether it should certify the applicant.

(2) The relevant deadline is the end of the 4 months beginning with the day on which the Authority receives the application; but this is subject to any extension under subsection (3).

(3) If, before the deadline mentioned in subsection (2) (or before that deadline as previously extended under this subsection), the Authority asks the applicant or a relevant producer or supplier for information under section 8D(4) or (5), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.

(4) As soon as is reasonably practicable after making the preliminary decision the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) the Secretary of State; and
- (c) the European Commission.

(5) The Authority must enclose with the notification under subsection (4)(c) a copy of any report—

- (a) which the Secretary of State has prepared under section 8E in respect of the applicant; and
- (b) which the Authority receives before giving the notification.

(6) Subsections (7) and (8) apply in relation to the Authority's final decision under Article 3 of the Gas Regulation as to whether to certify the applicant.

(7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) the Secretary of State; and
- (c) the European Commission.

(8) If the final decision is to certify the applicant the applicant is to be taken as certified by the Authority under this section.

8G Grounds for certification

(1) This section applies to—

- (a) a preliminary decision under section 8F as to whether an applicant should be certified;
- (b) a final decision under Article 3 of the Gas Regulation as to whether to certify an applicant.

(2) The Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following six grounds (“the certification grounds”) applies.

(3) The first certification ground is that the applicant meets the ownership unbundling requirement in section 8H.

(4) The second certification ground is that the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraph (9) of Article 9 of the Gas Directive (alternative arrangements for independence), and the Authority thinks the requirements of that paragraph are met.

(5) The third certification ground is that—

- (a) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 14 of the Gas Directive (independent system operator);
- (b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and
- (c) the Authority—
 - (i) thinks that the requirements of those paragraphs are met, and
 - (ii) is minded to designate the nominated independent system operator.

(6) The fourth certification ground is that—

- (a) the applicant holds a licence under section 7ZA;
- (b) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the ground that it meets the requirements of Chapter 4 of the Gas Directive (independent transmission operator), in accordance with Articles 9(8) (b) and 18(10) of that Directive; and
- (c) the Authority thinks that the applicant meets the requirements of that Chapter, in accordance with those Articles.

(7) The fifth certification ground is that—

- (a) the applicant holds a licence under section 7ZA; and
- (b) in accordance with the conditions of that licence, the applicant has been granted an exemption from the ownership unbundling requirement in accordance with Article 36 of the Gas Directive (new infrastructure) and remains entitled to the benefit of it.

(8) The sixth certification ground is that—

- (a) the applicant holds a licence under section 7ZA; and
- (b) either—
 - (i) the applicant has, in accordance with the conditions of that licence, been granted an exemption in accordance with Article 22 of Directive [2003/55/EC](#) of the European Parliament and of the Council of 26 June 2003 on common rules for the internal market in natural gas (new infrastructure) and remains entitled to the benefit of it; or
 - (ii) another person benefits from such an exemption, and the applicant is in a position which is substantially similar to the position of that person.

(9) But, regardless of whether a certification ground applies, the Authority—

- (a) may, in particular, decide that the applicant should not be certified, or decide not to certify the applicant, if, on the basis of an opinion expressed by the European Commission under Article 11 of the Gas Directive (certification in relation to persons from countries outside the European Economic Area), the Authority thinks that the certification of the applicant would put at risk the security of gas supplies in any EEA state;
- (b) must not decide that the applicant should be certified, and must not decide to certify the applicant, if a report prepared by the Secretary of State under section 8E

states that the certification of the applicant would put at risk the security of gas supplies in the United Kingdom or any other EEA state;

- (c) must not decide to certify the applicant on the second certification ground if the European Commission has not verified, in accordance with paragraph (10) of Article 9 of the Gas Directive (verification of independence under alternative arrangements), that the requirement in that paragraph as to arrangements for effective independence is met.

8H The ownership unbundling requirement

(1) In section 8G(3) the ownership unbundling requirement is met by an applicant for certification if the Authority thinks that each of the following five tests is passed.

(2) The first test is that the applicant—

- (a) does not control a relevant producer or supplier;
- (b) does not have a majority shareholding in a relevant producer or supplier; and
- (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.

(3) For the purposes of subsection (2)(c), the Authority is entitled to think that the applicant will not exercise shareholder rights if the applicant has given an undertaking not to exercise those shareholder rights.

(4) The second test is that, where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—

- (a) controls a gas undertaking which is a relevant producer or supplier; or
- (b) has a majority shareholding in a gas undertaking which is a relevant producer or supplier.

(5) The third test is that, where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of a gas undertaking which is a relevant producer or supplier.

(6) The fourth test is that the applicant is not controlled by a person who controls a relevant producer or supplier.

(7) But even where the fourth test is not passed, the Authority may treat it as passed if—

- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant's business; or
- (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.

(8) The fifth test is that the applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.

(9) But even where the fifth test is not passed, the Authority may treat it as passed if—

- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant's business; or
- (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.

(10) In subsection (2)(c) “relevant date” means the relevant date for the purposes of section 8C(1) or (2).

8I The ownership unbundling requirement: supplementary

(1) Subsections (2) and (3) apply where—

- (a) by virtue of subsection (7) or (9) of section 8H, the Authority treats the fourth or fifth test under section 8H as passed in relation to a person; and
- (b) the person is certified in reliance on that treatment.

(2) The Authority must by notice to the certified person specify a period of time at the end of which the Authority will cease to treat that test as passed by virtue of that subsection.

(3) The Authority may by notice to the certified person extend that period if the Authority thinks it necessary or expedient to do so.

(4) In deciding whether to treat a test as passed by virtue of section 8H(7) or (9), and in determining any period or extension under subsection (2) or (3), the Authority—

- (a) must take into account—
 - (i) the period of time for which the test is likely to continue not to be passed, and
 - (ii) whether the relationship (direct or indirect) between the applicant and the relevant producer or supplier has led or might lead the applicant to discriminate in favour of the relevant producer or supplier; and
- (b) may, in particular, take into account any information or undertaking given to the Authority by the applicant, the relevant producer or supplier or the person who controls the applicant and controls or has a majority shareholding in the relevant producer or supplier.

(5) The information and undertakings that may be taken into account under subsection (4)(b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the applicant and the business of the relevant producer or supplier.

8J Designation for the purposes of EU gas legislation

(1) This section applies in relation to any period for which a person—

- (a) holds a licence under section 7 or 7ZA; and
- (b) is certified.

(2) If the person is certified on the first, second, fourth, fifth or sixth certification ground in section 8G, the person is designated as a gas transmission system operator for the purposes of Article 10(2) of the Gas Directive (designation of transmission system operators).

(3) If the person is certified on the third certification ground in section 8G, the independent system operator nominated in the application for certification is designated as a gas transmission system operator for the purposes of that Article.

(4) As soon as is reasonably practicable after a person is designated by virtue of this section, the Authority must notify the designation to—

- (a) the person designated;
- (b) the Secretary of State; and
- (c) the European Commission.

8K Monitoring and review of certification

(1) The Authority must monitor, in respect of each certified person, whether the basis on which the Authority decided to certify the person, including the certification ground on which the person was certified, (the “certification basis”) continues to apply.

(2) If, on or after 3 March 2013, as result of information it has received or obtained, the Authority thinks that a person from a third country has taken or may take control of a certified person, the Authority must, as soon as is reasonably practicable—

- (a) notify the information to the Secretary of State and the European Commission; and
- (b) enclose with the notification to the Secretary of State any further information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Authority must review whether the certification basis in respect of a certified person continues to apply if the European Commission asks it to do so.

(4) A review under subsection (3) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.

(5) The Authority may also review whether the certification basis in respect of a certified person continues to apply if—

- (a) the certified person notifies it of any event or circumstance which may affect that basis; or
- (b) the Authority thinks that the basis may no longer apply.

(6) A review under subsection (5) is to be carried out within the 4 months beginning with—

- (a) if paragraph (a) of subsection (5) applies, the day on which the Authority receives the notification under that paragraph;
- (b) otherwise, the first day on which the Authority thinks that the certification basis may no longer apply.

(7) Subsection (8) applies where—

- (a) by virtue of section 8H(7) or (9), the Authority has treated the fourth or fifth test under section 8H as passed;
- (b) a person is certified in reliance on that treatment; and
- (c) the period specified under section 8I as the period at the end of which that treatment will cease comes to an end.

(8) Where this subsection applies, the Authority must review whether that test is now passed.

(9) A review under subsection (8) is to be carried out within the 4 months beginning with the end of the period mentioned in subsection (7)(c).

8L Review of certification: requirement to provide information etc

(1) As soon as is reasonably practicable after beginning a review under section 8K, the Authority must notify the certified person that the review is being carried out and of the reasons for it.

(2) The Authority may ask that person for any information the Authority thinks is relevant to the review, and the person must supply the information if—

- (a) it is in the person's possession; or
- (b) it is information which the person could reasonably be expected to obtain.

(3) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to a review under section 8K, and the relevant producer or supplier must supply that information if—

- (a) it is in the relevant producer or supplier's possession; or
- (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.

(4) A person required to supply information under subsection (2) or (3) must do so by any deadline specified by the Authority.

8M Report as to any connection of certified person with a country outside the European Economic Area

(1) This section applies if the Authority notifies information to the Secretary of State under section 8K(2) in respect of a certified person.

(2) The Secretary of State must prepare a report on whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

(4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 8L(2) or (3) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.

(5) In preparing the report, the Secretary of State must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

8N Continuation or withdrawal of certification

(1) Where the Authority reviews under section 8K(3) or (5) whether the certification basis in respect of a certified person continues to apply, it may, within the 4 months mentioned in section 8K(4) or (6) either—

- (a) make a preliminary decision that the certification should be continued on the certification ground mentioned in section 8K(1); or
- (b) make a preliminary decision that the certification should be withdrawn.

(2) If the Authority does not make a decision under subsection (1) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the certification ground mentioned in section 8K(1).

(3) Where the Authority reviews under section 8K(8) whether the fourth or fifth test under section 8H is now passed, it may, within the 4 months mentioned in section 8K(9), either—

- (a) make a preliminary decision that the certification should be continued on the basis that the test is now passed; or
 - (b) make a preliminary decision that the certification should be withdrawn.
- (4) If the Authority does not make a decision under subsection (3) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the basis that the test is now passed.
- (5) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this section, the Authority must—
- (a) notify the decision to the certified person and the Secretary of State; and
 - (b) notify the decision to the European Commission, enclosing the information it considers relevant to the decision.
- (6) Subsections (7) to (9) apply in relation to the Authority's final decision under Article 3 of the Gas Regulation whether to confirm the certification.
- (7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—
- (a) the person in relation to whom the review was carried out;
 - (b) the Secretary of State; and
 - (c) the European Commission.
- (8) If the final decision is to continue the certification the person is to be taken as continuing to be certified by the Authority under section 8F.
- (9) Otherwise, the person is to be taken as no longer certified.
- (10) Section 8G(9)(a) and (b) applies in relation to a decision mentioned in this section as it applies in relation to a decision mentioned in section 8G(1), but as if—
- (a) the references in section 8G(9)(a) and (b) to the certification of the applicant were references to the continued certification of the person certified; and
 - (b) the reference in section 8G(9)(b) to a report prepared under section 8E were a reference to a report prepared under section 8M.

80 Prohibition on the exercise of certain shareholder rights and rights of appointment

- (1) A person must not exercise a shareholder right or a right of appointment if—
 - (a) the right falls within subsection (2), (3), (4) or (5);
 - (b) the relevant date in respect of the certified person mentioned in that subsection has been reached;
 - (c) the exercise of the right would or might lead the certified person to discriminate in favour of the relevant producer or supplier mentioned in that subsection; and
 - (d) the relevant producer or supplier is a person to whom subsection (6) applies.
- (2) A right falls within this subsection if—
 - (a) it is a shareholder right;
 - (b) it is held by a person who controls a person certified on the certification ground in section 8G(3); and
 - (c) it is exercisable in relation to a relevant producer or supplier.
- (3) A right falls within this subsection if—
 - (a) it is a shareholder right;

- (b) it is exercisable in relation to a person certified on the certification ground in section 8G(3); and
- (c) it is held by a person who controls a relevant producer or supplier.
- (4) A right falls within this subsection if—
 - (a) it is a shareholder right;
 - (b) the person who holds it appointed a senior officer of a person certified on the certification ground in section 8G(3);
 - (c) the person appointed continues to hold that office; and
 - (d) the right is exercisable in relation to a gas undertaking which is a relevant producer or supplier.
- (5) A right falls within this subsection if—
 - (a) it is a right to appoint a senior officer of a person certified on the certification ground in section 8G(3); and
 - (b) the person who holds it has, within the immediately preceding period of 3 years, exercised a shareholder right in relation to a gas undertaking which is a relevant producer or supplier.
- (6) This subsection applies to a person if, in order to carry out some or all of the activity by virtue of which the person is a relevant producer or supplier, the person—
 - (a) requires a licence under section 7A of this Act, section 6 of the Electricity Act 1989 (licences authorising supply, etc), or section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum); or
 - (b) would require such a licence if carrying out the activity in Great Britain.
- (7) In this section—
 - (a) “exercise” means exercise directly or indirectly, and “exercisable” is to be interpreted accordingly; and
 - (b) “relevant date” means the relevant date for the purposes of section 8C(1) or (2).

8P Validity of acts infringing section 8O

- (1) The following are voidable on an application to the court—
 - (a) the exercise of a shareholder right in breach of section 8O;
 - (b) the appointment of a senior officer in breach of that section.
- (2) Any person may make an application under subsection (1).
- (3) Such an application may not be made after the end of the 5 years beginning with the day on which the shareholder right was exercised or the appointment made.
- (4) If, by virtue of this section, the court declares the exercise of a shareholder right or an appointment to be void, it may make an order as to the consequences of its declaration.
- (5) In this section, “the court” means—
 - (a) in relation to England and Wales, the High Court, and
 - (b) in relation to Scotland, the Court of Session.

8Q Interpretation

- (1) In sections 8C to 8P and this section—

“control”, in relation to one person having control over another, has the meaning given by Article 2(36) of the Gas Directive (but in determining whether one person (“person A”) has control over another (“person B”) no account is to be taken of any unexercised contractual or other right which would, if exercised, give person A control over person B and which was conferred as a condition of the provision of either financial support or a guarantee (or both), by person A in relation to the business of person B); and references to one person controlling another are to be interpreted accordingly;

“certified” means taken in accordance with section 8F(8) or 8N(8) to be certified (or as continuing to be certified) by the Authority under section 8F; and “certify” and “certification” are to be interpreted accordingly;

“certification grounds” has the meaning given by section 8G(2);

“person from a third country” means a person the Authority thinks is from a third country;

“shareholder right” means a right, conferred by the holding of a share in the company’s share capital—

- (a) to vote at general meetings of the company; or
- (b) to appoint or remove a member of the company’s board of directors;

“third country” means a country that is not, and is not part of, an EEA state.

(2) In this Part “gas undertaking” means a person who—

- (a) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain;
- (b) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7;
- (c) supplies to any premises gas which has been conveyed to those premises through pipes;
- (d) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or
- (e) otherwise sells gas.

(3) In this Part “relevant producer or supplier”, in relation to an applicant for certification or a certified person, means a person who falls within each of subsections (4) and (5).

(4) A person falls within this subsection if the person—

- (a) is a gas undertaking;
- (b) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (c) supplies electricity to any premises; or
- (d) otherwise generates or sells electricity,

and terms used in paragraphs (b) and (c) of this subsection have the same meanings in those paragraphs as in Part 1 of the Electricity Act 1989.

(5) A person falls within this subsection if the person carries out in an EEA state some or all of the activity by virtue of which the person falls within subsection (4) and—

- (a) requires a licence under section 7A of this Act⁽¹⁰⁾ or section 6 of the Electricity Act 1989 (licences authorising supply, etc)⁽¹¹⁾ to do so;
- (b) would, in the Authority’s opinion, require such a licence if carrying out the activity in Great Britain; or
- (c) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of the person.”.

Electricity transmission and the operation of electricity interconnectors: independence

5. After section 10 of the Electricity Act 1989 insert—

“Electricity transmission and the operation of electricity interconnectors: independence

10A Electricity transmission and the operation of electricity interconnectors: requirement for certain participants to be certified as independent

(1) A person who, for any period on or after the relevant date, holds a transmission licence and participates in the transmission of electricity for the purpose mentioned in subsection (2) must ensure that the person is certified by the Authority under section 10D throughout that period.

(2) That purpose is the purpose of—

- (a) giving a supply to any premises; or
- (b) enabling a supply to be so given.

(3) A person who, for any period on or after the relevant date, holds an interconnector licence and participates in the operation of an electricity interconnector must ensure that the person is certified by the Authority under section 10D throughout that period.

(4) In subsections (1) and (3) the “relevant date” in respect of a person is 3 March 2012 or any later date before 4 March 2013 which the Authority specifies under subsection (5) or (6) in respect of the person.

(5) The Authority may specify a later date in respect of a person if—

- (a) the person has asked the Authority to specify a later date;
- (b) the person is not, and is not part of, a vertically integrated undertaking; and
- (c) no senior officer of the person is also a senior officer of a relevant producer or supplier.

(6) The Authority may also specify a later date in respect of a person if the Authority thinks that, for reasons beyond its and the person’s control, the Authority will not reasonably be able to make a final decision before 3 March 2012 as to whether to certify the person.

(7) In subsection (5)(b) “vertically integrated undertaking” has the meaning given by Article 2(21) of the Electricity Directive.

⁽¹⁰⁾ 1986 c. 44. Section 7A was inserted by section 6(1) of the Gas Act 1995 (c. 45) and subsequently amended by section 108 of, and paragraphs 1 and 2(1) of Part 1 to Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); and by section 149(1) and (7) of the Energy Act 2004 (c. 20).

⁽¹¹⁾ 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and subsequently amended by sections 89(3), 136(1) and (2), 143(1), 145(1) and (5) to (7), and 197(9) of, and paragraphs 3 and 5 of Schedule 19 and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20); and by section 79 of, and paragraph 2 of Schedule 8 to, the Climate Change Act 2008 (c. 27).

10B Application for certification

- (1) Any person may apply for certification.
- (2) An application for certification—
 - (a) must be made in writing to the Authority; and
 - (b) must be made in such form and contain such information as the Authority may specify.
- (3) If the application is made on or after 3 March 2013 and the applicant is a person from a third country or a person controlled by a person from a third country, the Authority must, as soon as is reasonably practicable after receiving the application—
 - (a) notify the Secretary of State and the European Commission that an application has been made by such a person; and
 - (b) enclose with the notification to the Secretary of State any information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.
- (4) The Authority may ask an applicant for certification for any further information the Authority thinks is relevant to the application, and the applicant must supply that information if—
 - (a) it is in the applicant's possession; or
 - (b) it is information which the applicant could reasonably be expected to obtain.
- (5) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to an application for certification, and the relevant producer or supplier must supply that information if—
 - (a) it is in the relevant producer or supplier's possession; or
 - (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.
- (6) A person required to supply information under subsection (4) or (5) must do so by any deadline specified by the Authority.

10C Report where applicant connected with a country outside the European Economic Area

- (1) This section applies if the Secretary of State is notified by the Authority under section 10B(3) that an application has been made by a person from a third country or a person controlled by a person from a third country.
- (2) The Secretary of State must prepare a report on whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.
- (3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.
- (4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 10B(4) or (5) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.
- (5) In preparing the report, the Secretary of State must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

10D Certification

(1) Where the Authority receives an application for certification, it must make a preliminary decision by the relevant deadline as to whether it should certify the applicant.

(2) The relevant deadline is the end of the 4 months beginning with the day on which the Authority receives the application; but this is subject to any extension under subsection (3).

(3) If, before the deadline mentioned in subsection (2) (or before that deadline as previously extended under this subsection), the Authority asks the applicant or a relevant producer or supplier for information under section 10B(4) or (5), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.

(4) As soon as is reasonably practicable after making the preliminary decision the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) the Secretary of State; and
- (c) the European Commission.

(5) The Authority must enclose with the notification under subsection (4)(c) a copy of any report—

- (a) which the Secretary of State has prepared under section 10C in respect of the applicant; and
- (b) which the Authority receives before giving the notification.

(6) Subsections (7) and (8) apply in relation to the Authority's final decision under Article 3 of the Electricity Regulation as to whether to certify the applicant.

(7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) the Secretary of State; and
- (c) the European Commission.

(8) If the final decision is to certify the applicant the applicant is to be taken as certified by the Authority under this section.

10E Grounds for certification

(1) This section applies to—

- (a) a preliminary decision under section 10D as to whether an applicant should be certified;
- (b) a final decision under Article 3 of the Electricity Regulation as to whether to certify an applicant.

(2) The Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following five grounds ("the certification grounds") applies.

(3) The first certification ground is that the applicant meets the ownership unbundling requirement in section 10F.

(4) The second certification ground is that the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraph (9) of Article 9 of the Electricity Directive (alternative arrangements for independence), and the Authority thinks the requirements of that paragraph are met.

(5) The third certification ground is that—

- (a) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 13 of the Electricity Directive (independent system operator);
- (b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and
- (c) the Authority—
 - (i) thinks that the requirements of those paragraphs are met, and
 - (ii) is minded to designate the nominated independent system operator.

(6) The fourth certification ground is that—

- (a) the applicant holds a licence under section 6(1)(e); and
- (b) in accordance with the conditions of that licence, the applicant has been granted an exemption under Article 17 of the Electricity Regulation (new interconnectors) and remains entitled to the benefit of it.

(7) The fifth certification ground is that—

- (a) the applicant holds a licence under section 6(1)(e); and
- (b) in accordance with the conditions of that licence, the applicant has been granted an exemption under Article 7 of Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (new interconnectors) and remains entitled to the benefit of it.

(8) But, regardless of whether a certification ground applies, the Authority—

- (a) may, in particular, decide that the applicant should not be certified, or decide not to certify the applicant, if, on the basis of an opinion expressed by the European Commission under Article 11 of the Electricity Directive (certification in relation to persons from countries outside the European Economic Area), the Authority thinks that the certification of the applicant would put at risk the security of electricity supplies in any EEA state;
- (b) must not decide that the applicant should be certified, and must not decide to certify the applicant, if a report prepared by the Secretary of State under section 10C states that the certification of the applicant would put at risk the security of electricity supplies in the United Kingdom or any other EEA state;
- (c) must not decide to certify the applicant on the second certification ground if the European Commission has not verified, in accordance with paragraph (10) of Article 9 of the Electricity Directive (verification of independence under alternative arrangements), that the requirement in that paragraph as to arrangements for effective independence is met.

10F The ownership unbundling requirement

(1) In section 10E(3) the ownership unbundling requirement is met by an applicant for certification if the Authority thinks that each of the following five tests is passed.

(2) The first test is that the applicant—

- (a) does not control a relevant producer or supplier;
- (b) does not have a majority shareholding in a relevant producer or supplier; and
- (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.

(3) For the purposes of subsection (2)(c), the Authority is entitled to think that the applicant will not exercise shareholder rights if the applicant has given an undertaking not to exercise those shareholder rights.

(4) The second test is that, where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—

- (a) controls an electricity undertaking which is a relevant producer or supplier; or
- (b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.

(5) The third test is that, where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of an electricity undertaking which is a relevant producer or supplier.

(6) The fourth test is that the applicant is not controlled by a person who controls a relevant producer or supplier.

(7) But even where the fourth test is not passed, the Authority may treat it as passed if—

- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant's business; or
- (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.

(8) The fifth test is that the applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.

(9) But even where the fifth test is not passed, the Authority may treat it as passed if—

- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant's business; or
- (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.

(10) In subsection (2)(c) “relevant date” means the relevant date for the purposes of section 10A(1) or (3).

10G The ownership unbundling requirement: supplementary

(1) Subsections (2) and (3) apply where—

- (a) by virtue of subsection (7) or (9) of section 10F, the Authority treats the fourth or fifth test under section 10F as passed in relation to a person; and
- (b) the person is certified in reliance on that treatment.

(2) The Authority must by notice to the certified person specify a period of time at the end of which the Authority will cease to treat that test as passed by virtue of that subsection.

(3) The Authority may by notice to the certified person extend that period if the Authority thinks it necessary or expedient to do so.

(4) In deciding whether to treat a test as passed by virtue of section 10F(7) or (9), and in determining any period or extension under subsection (2) or (3), the Authority—

- (a) must take into account—
 - (i) the period of time for which the test is likely to continue not to be passed, and
 - (ii) whether the relationship (direct or indirect) between the applicant and the relevant producer or supplier has led or might lead the applicant to discriminate in favour of the relevant producer or supplier; and
- (b) may, in particular, take into account any information or undertaking given to the Authority by the applicant, the relevant producer or supplier or the person who controls the applicant and controls or has a majority shareholding in the relevant producer or supplier.

(5) The information and undertakings that may be taken into account under subsection (4)(b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the applicant and the business of the relevant producer or supplier.

10H Designation for the purposes of EU electricity legislation

(1) This section applies in relation to any period for which a person—

- (a) holds a transmission licence or an interconnector licence; and
- (b) is certified.

(2) If the person is certified on the first, second, fourth or fifth certification ground in section 10E, the person is designated as an electricity transmission system operator for the purposes of Article 10(2) of the Electricity Directive (designation of transmission system operators).

(3) If the person is certified on the third certification ground in section 10E, the independent system operator nominated in the application for certification is designated as an electricity transmission system operator for the purposes of that Article.

(4) As soon as is reasonably practicable after a person is designated by virtue of this section, the Authority must notify the designation to—

- (a) the person designated;
- (b) the Secretary of State; and
- (c) the European Commission.

10I Monitoring and review of certification

(1) The Authority must monitor, in respect of each certified person, whether the basis on which the Authority decided to certify the person, including the certification ground on which the person was certified, (the “certification basis”) continues to apply.

(2) If, on or after 3 March 2013, as result of information it has received or obtained, the Authority thinks that a person from a third country has taken or may take control of a certified person, the Authority must, as soon as is reasonably practicable—

- (a) notify the information to the Secretary of State and the European Commission; and
- (b) enclose with the notification to the Secretary of State any further information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of electricity supplies in the

United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Authority must review whether the certification basis in respect of a certified person continues to apply if the European Commission asks it to do so.

(4) A review under subsection (3) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.

(5) The Authority may also review whether the certification basis in respect of a certified person continues to apply if—

- (a) the certified person notifies it of any event or circumstance which may affect that basis; or
- (b) the Authority thinks that the basis may no longer apply.

(6) A review under subsection (5) is to be carried out within the 4 months beginning with—

- (a) if paragraph (a) of subsection (5) applies, the day on which the Authority receives the notification under that paragraph;
- (b) otherwise, the first day on which the Authority thinks that the certification basis may no longer apply.

(7) Subsection (8) applies where—

- (a) by virtue of section 10F(7) or (9), the Authority has treated the fourth or fifth test under section 10F as passed in relation to a person;
- (b) the person is certified in reliance on that treatment; and
- (c) the period specified under section 10G as the period at the end of which that treatment will cease comes to an end.

(8) Where this subsection applies, the Authority must review whether that test is now passed.

(9) A review under subsection (8) is to be carried out within the 4 months beginning with the end of the period mentioned in subsection (7)(c).

10J Review of certification: requirement to provide information etc

(1) As soon as is reasonably practicable after beginning a review under section 10I, the Authority must notify the certified person that the review is being carried out and of the reasons for it.

(2) The Authority may ask that person for any information the Authority thinks is relevant to the review, and the person must supply the information if—

- (a) it is in the person's possession; or
- (b) it is information which the person could reasonably be expected to obtain.

(3) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to a review under section 10I, and the relevant producer or supplier must supply that information if—

- (a) it is in the relevant producer or supplier's possession; or
- (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.

(4) A person required to supply information under subsection (2) or (3) must do so by any deadline specified by the Authority.

10K Report as to any connection of certified person with a country outside the European Economic Area

(1) This section applies if the Authority notifies information to the Secretary of State under section 10I(2) in respect of a certified person.

(2) The Secretary of State must prepare a report on whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

(4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 10J(2) or (3) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.

(5) In preparing the report, the Secretary of State must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

10L Continuation or withdrawal of certification

(1) Where the Authority reviews under section 10I(3) or (5) whether the certification basis in respect of a certified person continues to apply, it may, within the 4 months mentioned in section 10I(4) or (6), either—

- (a) make a preliminary decision that the certification should be continued on the certification ground mentioned in section 10I(1); or
- (b) make a preliminary decision that the certification should be withdrawn.

(2) If the Authority does not make a decision under subsection (1) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the certification ground mentioned in section 10I(1).

(3) Where the Authority reviews under section 10I(8) whether the fourth or fifth test under section 10F is now passed, it may, within the 4 months mentioned in section 10I(9), either—

- (a) make a preliminary decision that the certification should be continued on the basis that the test is now passed; or
- (b) make a preliminary decision that the certification should be withdrawn.

(4) If the Authority does not make a decision under subsection (3) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the basis that the test is now passed.

(5) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this section, the Authority must—

- (a) notify the decision to the certified person and the Secretary of State; and
- (b) notify the decision to the European Commission, enclosing the information it considers relevant to the decision.

(6) Subsections (7) to (9) apply in relation to the Authority's final decision under Article 3 of the Electricity Regulation whether to confirm the certification.

(7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—

- (a) the person in relation to whom the review was carried out;
- (b) the Secretary of State; and
- (c) the European Commission.

(8) If the final decision is to continue the certification the person is to be taken as continuing to be certified by the Authority under section 10D.

(9) Otherwise, the person is to be taken as no longer certified.

(10) Section 10E(8)(a) and (b) applies in relation to a decision mentioned in this section as it applies in relation to a decision mentioned in section 10E(1), but as if—

- (a) the references in section 10E(8)(a) and (b) to the certification of the applicant were references to the continued certification of the person certified; and
- (b) the reference in section 10E(8)(b) to a report prepared under section 10C were a reference to a report prepared under section 10K.

10M Prohibition on the exercise of certain shareholder rights and rights of appointment

(1) A person must not exercise a shareholder right or a right of appointment if—

- (a) the right falls within subsection (2), (3), (4) or (5);
- (b) the relevant date in respect of the certified person mentioned in that subsection has been reached;
- (c) the exercise of the right would or might lead the certified person to discriminate in favour of the relevant producer or supplier mentioned in that subsection; and
- (d) the relevant producer or supplier is a person to whom subsection (6) applies.

(2) A right falls within this subsection if—

- (a) it is a shareholder right;
- (b) it is held by a person who controls a person certified on the certification ground in section 10E(3); and
- (c) it is exercisable in relation to a relevant producer or supplier.

(3) A right falls within this subsection if—

- (a) it is a shareholder right;
- (b) it is exercisable in relation to a person certified on the certification ground in section 10E(3); and
- (c) it is held by a person who controls a relevant producer or supplier.

(4) A right falls within this subsection if—

- (a) it is a shareholder right;
- (b) the person who holds it appointed a senior officer of a person certified on the certification ground in section 10E(3);
- (c) the person appointed continues to hold that office; and
- (d) the right is exercisable in relation to an electricity undertaking which is a relevant producer or supplier.

(5) A right falls within this subsection if—

- (a) it is a right to appoint a senior officer of a person certified on the certification ground in section 10E(3); and
 - (b) the person who holds it has, within the immediately preceding period of 3 years, exercised a shareholder right in relation to an electricity undertaking which is a relevant producer or supplier.
- (6) This subsection applies to a person if, in order to carry out of some or all of the activity by virtue of which the person is a relevant producer or supplier, the person—
- (a) requires a licence under section 6 of this Act, section 7A of the Gas Act 1986 (licensing of gas suppliers and gas shippers) or section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum); or
 - (b) would require such a licence if carrying out the activity in Great Britain.
- (7) In this section—
- (a) “exercise” means exercise directly or indirectly, and “exercisable” is to be interpreted accordingly; and
 - (b) “relevant date” means the relevant date for the purposes of section 10A(1) or (3).

10N Validity of acts infringing section 10M

- (1) The following are voidable on an application to the court—
 - (a) the exercise of a shareholder right in breach of section 10M;
 - (b) the appointment of a senior officer in breach of that section.
- (2) Any person may make an application under subsection (1).
- (3) Such an application may not be made after the end of the 5 years beginning with the day on which the shareholder right was exercised or the appointment made.
- (4) If, by virtue of this section, the court declares the exercise of a shareholder right or an appointment to be void, it may make an order as to the consequences of its declaration.
- (5) In this section, “the court” means—
 - (a) in relation to England and Wales, the High Court, and
 - (b) in relation to Scotland, the Court of Session.

10O Interpretation

- (1) In sections 10A to 10N and this section—
 - “control”, in relation to one person having control over another, has the meaning given by Article 2(34) of the Electricity Directive (but in determining whether one person (“person A”) has control over another (“person B”) no account is to be taken of any unexercised contractual or other right which would, if exercised, give person A control over person B and which was conferred as a condition of the provision of either financial support or a guarantee (or both), by person A in relation to the business of person B); and references to one person controlling another are to be interpreted accordingly;
 - “certified” means taken in accordance with section 10D(8) or 10L(8) to be certified (or as continuing to be certified) by the Authority under section 10D; and “certify” and “certification” are to be interpreted accordingly;
 - “certification grounds” has the meaning given by section 10E(2);
 - “majority shareholding” means a simple majority of shares;

“person from a third country” means a person the Authority thinks is from a third country;

“shareholder right” means a right, conferred by the holding of a share in a company’s share capital—

- (a) to vote at general meetings of the company; or
- (b) to appoint or remove a member of the company’s board of directors;

“third country” means a country that is not, and is not part of, an EEA state.

(2) In this Part “electricity undertaking” means a person who—

- (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) supplies electricity to any premises; or
- (c) otherwise generates or sells electricity.

(3) In this Part “relevant producer or supplier”, in relation to an applicant for certification or a certified person, means a person who falls within each of subsections (4) and (5).

(4) A person falls within this section if the person—

- (a) is an electricity undertaking;
- (b) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain;
- (c) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7 of the Gas Act 1986;
- (d) supplies to any premises gas which has been conveyed to those premises through pipes;
- (e) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or
- (f) otherwise sells gas,

and terms used in paragraphs (b) to (f) of this subsection have the same meanings in those paragraphs as in Part 1 of the Gas Act 1986.

(5) A person falls within this subsection if the person carries out in an EEA state some or all of the activity by virtue of which the person falls within subsection (4) and—

- (a) requires a licence under section 7A of the Gas Act 1986 (licensing of gas suppliers and gas shippers) or section 6 of this Act to do so;
- (b) would, in the Authority’s opinion, require such a licence if carrying out the activity in Great Britain; or
- (c) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of the person.”.

PART 4

Gas facilities

Independence of storage facilities

6. After section 8Q of the Gas Act 1986(12) insert—

“Storage facilities: independence

8R Independence of storage facilities

(1) This section applies to a storage facility unless a minor facility exemption is in force in respect of that facility under section 8S.

(2) The owner of a storage facility to which this section applies must, notwithstanding any licence held by the owner, refrain from producing gas in an EEA state.

(3) The owner must also, notwithstanding any licence held by the owner, refrain from carrying out any of the following activities in an EEA state except to the extent that the activity is necessary for the efficient operation of the storage facility or of another facility used by the owner to store gas—

- (a) the supply to any premises of gas which has been conveyed to those premises through pipes;
- (b) the making of an arrangement with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that gas transporter;
- (c) any other sale of gas.

(4) If an affiliate of the owner carries out in an EEA state an activity which, under subsection (2) or (3), the owner must refrain from carrying out, the owner must operate the storage facility independently of the interests of that affiliate and must, in particular, ensure that—

- (a) no senior officer or manager of the owner is a senior officer or manager of the affiliate;
- (b) if a senior officer or manager of the owner has an interest in the affiliate that conflicts, or is likely to conflict, with the interests of the storage facility, the owner maintains procedures to ensure that the storage facility is operated independently of that interest in the affiliate;
- (c) the owner is entitled to take decisions without the consent of that affiliate in respect of any assets necessary to operate, maintain or develop the storage facility; and
- (d) the owner does not take instructions from the affiliate regarding day to day operations or individual decisions concerning the construction or upgrading of the storage facility.

(5) Subsection (4)(c) and (d) does not prevent a parent undertaking of the owner from requiring the owner—

- (a) to obtain the parent undertaking’s approval of the owner’s annual financial planning;

(12) Section 8Q is inserted by regulation 4 of these Regulations.

- (b) to comply with restrictions on the owner’s overall indebtedness.
- (6) The owner must establish a programme (the “independence programme”) in relation to the owner’s senior officers, other officers, managers and employees for the purpose of ensuring that they do not cause the owner to—
- (a) discriminate against persons who are not affiliates of the owner; or
 - (b) breach any of the owner’s obligations under section 11C(13) regarding the disclosure or use of information.
- (7) The owner must—
- (a) ensure that compliance with the independence programme is monitored; and
 - (b) each year, publish a report setting out the measures taken in accordance with the independence programme and send a copy to the Authority.
- (8) For the purposes of this section a person produces gas if the person—
- (a) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain; or
 - (b) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7.
- (9) In this section—
- “affiliate”, in relation to a person (“person A”), means—
- (a) a person who has control of person A; or
 - (b) a person who is under the control of the same person as person A;
- “control” has the meaning given by section 8Q(1);
- “manager”, in relation to the owner of a storage facility or an affiliate of the owner, means a natural person who is responsible, directly or indirectly, for the day to day management of the owner or the affiliate;
- “parent undertaking” has the meaning given by section 1162 of the Companies Act 2006(14).
- (10) The reference in subsection (4)(b) to a conflict of interests includes a conflict of interest and duty and a conflict of duties.

8S Independence of storage facilities and duty to allow others to use them: exemptions for minor facilities

- (1) A person who is or expects to be an owner of a storage facility may apply in writing to the Authority for an exemption from the requirements of sections 8R and 19B(15) in respect of that facility (a “minor facility exemption”).
- (2) The Authority must give a minor facility exemption in respect of a facility where it is satisfied that use of the facility by other persons is not technically or economically necessary for the operation of an efficient gas market.
- (3) A minor facility exemption—

(13) Inserted by regulation 7 of these Regulations.

(14) 2006 c. 46. Amendments have been made that are not relevant for these purposes.

(15) 1986 c. 44. Section 19B was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Amendments have been made that are not relevant for these purposes.

- (a) must be in writing;
- (b) may be given—
 - (i) for an indefinite period or for a period determined under the exemption;
 - (ii) unconditionally or subject to such conditions as the Authority considers appropriate.
- (4) The Authority must publish its decision to give or refuse to give a minor facility exemption together with the reasons for the decision.
- (5) A minor facility exemption may be revoked—
 - (a) in accordance with provisions contained in it;
 - (b) at any other time, if the Authority considers that the condition in subsection (2) is no longer met.
- (6) The Authority must from time to time publish a document setting out how it will determine whether the use of a facility by other persons is technically or economically necessary for the operation of an efficient gas market, including the matters it will take into account when determining this.
- (7) Publication under subsection (4) or (6) must be in such manner as the Authority considers appropriate.
- (8) Before publishing a document under subsection (6) the Authority must consult—
 - (a) the Secretary of State; and
 - (b) such other persons as the Authority considers appropriate.”.

General duties of storage facility owners, LNG import or export facility owners etc

- 7.—(1) The Gas Act 1986 is amended as follows.
- (2) After section 11(16) insert—

“Duties of facility owners and prospective facility owners

11A General duties of facility owners

- (1) This section applies to—
 - (a) a storage facility;
 - (b) an LNG import or export facility.
- (2) The owner of a facility to which this section applies must—
 - (a) operate, maintain and develop the facility, so far as it is economical to do so, in a manner calculated to ensure that the facility is secure, reliable and efficient;
 - (b) take any steps required by the Authority to ensure that the owner maintains sufficient financial resources to enable the owner to comply with the owner’s obligations under this Act and under the Gas Regulation.

11B Duty of current and prospective LNG import or export facility owners to provide information

11B A person who is or expects to be the owner of an LNG import or export facility must provide the Authority with such information in such manner and at such times as the Authority may reasonably require to facilitate the performance of its functions under this Act.

11C Restrictions on disclosure of information by facility owners

(1) The owner of a storage facility or LNG import or export facility must take all reasonable steps to ensure that commercially sensitive information relating to the operation of the facility is not disclosed—

- (a) to a person in a way that discriminates against any other person or description of persons;
- (b) to an associated undertaking unless the disclosure is necessary in order to enable a transaction with that associated undertaking to take place.

(2) Information which is obtained by the owner of a storage facility or LNG import or export facility from an associated undertaking for the purpose of, or in the course of, a transaction with that undertaking must not be used by the owner for any other purpose.”.

(3) Omit section 19DA (provision of information)(**17**).

(4) In section 19E (sections 19A to 19D: supplemental)(**18**), in subsection (1) for “19DA” substitute “19D”.

Duty to allow others to use storage facilities: exemptions for new and modified facilities

8.—(1) For the italic heading preceding section 19 of the Gas Act 1986 substitute—

“Pipe-line systems, storage facilities and LNG import or export facilities: rights of use etc”.

(2) Section 19A of the Gas Act 1986 (exemptions from duty to allow others to use storage facilities)(**19**) is amended as follows.

(3) For subsection (1) substitute—

“(1) Section 19B applies to a storage facility, except as provided in subsections (1A) and (1B).

(1A) Section 19B does not apply to a storage facility if it is subject to a minor facility exemption under section 8S(**20**).

(1B) Section 19B does not apply to a storage facility if, or to the extent that, it is exempt under this section.

(1C) The Authority must maintain on its website a list of the facilities to which section 19B applies.

(17) Section 19DA was inserted by regulation 2(2) of, and paragraph 5 of Schedule 2 to, [S.I. 2004/2043](#).

(18) Section 19E was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#). Subsection (1) was subsequently amended by regulation 2(2) of, and paragraph 6(1) of Schedule 2 to, [S.I. 2004/2043](#). Other amendments have been made that are not relevant for these purposes.

(19) Section 19A was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#) and has since been amended by the Utilities Act 2000 (c. 27), section 3(2); Regulation 2(2) of, and paragraph 1 and 2 of Schedule 2 to, [S.I. 2004/2043](#); and regulation 4 of [S.I. 2009/1349](#).

(20) Inserted by regulation 6 of these Regulations.

- (1D) If only part of the capacity of a storage facility is exempt under this section, the list under subsection (1C) must specify the extent to which section 19B applies to the facility.”.
- (4) In subsection (2), after “an exemption” insert “under this section”.
- (5) After subsection (2) insert—
- “(2A) An application under subsection (2) must relate to—
 - (a) a storage facility (or proposed storage facility) which is not yet operational; or
 - (b) a modification (or proposed modification) which falls within subsection (2B) and is not yet operational.
 - (2B) A modification (or proposed modification) falls within this subsection if it is—
 - (a) a modification of a storage facility to provide for a significant increase in the capacity of the facility; or
 - (b) a modification of a storage facility to enable the development of new sources of gas supply.
 - (2C) The Authority must send to the European Commission a copy of an application under subsection (2) as soon as is reasonably practicable following its receipt.”.
- (6) For subsection (3) substitute—
- “(3) An exemption under this section must be given in writing and on the following terms—
 - (a) a term specifying the period of the exemption, or specifying how that period is to be determined;
 - (b) a term as to whether the exemption applies to all of the capacity of the facility or part of that capacity only;
 - (c) a term that the owner must comply with the capacity allocation mechanism approved in accordance with section 19DB(21); and
 - (d) such other terms regarding non-discriminatory access to the facility or any other matter as the Authority considers appropriate.
 - (3A) When determining a term under subsection (3) the Authority must take into account—
 - (a) the capacity of the facility or (as the case may be) the increase in capacity of the facility;
 - (b) the length of time required to recover the investment in the facility or (as the case may be) the investment in the modification;
 - (c) the implications of the exemption for the operation of the gas market in Great Britain.”.
- (7) Omit subsections (4) and (5).
- (8) In subsection (6)—
- (a) for the words from the beginning to “either” substitute “Where the Authority receives an application under subsection (2) in relation to a facility or modification, it must give an exemption if it is satisfied that”;
 - (b) omit paragraph (a).
- (9) After subsection (6) insert—

(21) Inserted by regulation 15 of these Regulations.

“(6A) An exemption given in accordance with subsection (6) may apply to all of the capacity of the facility concerned or to part of that capacity only, regardless of the extent of the exemption applied for; but this is subject to subsection (7).”

(10) In subsection (7), at the end insert “or part of that increase in its capacity”.

(11) After subsection (7) insert—

“(7A) When deciding whether the requirements of subsection (8)(a), (d) and (e) are met, the Authority must take into account the way in which capacity is to be allocated under the capacity allocation mechanism approved in accordance with section 19DB.”

(12) In subsection (8)—

- (a) in paragraph (a) for “significant increase in its capacity” substitute “modification”;
- (b) in paragraph (b) omit “to provide for a significant increase in its capacity”;
- (c) in paragraph (d) after “capacity,” insert “and”;
- (d) omit paragraph (f) (and the “and” preceding it).

(13) In subsection (9), for “subsection (10)” substitute “subsections (9A) and (10)”.

(14) After subsection (9) insert—

“(9A) Subsection (9) does not prevent a further exemption being given by virtue of subsection (6)(b) in respect of a facility if the previous exemption given by virtue of that provision in respect of the facility has been revoked under section 19AA(5)(22).”

(15) In subsection (10)—

- (a) after “a significant increase in its capacity” insert “or to enable the development of new sources of gas supply”;
- (b) for “that increase in its capacity” (in each place) substitute “that modification”.

(16) In subsection (11), for “together with the reasons for its decision” substitute “under this section, together with the reasons for its decision.”

Duty to allow others to use storage facilities: review and revocation of exemptions

9. After section 19A of the Gas Act 1986 insert—

“19AA Review and revocation of exemptions under section 19A

(1) If the Authority gives, or refuses to give, an exemption under section 19A it must send the following to the European Commission as soon as is reasonably practicable—

- (a) if the exemption was given, a copy of the exemption and of the terms on which it has been given;
- (b) the Authority’s reasons for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Gas Directive;
- (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—
 - (i) relevant financial information;
 - (ii) analysis of the likely effect of the exemption on competition and on the effective functioning of the EU market for natural gas;
- (d) if the exemption was given, the basis on which the Authority determined—
 - (i) the period of the exemption or how that period is to be determined; and

(22) Inserted by regulation 9 of these Regulations.

- (ii) the capacity to which the exemption applies;
 - (e) any contribution by the storage facility to the diversification of the supply of gas; and
 - (f) any other information requested by the European Commission.
- (2) If, in accordance with Article 36(9) of the Gas Directive, the European Commission requires the Authority to revoke an exemption given under section 19A, or to modify the terms on which it is given, the Authority must—
- (a) comply with that request within the period of 1 month beginning with the day on which it receives the request; and
 - (b) inform the European Commission when it has done so.
- (3) The Authority must revoke an exemption given under section 19A in respect of a facility—
- (a) if the construction of the facility, or (as the case may be) the making of the modification to which the exemption relates, has not been started within the 2 years beginning with the relevant date; or
 - (b) if the facility, or (as the case may be) the modification to which the exemption relates, is not operational within the 5 years beginning with the relevant date.
- (4) In subsection (3) “relevant date” means—
- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under subsection (1), the date of that notification;
 - (b) if, in accordance with Article 36(9) of the Gas Directive, the European Commission required the Authority to modify the terms, the date of that requirement;
 - (c) otherwise, the date 4 months after the Authority sent the Commission a copy of the exemption and terms under subsection (1).
- (5) The Authority may at any other time revoke an exemption given under section 19A, or modify the terms on which such an exemption is given, in respect of a facility—
- (a) in accordance with the provisions of the exemption; or
 - (b) by giving the owner of the facility a notice of revocation at least 4 months before the revocation takes effect.”.

Duty to allow others to use storage facilities

10. In section 19B of the Gas Act 1986 (acquisition of rights to use storage facilities)(**23**), after subsection (3) insert—

“(3A) At least 2 months before publishing the main commercial conditions, or any changes to the published conditions, under subsection (1), the owner of a relevant facility must—

- (a) publish a draft of the proposed conditions or changes; and
- (b) inform any person who has a right to have gas stored in the facility that the draft has been published.

(3B) When finalising conditions or changes under subsection (1), the owner of a relevant facility must take into account any representations it has received about the proposed conditions or changes.”.

(23) 1986 c. 44. Section 19B was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Amendments have been made that are not relevant for these purposes.

Duty to allow others to use LNG import or export facilities: exemptions for new and modified facilities

11.—(1) Section 19C of the Gas Act 1986 (application of section 19D to LNG facilities)(**24**) is amended as follows.

(2) For subsection (1) substitute—

“(1) Section 19D applies to an LNG import or export facility, except as provided in subsections (1A) and (1B).

(1A) Section 19D does not apply to an LNG import or export facility if, or to the extent that, it is exempt under this section.

(1B) Section 19D does not apply to an LNG import or export facility if it is exempt under section 19DZA.”.

(3) In subsection (2)—

(a) for “LNG import facility” substitute “LNG import or export facility”;

(b) after “an exemption” insert “under this section”.

(4) After subsection (2) insert—

“(2A) An application under subsection (2) must relate to—

(a) a facility (or proposed facility) which is not yet operational; or

(b) a modification (or proposed modification) which falls within subsection (2B) and is not yet operational.

(2B) A modification (or proposed modification) falls within this subsection if it is—

(a) a modification of an LNG import or export facility to provide for a significant increase in the capacity of the facility; or

(b) a modification of an LNG import or export facility to enable the development of new sources of gas supply.

(2C) The Authority must send to the European Commission a copy of an application under subsection (2) as soon as is reasonably practicable following its receipt.”.

(5) For subsection (3) substitute—

“(3) An exemption under this section must be given in writing and on the following terms—

(a) a term specifying the period of the exemption, or specifying how that period is to be determined;

(b) a term as to whether the exemption applies to all of the capacity of the facility or part of that capacity only;

(c) a term that the owner must comply with the capacity allocation mechanism approved in accordance with section 19DB; and

(d) such other terms regarding non-discriminatory access to the facility or any other matter as the Authority considers appropriate.

(3A) When determining a term under subsection (3) the Authority must take into account—

(a) the capacity of the facility or (as the case may be) the increase in capacity of the facility;

(24) Section 19C was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#) and has since been amended by the Utilities Act 2000 ([c. 27](#)), section 3(2) and regulation 2(2) to, and paragraph 3 of Schedule 2 to [S.I. 2004/2043](#). Other amendments have been made that are not relevant for these purposes.

- (b) the length of time required to recover the investment in the facility or (as the case may be) the investment in the modification; and
 - (c) the implications of the exemption for the operation of the gas market in Great Britain.”.
- (6) Omit subsection (4).
- (7) After subsection (5) insert—
- “(5A) An exemption given in accordance with subsection (5) may apply to all of the capacity of the facility concerned or to part of that capacity only, regardless of the extent of the exemption applied for; but this is subject to subsection (6).”.
- (8) In subsection (6), at the end insert “or part of that increase in its capacity”.
- (9) After subsection (6) insert—
- “(6A) When deciding whether the requirements of subsection (7)(a), (d) and (e) are met, the Authority must take into account the way in which capacity is to be allocated under the capacity allocation mechanism approved in accordance with section 19DB.”.
- (10) In subsection (7)—
- (a) in paragraph (a) for “significant increase in its capacity” substitute “modification”;
 - (b) in paragraph (b) omit “to provide for a significant increase in its capacity”;
 - (c) in paragraph (d) at the end insert “and”;
 - (d) omit paragraph (f) (and the “and” preceding it).
- (11) In subsection (8), for “subsection (9)” substitute “subsections (8A) and (9)”.
- (12) After subsection (8) insert—
- “(8A) Subsection (8) does not prevent a further exemption being given by virtue of subsection (5) in respect of a facility if the previous exemption given by virtue of that subsection in respect of the facility has been revoked under section 19CA(3).”.
- (13) In subsection (9)—
- (a) after “a significant increase in its capacity” insert “or to enable the development of new sources of gas supply”;
 - (b) for “that increase in its capacity” (in each place) substitute “modification”.
- (14) In subsection (10), for “together with the reasons for its decision” substitute “under this section, together with the reasons for its decision,”.

Duty to allow others to use LNG import or export facilities: review and revocation of exemptions

12. After section 19C of the Gas Act 1986 insert—

“19CA Review and revocation of exemptions under section 19C

- (1) If the Authority gives, or refuses to give, an exemption under section 19C it must send the following to the European Commission as soon as is reasonably practicable—
- (a) if an exemption was given, a copy of the exemption and of the terms on which it has been given;
 - (b) the Authority’s reasons for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Gas Directive;
 - (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—

- (i) relevant financial information;
 - (ii) analysis of the likely effect of the exemption on competition and on the effective functioning of the EU market for natural gas;
 - (d) if an exemption was given, the basis on which the Authority determined—
 - (i) the period of the exemption or how that period is to be determined; and
 - (ii) the capacity to which the exemption applies;
 - (e) any contribution by the storage facility to the diversification of gas supply; and
 - (f) any other information requested by the European Commission.
- (2) If, in accordance with Article 36(9) of the Gas Directive, the European Commission requires the Authority to revoke an exemption given under section 19C, or to modify the terms on which such an exemption is given, the Authority must—
- (a) comply with that request within the period of 1 month beginning with the day on which it receives the request; and
 - (b) inform the European Commission when it has done so.
- (3) The Authority must revoke an exemption given under section 19C in respect of a facility—
- (a) if the construction of the facility, or (as the case may be) the making of the modification to which the exemption relates, has not been started within the 2 years beginning with the relevant date; or
 - (b) if the facility, or (as the case may be) the modification to which the exemption relates, is not operational within the 5 years beginning with the relevant date.
- (4) In subsection (4) “relevant date” means—
- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under subsection (1), the date of that notification;
 - (b) if, in accordance with Article 36(9) of the Gas Directive, the European Commission required the Authority to modify the terms, the date of that requirement;
 - (c) otherwise, the date 4 months after the Authority sent the Commission a copy of the exemption and terms under subsection (1).
- (5) The Authority may at any other time revoke an exemption given under section 19C, or modify the terms on which such an exemption is given, in respect of a facility—
- (a) in accordance with the provisions of the exemption; or
 - (b) by giving the owner of the facility a notice of revocation at least 4 months before the revocation takes effect.”.

Duty to allow others to use LNG import or export facilities

13.—(1) Section 19D of the Gas Act 1986 (acquisition of rights to use LNG import or export facilities)(**25**) is amended as follows.

- (2) In subsection (1), for “LNG import facility” substitute “LNG import or export facility”.
- (3) Before “liquid gas” (in each place) insert “gas or”.
- (4) In subsection (11), at the end insert “; but this is subject to subsections (11A) and (11B)”.

(25) Section 19D was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#). Amendments have been made that are not relevant for these purposes.

(5) After subsection (11) insert—

“(11A) When considering whether the giving of directions under subsection (11) in respect of an LNG import or export facility would be prejudicial as mentioned in that subsection, the Authority must disregard any difficulties by virtue of which the owner of the facility may or must apply for an exemption under section 19DZA with respect to the facility.

(11B) The Authority must not give directions under subsection (11) in respect of an LNG import or export facility if—

- (a) such directions would prevent the owner from carrying out any public service obligation, within the meaning of paragraph (2) of Article 3 of the Gas Directive, which is imposed on the owner pursuant to that paragraph; or
- (b) an exemption is in force with respect to the facility under section 19DZA (regardless of whether that exemption was given before or after the application to the Authority under subsection (8) was made).”.

Duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments

14. After section 19D of the Gas Act 1986(26) insert—

“19DZA Duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments

(1) The owner of an LNG import or export facility may apply to the Authority for an exemption under this section with respect to the facility if the owner—

- (a) receives an application under section 19D(4) with respect to the facility; and
- (b) considers that allowing the application would cause the owner serious financial difficulties because of take-or-pay commitments of the owner under one or more gas-purchase contracts.

(2) The owner of an LNG import or export facility must apply to the Authority for an exemption under this section with respect to the facility if—

- (a) the owner refuses an application under section 19D(4) with respect to the facility; and
- (b) the reason, or one of the reasons, given under section 19D(7) for the refusal is the consideration mentioned in subsection (1)(b).

(3) An application made by virtue of subsection (2) must be made before the end of the 7 days beginning with the day of the refusal.

(4) An application for an exemption under this section must enclose all relevant information, including in particular information in respect of—

- (a) the nature and extent of the difficulties mentioned in subsection (1)(b) which the owner considers would arise (the “difficulties”);
- (b) any steps taken by the owner to prevent the difficulties from arising; and
- (c) the period over which the owner considers the difficulties would arise.

(5) The Authority may give an exemption under this section if it considers that—

- (a) having regard to any steps taken by the owner to prevent the difficulties from arising, the only reasonably available means of prevention is an exemption under this section; and
- (b) an exemption ought to be given, having regard to—
 - (i) the objective of achieving a competitive gas market;
 - (ii) the need for the owner to comply with any relevant public service obligation, within the meaning of paragraph (2) of Article 3 of the Gas Directive, which is imposed on the owner pursuant to that paragraph;
 - (iii) the need to ensure security of the supply of gas;
 - (iv) the position of the owner of the facility in the gas market and the level of competition in the market;
 - (v) the level of seriousness of the difficulties;
 - (vi) the time when the gas-purchase contract was entered into, and the extent to which the owner could reasonably have foreseen at that time that the difficulties were likely to arise;
 - (vii) the terms of the gas-purchase contract, including the extent to which the contract allows for market changes;
 - (viii) the significance of the facility to the gas market; and
 - (ix) the overall effect of the exemption on the operation of an economically efficient gas market.
- (6) An exemption under this section must be given for a limited period and in writing and must specify—
 - (a) the period of the exemption; and
 - (b) any conditions the Authority considers necessary in order to ensure that the owner takes all reasonably practicable steps to ensure that, by the time the exemption expires, the difficulties would no longer arise.
- (7) If the Authority has given an exemption under this section it must send to the European Commission as soon as is reasonably practicable—
 - (a) a copy of its decision to give the exemption, including the terms on which the exemption was given; and
 - (b) any other information the Authority considers relevant to the exemption or to the terms on which the exemption was given.
- (8) An exemption under this section may be modified or revoked by the Authority—
 - (a) in accordance with its provisions;
 - (b) at any other time, if the Authority considers that an exemption under this section is no longer required.
- (9) The Authority must modify or revoke an exemption given under this section if required to do so by the European Commission in accordance with Article 48(2) of the Gas Directive.
- (10) In this section “take-or-pay commitment” and “gas-purchase contract” have the same meanings as in Article 48(1) of the Gas Directive.”.

Exempt new and modified facilities: mechanisms for the allocation of capacity

15. After section 19DA of the Gas Act 1986(27) insert—

“19DB Allocation of capacity in exempt new and modified facilities

- (1) This section applies in relation to an application for an exemption—
 - (a) under section 19A(2), in respect of all or part of the capacity of a storage facility; or
 - (b) under section 19C(2), in respect of all or part of the capacity of an LNG import or export facility.
- (2) The application must specify the criteria that will be used to determine—
 - (a) who is to be granted rights to use the facility, or the part of the capacity of the facility, to which the application relates (the “exempt infrastructure”); and
 - (b) the way in which those rights may be exercised,

(the “capacity allocation mechanism”).

- (3) The Authority must not give an exemption under section 19A or 19C in response to the application unless it has—
 - (a) approved the capacity allocation mechanism specified in the application; or
 - (b) approved the mechanism on condition that certain modifications are made to it.
- (4) The Authority may only approve the capacity allocation mechanism under subsection (3)(a) if it considers that the mechanism meets the following three conditions.
- (5) The first condition is that before a right to use the exempt infrastructure is granted to the owner of the facility or to any other person—
 - (a) the intention to grant a right to use the exempt infrastructure must be published in a way that the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be interested in using the infrastructure; and
 - (b) such persons must be able to register an interest in using the exempt infrastructure.
- (6) The second condition is that the mechanism must require that any unused capacity in the exempt infrastructure be made available to other users or potential users.
- (7) The third condition is that the mechanism must not prevent, and must not be capable of being used to prevent, subsequent trading of rights to use the exempt infrastructure.
- (8) The Authority may only approve the capacity allocation mechanism under subsection (3)(b) if it considers that the mechanism will meet those three conditions once the modifications on which the approval is conditional have been made.”.

Consequential amendments of the Petroleum Act 1998 in respect of storage facilities

16.—(1) The Petroleum Act 1998(28) is amended as follows.

(2) Omit section 17C (application of section 17D)(29).

(27) 1986 c. 44. Section 19E was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#). Amendments have been made that are not relevant for these purposes.

(28) 1998 c. 17.

(29) Section 17C was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, [S.I. 2000/1937](#) and was subsequently amended by regulation 2(3) of, and paragraph 1 of Schedule 3 to, [S.I. 2004/2043](#); and regulation 4 of [S.I. 2009/1349](#).

- (3) Omit section 17D (access to offshore gas storage facilities)(**30**).
- (4) Omit section 17E (section 17D: supplemental)(**31**).
- (5) In section 17H (enforcement of certain duties in relation to access to pipelines and offshore gas storage facilities)(**32**)—
- (a) In subsection (1)—
 - (i) omit “with any notice under section 17D(11) or”;
 - (ii) omit “and the obligation to comply with any duty in section 17B(6) or section 17D(7)”;
 - (iii) for “duties” substitute “a duty”;
 - (iv) for “them” substitute “it”;
 - (b) omit subsection (4);
 - (c) change the section title to “Enforcement of duty in section 17GA”,
- but this paragraph is subject to paragraph (7).
- (6) In section 28(1) (interpretation) omit the definition of “offshore gas storage facility”(b3).
- (7) So far as section 17H would, but for the amendments made by paragraph (5), have effect in relation to a past breach, it continues to have effect in relation to that past breach as if those amendments had not been made.
- (8) In paragraph (7) “past breach” means a failure before the coming into force of these Regulations to comply with—
- (a) a duty under section 17D(1), (3), or (7);
 - (b) a notice under section 17D(11);
 - (c) a duty in section 17E(2).

Transitional provision in relation to exempt storage and LNG import or export facilities

17.—(1) An exemption given under—

- (a) section 19A(6)(a) of the Gas Act 1986 (duty to allow others to use storage facilities: exemptions for minor facilities)(b34); or
- (b) section 17C(5A)(a) of the Petroleum Act 1998 (duty to allow others to use offshore gas storage facilities: exemptions for minor facilities),

before the date on which these Regulations come into force shall be treated as having been given under section 8S of the Gas Act 1986 (independence of storage facilities and duty to allow others to use them: exemptions for minor facilities)(b35).

(2) An exemption given under section 17C(5A)(b) of the Petroleum Act 1998 (duty to allow others to use offshore gas storage facilities: exemptions for new and modified facilities) before

(30) Section 17D was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, [S.I. 2000/1937](#).

(31) Section 17E was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, [S.I. 2000/1937](#) and was subsequently amended by articles 3(1)(b) and 6 of, and paragraph 206 of Part 2 of Schedule 1 to, [S.I. 2008/948](#); and the Corporation Tax Act 2010, section 1177 and paragraph 298 of Part 2 of Schedule 1.

(32) Section 17H was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, [S.I. 2000/1937](#) and was subsequently amended by regulation 2(3) of, and paragraph 2 of Schedule 3 to, [S.I. 2004/2043](#); and article 2 of, and paragraph 3 of the Schedule to, [S.I. 2007/290](#); and the Energy Act 2004, section 197(9) and Part 1 of Schedule 23 (the commencement date for the relevant part of Part 1 of Schedule 23 is yet to be appointed in accordance with section 198 of the Energy Act 2004).

(33) Section 28(1) was amended by regulation 2(4) of, and paragraph 9 of Schedule 4 to, [S.I. 2000/1937](#) and was subsequently amended by regulation 2(3) of, and paragraph 3 to Schedule 3 to, [S.I. 2004/2043](#). Other amendments have been made that are not relevant for these purposes.

(34) Section 19A was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#). Amendments have been made that are not relevant for these purposes.

(35) Inserted by regulation 6 of these Regulations.

the date on which these Regulations come into force shall be treated as having been given under section 19A(6)(b) of the Gas Act 1986 (duty to allow others to use storage facilities: exemptions for new and modified facilities).

PART 5

Distribution

Independence of gas transporters authorised to convey gas to premises

18.—(1) Section 7 of the Gas Act 1986 (licensing of gas transporters)(**36**) is amended as follows.

(2) In subsection (2), for “subsection (3)” substitute “subsections (3) and (3A)”.

(3) After subsection (3) insert—

“(3A) A licence authorising the conveyance of gas through pipes to any premises must not be granted under this section to a person who is a gas producer unless it is a condition of the licence that the person must not convey gas through pipes to 100,000 or more sets of premises.”.

(4) In subsection (4), for “The” substitute “Subject to subsection (3A), the”.

(5) In subsection (10), before paragraph (a) insert—

“(za) “gas producer” means a person who—

(i) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain; or

(ii) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7;”.

Independence of electricity distributors

19. In section 6(2) of the Electricity Act 1989 (licences authorising supply, etc)(**37**), for “a supply licence” substitute—

“—

(a) a generation licence; or

(b) a supply licence.”.

PART 6

Licence exempt undertakings

Duties of gas distribution exemption holders and supply exemption holders

20.—(1) The Gas Act 1986 is amended as follows.

(36) Section 7 was amended by the Gas Act 1995 (c. 45), section 5; and the Energy Act 2004, section 149(1) and (5). Other amendments have been made that are not relevant for these purposes.

(37) 1989 c. 29. Section 6 was substituted for section 6 as originally enacted by the Utilities Act 2000 (c. 27), section 30. Other amendments have been made that are not relevant for these purposes.

(2) After section 6A(38) insert—

“6B Duties of distribution exemption holders

Schedule 2AA (which relates to the duties of distribution exemption holders) has effect.

6C Duties of supply exemption holders

6C Schedule 2AB (which relates to the duties of supply exemption holders) has effect.”.

(3) After Schedule 2A(39) insert the Schedules set out in Schedule 1.

Duties of electricity distribution exemption holders and supply exemption holders

21.—(1) The Electricity Act 1989 is amended as follows.

(2) After section 5(40) insert—

“5A Duties of distribution exemption holders

Schedule 2ZA (which relates to the duties of distribution exemption holders) has effect.

5B Duties of supply exemption holders

5B Schedule 2ZB (which relates to the duties of supply exemption holders) has effect.”.

(3) Before Schedule 2A(41) insert the Schedules set out in Schedule 2.

PART 7

Regulatory authority

Designation, reporting and members

Designation of the Gas and Electricity Markets Authority as the regulatory authority for Great Britain

22. After section 3 of the Utilities Act 2000(42) insert—

“3A Designation of Authority as regulatory authority for Great Britain

(1) The Authority is designated as the regulatory authority for Great Britain in accordance with Article 35 of the Electricity Directive and Article 39 of the Gas Directive.

(2) The Authority must ensure that members of its staff do not—

(38) 1986 c. 44; section 6A was inserted by the Gas (Exempt Supplies) Act 1993 (c. 1), section 2; and substituted by the Gas Act 1995 (c. 45), section 4. Other amendments have been made that are not relevant for these purposes.

(39) Schedule 2A was inserted by section 3(2) of, and Schedule 1 to, the Gas Act 1995; and subsequently repealed by section 75 of the Utilities Act 2000 (c. 27) (the commencement date for section 75 is yet to be appointed in accordance with section 110(2) of the Utilities Act 2000).

(40) Section 5 was substituted by the Utilities Act 2000 (c. 27), section 29. Other amendments have been made that are not relevant for these purposes.

(41) Schedule 2A was inserted by the Energy Act 2008, s44(4) and Schedule 2.

(42) 2000 c. 27.

- (a) seek or take any instructions that might compromise, or might reasonably be seen to compromise, the Authority's independence in relation to its functions as designated regulatory authority for Great Britain; or
 - (b) carry out any other activity, or have any financial or other interest, that might compromise, or might reasonably be seen to compromise, the impartiality of those members of staff.
- (3) If a representative of the Authority is appointed under Article 13(2) of the Agency Regulation to represent the United Kingdom on the Board of Regulators of the Agency, the Authority must—
- (a) in advance of any meeting of the Board, ensure that the designated regulatory authority for Northern Ireland is given access to any documents and other information that the Authority has access to in relation to that meeting;
 - (b) provide that authority with an opportunity to make representations in respect of those documents or that information;
 - (c) have regard to any representations so made; and
 - (d) notify that authority of the matters discussed and decisions taken by the Board.”.

Authority to prepare annual reports on its activities as designated regulatory authority

23. After section 5 of the Utilities Act 2000 insert—

“Report on activities as designated regulatory authority

5ZA.—(1) The Authority must, as soon as is practicable after the end of each reporting period, prepare a report on the activities it has carried out in that period as designated regulatory authority for Great Britain.

(2) A report prepared under subsection (1) is referred to as a regulatory authority report.

(3) The regulatory authority report must include, in particular, a general survey of the steps taken and results achieved by the Authority in the performance of its functions in accordance with Article 37 of the Electricity Directive and Article 41 of the Gas Directive.

(4) In preparing the regulatory authority report, the Authority must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

(5) The Authority must—

(a) send a copy of the regulatory authority report to—

- (i) the Secretary of State,
- (ii) the European Commission, and
- (iii) the Agency; and

(b) publish it in such manner as the Authority considers appropriate.

(6) In this section “reporting period” means—

- (a) the period beginning with the date on which this section comes into force and ending on 15 July 2012;
- (b) each subsequent period of 12 months.

(7) Nothing in this section or section 5 prevents a regulatory authority report and an annual report from including a report on the same matters.”.

Members of the Gas and Electricity Markets Authority

24.—(1) Schedule 1 to the Utilities Act 2000 (Gas and Electricity Markets Authority) is amended as follows.

(2) After paragraph 2 insert—

“2A. A person holding office as chairman or other member must not—

- (a) seek or take any instructions that might compromise, or might reasonably be seen to compromise, the independence of the Authority in relation to its functions as designated regulatory authority for Great Britain; or
- (b) carry out any other activity, or have any financial or other interest, that might compromise, or might reasonably be seen to compromise, that person’s impartiality.”.

(3) For paragraph 3 substitute—

“3.—(1) An appointment of a person to hold office as chairman or other member must be for a term of not less than 5 years and not more than 7 years.

(2) But in appointing as chairman or other member a person who is on the Authority’s staff, the Secretary of State may make the appointment subject to a condition that the appointment will end if that person ceases to be on the Authority’s staff.

(3) The appointment of a person as chairman or other member may be renewed only once.

(4) The Secretary of State must ensure that there is sufficient continuity in the persons holding office as chairman or other member in determining—

- (a) the term of a person’s appointment in accordance with sub-paragraph (1) (whether initially or on renewal); and
- (b) whether or not to renew an appointment in accordance with sub-paragraph (3).

(5) A person holding office as chairman or other member may resign that office by giving notice in writing to the Secretary of State.

(6) A person holding office as chairman or other member may be removed from office by the Secretary of State on one of the following grounds only—

- (a) a breach of paragraph 2A;
- (b) incapacity; or
- (c) misbehaviour.”.

Definitions in the Utilities Act 2000

25. In section 106(1) of the Utilities Act 2000 (interpretation), in the appropriate places insert—

““the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;”;

““the Agency Regulation” means Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators(43);”;

““designated regulatory authority” means an authority designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive;”;

““designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A;”;

““the Electricity Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(44);”;

““the Gas Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC(45);”.

Principal objectives

Authority’s principal objective in relation to gas

26.—(1) In section 4AA(1A) of the Gas Act 1986 (principal objective and general duties of the Secretary of State and the Authority: interests of consumers)(46)—

- (a) omit “and” immediately preceding paragraph (b); and
- (b) after paragraph (b) insert—
 - “; and
 - (c) their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Great Britain, of the objectives set out in Article 40(a) to (h) of the Gas Directive.”.

Authority’s principal objective in relation to electricity

27. In section 3A(1A) of the Electricity Act 1989 (principal objective and general duties of the Secretary of State and the Authority: interests of consumers)(47)—

- (a) omit “and” immediately preceding paragraph (b); and
- (b) after paragraph (b) insert—
 - “; and
 - (c) their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Great Britain, of the objectives set out in Article 36(a) to (h) of the Electricity Directive.”.

Dispute resolution

Authority’s dispute resolution functions in relation to gas

28.—(1) The Gas Act 1986(48) is amended as follows.

(2) In each of the following, for “Article 25” substitute “Article 41”—

- (a) the italic heading preceding section 27B (meaning of “Article 25 dispute”); and
- (b) the title of section 27B.

(44) OJ No L 211, 14.08.2009, p. 55.

(45) OJ No L 211, 14.08.2009, p. 94.

(46) Section 4AA was inserted by section 9 of the Utilities Act 2000 (c. 27), and was subsequently amended by section 16(1) and (3) of the Energy Act 2010 (c. 27). Other amendments have been made that are not relevant for these purposes.

(47) Section 3A was inserted by section 13 of the Utilities Act 2000 (c. 27), and was subsequently amended bisection 17(1) and (3) of the Energy Act 2010 (c. 27). Other amendments have been made that are not relevant for these purposes.

(48) 1986 c. 44. Sections 27B to 27D, and the italic heading preceding section 27B, were inserted by regulation 3 of S.I. 2009/1349.

(3) In section 27B—

(a) for subsection (1) substitute—

“(1) For the purposes of sections 27C and 27D, a dispute is an “Article 41 dispute” if—

(a) it arises from a written complaint—

- (i) made against a gas transporter,
- (ii) made against the holder of a licence under section 7ZA,
- (iii) made against the owner of an LNG import or export facility,
- (iv) made against the owner of a storage facility,
- (v) made against a person carrying out an activity described in section 5(1)(a) or (aa) who has been granted an exemption under section 6A(1), or
- (vi) made by a person falling within paragraph (a) of subsection (1B) against a person falling within paragraph (b) of that subsection;

(b) it is wholly or mainly a dispute regarding an obligation of the person complained against under any relevant condition or relevant requirement in relation to that person imposed for the purpose of implementing the Gas Directive; and

(c) it is a dispute between the complainant and the person complained against.

(1A) Until section 75 of the Utilities Act 2000 comes into force the reference in subsection (1)(a)(v) above to a person who has been granted an exemption under section 6A(1) includes a person to whom one or more of the exceptions to section 5(1) contained in Schedule 2A applies.

(1B) For the purposes of subsection (1)(a)(vi)—

- (a) a person falls within this paragraph if the person is certified on the ground mentioned in section 8G(5) in respect of a pipe-line system or gas interconnector;
- (b) a person falls within this paragraph if the person is designated under section 8J(3) in respect of the pipe-line system or gas interconnector mentioned in paragraph (a).”;

(b) in subsection (2), for “(1)(b)” substitute “(1)(a)”;

(c) in subsection (3)—

- (i) omit the definitions of “2003 Directive”, “LNG import facility” and “owner”, and
- (ii) for the definition of “household customer” substitute—
 ““household customer” means a customer who purchases gas for consumption by the customer’s own household;”.

(4) In section 27C (determination of disputes)—

(a) in subsections (1), (2) and (3), for “Article 25” substitute “Article 41”;

(b) for subsection (8), substitute—

“(8) Sections 28 to 30F and 38 have effect in relation to a person against whom a complaint is made as mentioned in section 27B(1)(a), and on whom a duty or other requirement is imposed by an order under this section—

- (a) as if references in those sections to a relevant requirement (other than the reference in section 28(8)) included references to that duty or requirement; and
- (b) if the complaint is made against the person as mentioned in sub-paragraph (vi) of section 27B(1)(a), also as if references in those sections to a regulated person included references to that person.”;

(c) omit subsection (9).

(5) In section 27D (time limit for determinations), in subsections (1) and (4)(a), for “Article 25” substitute “Article 41”.

Authority’s dispute resolution functions in relation to electricity

29.—(1) The Electricity Act 1989(**49**) is amended as follows.

(2) In each of the following, for “Article 23” substitute “Article 37”—

- (a) the italic heading preceding section 44B (meaning of “Article 37 dispute”); and
- (b) the title of section 44B.

(3) In section 44B—

(a) for subsection (1) substitute—

“(1) For the purposes of sections 44C and 44D a dispute is an “Article 37 dispute” if—

(a) it arises from a written complaint—

- (i) made against the holder of a transmission licence,
- (ii) made against the holder of a distribution licence,
- (iii) made against the holder of an interconnector licence,
- (iv) made against a distribution exemption holder, or
- (v) made by a person falling within paragraph (a) of subsection (1A) against a person falling within paragraph (b) of that subsection;

(b) it is wholly or mainly a dispute regarding an obligation of the person complained against under any relevant condition or relevant requirement in relation to that person imposed for the purpose of implementing the Electricity Directive; and

(c) it is a dispute between the complainant and the person complained against.

(1A) For the purposes of subsection (1)(a)(v)—

- (a) a person falls within this paragraph if the person is certified on the ground mentioned in section 10E(5) in respect of a transmission system or electricity interconnector;
- (b) a person falls within this paragraph if the person is designated under section 10H(3) in respect of the transmission system or electricity interconnector mentioned in paragraph (a).”;

(b) in subsection (2)—

- (i) for “(1)(b)” substitute “(1)(a)”, and
- (ii) in paragraph (a)(i) for “the licence” substitute “a licence”;

(c) for subsection (3) substitute—

“(3) In this section, “household customer” means a customer who purchases electricity for consumption by the customer’s own household.”.

(4) In section 44C (determination of disputes)—

- (a) in subsections (1), (2) and (3), for “Article 23” substitute “Article 37”; and
- (b) for subsection (8) substitute—

“(8) Sections 25 to 28 have effect in relation to a person against whom a complaint is made as mentioned in section 44B(1)(a), and on whom a duty or other requirement is imposed by an order under this section—

- (a) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to that duty or requirement;
- (b) if the complaint is made against the person as mentioned in sub-paragraph (v) of section 44B(1)(a), also as if references in those sections to a regulated person included references to that person.”.

(5) In section 44D (time limit for determinations)—

- (a) in subsections (1) and (6)(a), for “Article 23” substitute “Article 37”;
- (b) in subsection (2) omit “and (5)”; and
- (c) omit subsections (4) and (5).

Monitoring

Authority’s monitoring functions in relation to gas

30.—(1) The Gas Act 1986 is amended as follows.

(2) In section 34 (general functions), in subsection (1)(a) after “above” insert “or subsection (2A) below”.

(3) After section 34(2) insert—

“(2A) The activities referred to in subsection (1)(a) are the matters specified in the following provisions of the Gas Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 41(1)(g) to (k), (m), (n) and (r) to (t);
- (c) where a person is certified on the ground mentioned in subsection (5) of section 8G(50), Article 41(3)(a) and (b);
- (d) where a person is certified on the ground mentioned in subsection (6) of section 8G(51), Article 41(5)(b) and (d); and
- (e) Article 41(9).”.

(4) After section 34 insert—

“34A Power to require information etc for the purpose of monitoring

(1) The Authority may, for the purpose of performing its duty under subsection (1)(a) or (b) of section 34 in relation to activities falling within subsection (2A) of that section, serve a notice under subsection (2) on any regulated person.

(2) A notice under this subsection is a notice signed by the Authority which—

- (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority any documents which are specified or described in the notice and are in that person’s custody or under that person’s control; or
- (b) requires that person, if that person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

(50) Inserted by regulation 4 of these Regulations.

(51) Inserted by regulation 4 of these Regulations.

(3) In paragraphs (a) and (b) of subsection (2) the reference to the Authority includes a reference to a person appointed by the Authority for the purpose of exercising the power in question.

(4) Sections 28 to 30 have effect in relation to a person on whom a notice is served under subsection (2) as if references in those sections to a relevant requirement (other than the reference in section 28(8)) included references to a requirement of that notice.

(5) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is liable—

(a) on summary conviction—

(i) in England and Wales, to a fine not exceeding the statutory maximum;

(ii) in Scotland, to a fine not exceeding £5,000; or

(b) on conviction on indictment, to a fine.

(6) The definition of “regulated person” in section 28(8)(52) applies for the purposes of this section.”.

Authority’s monitoring functions in relation to electricity

31.—(1) The Electricity Act 1989 is amended as follows.

(2) In section 47 (general functions), after subsection (1B)(53) insert—

“(1C) The activities to which subsection (1) applies also include, in particular, the matters specified in the following provisions of the Electricity Directive as matters to be monitored—

(a) Article 26(3);

(b) Article 37(1)(g) to (k), (m) and (q) to (t); and

(c) where a person is certified on the ground mentioned in subsection (5) of section 10E(54), Article 37(3)(a), (b) and (f).”.

(3) After section 47 insert—

“47A Power to require information etc for the purpose of monitoring

(1) The Authority may, for the purpose of performing its duty under subsection (1)(a) or (b) of section 47 in relation to activities falling within subsection (1C) of that section, serve a notice under subsection (2) on any regulated person.

(2) A notice under this subsection is a notice signed by the Authority which—

(a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority any documents which are specified or described in the notice and are in that person’s custody or under that person’s control; or

(b) requires that person, if that person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

(52) The definition of “regulated person” in section 28(8) is substituted by regulation 39(4)(a) of these Regulations. Other amendments to section 28(8) have been made that are not relevant for these purposes.

(53) Subsection (1B) of section 47 was inserted by section 9 of the Climate Change and Sustainable Energy Act 2006 (c. 19). Other amendments have been made that are not relevant for these purposes.

(54) Inserted by regulation 5 of these Regulations.

(3) In paragraphs (a) and (b) of subsection (2) the reference to the Authority includes a reference to a person appointed by the Authority for the purpose of exercising the power in question.

(4) Sections 25 to 27 have effect in relation to a person on whom a notice is served under subsection (2) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to a requirement of that notice.

(5) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to a fine not exceeding the statutory maximum, and
 - (ii) in Scotland, to a fine not exceeding £5,000; or
- (b) on conviction on indictment, to a fine.”.

*Binding decisions of the Agency for the Cooperation of
Energy Regulators and of the European Commission*

Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission in relation to gas

32. After section 4B of the Gas Act 1986(55) insert—

“4C Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission

The Authority must carry out its functions under this Part in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Gas Directive, the Gas Regulation or the Agency Regulation in relation to gas.”.

Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission in relation to electricity

33. After section 3D of the Electricity Act 1989(56) insert—

“3E Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission

The Authority must carry out its functions under this Part in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Electricity Directive, the Electricity Regulation or the Agency Regulation in relation to electricity.”.

(55) Section 4B was inserted by section 12 of the Utilities Act 2000 (c. 27). An amendment has been made that is not relevant for these purposes.

(56) Section 3D was inserted by section 16 of the Utilities Act 2000 (c. 27). Amendments have been made that are not relevant for these purposes.

Consultation and cooperation

Authority to consult and cooperate with other authorities in relation to gas

34. After section 4C of the Gas Act 1986⁽⁵⁷⁾ insert—

“Authority to consult and cooperate with other authorities

4D.—(1) When carrying out its functions as designated regulatory authority for Great Britain, the Authority must, wherever it thinks fit—

- (a) consult and cooperate with the Agency and the designated regulatory authorities for Northern Ireland and other Member States;
- (b) provide the Agency and the designated regulatory authorities for Northern Ireland and other Member States with information they may require in order to carry out their functions under the Gas Directive, the Gas Regulation or the Agency Regulation as it applies in relation to gas; and
- (c) consult relevant national authorities.

(2) In exercising functions in accordance with subsection (1), the Authority must, wherever it thinks fit, cooperate with the designated regulatory authorities for Northern Ireland and other Member States within a region which includes Great Britain with a view, within that region, to—

- (a) the integration of national markets;
- (b) the promotion and facilitation of cooperation between transmission system operators;
- (c) the optimal management of gas networks;
- (d) the promotion of jointly managed cross-border trade in gas and the allocation of cross-border capacity;
- (e) ensuring an adequate level of interconnection capacity;
- (f) the coordination of the development of network codes; and
- (g) the coordination of the regulation of gas markets, including rules concerning the management of congestion of gas networks.

(3) In this section—

“network code” means a network code developed under Article 6 of the Gas Regulation and adopted by the European Commission;

“region” includes a geographical area defined in accordance with Article 12(3) of the Gas Regulation; and

“relevant national authority” means any of the following—

- (a) the Competition Commission;
- (b) the Office of Communications;
- (c) the Office of Fair Trading;
- (d) the Water Services Regulation Authority.”.

⁽⁵⁷⁾ Inserted by regulation 32 of these Regulations.

Authority to consult and cooperate with other authorities in relation to electricity

35. After section 3E of the Electricity Act 1989⁽⁵⁸⁾ insert—

“3F Authority to consult and cooperate with other authorities

(1) When carrying out its functions as designated regulatory authority for Great Britain the Authority must, wherever it thinks fit—

- (a) consult and cooperate with the Agency and designated regulatory authorities for Northern Ireland and other Member States;
- (b) provide the Agency and the designated regulatory authorities for Northern Ireland and other Member States with information they may require in order to carry out their functions under the Electricity Directive, the Electricity Regulation or the Agency Regulation as it applies in relation to electricity; and
- (c) consult relevant national authorities.

(2) In exercising functions in accordance with subsection (1) the Authority must, wherever it thinks fit, cooperate with the designated regulatory authorities for Northern Ireland and other Member States within a region which includes Great Britain with a view, within that region, to—

- (a) the integration of national markets;
- (b) the promotion and facilitation of cooperation between transmission system operators;
- (c) the optimal management of electricity networks;
- (d) the promotion of jointly managed cross-border trade in electricity and the allocation of cross-border capacity;
- (e) enabling an adequate level of interconnection capacity;
- (f) the coordination of the development of network codes; and
- (g) the coordination of the regulation of electricity markets, including rules concerning the management of congestion of electricity networks.

(3) In this section—

“network code” means a network code developed under Article 6 of the Electricity Regulation and adopted by the European Commission;

“region” includes a geographical area defined in accordance with Article 12(3) of the Electricity Regulation; and

“relevant national authority” means any of the following—

- (a) the Competition Commission;
- (b) the Office of Communications;
- (c) the Office of Fair Trading;
- (d) the Water Services Regulation Authority.”.

Confidentiality requirements in respect of cross-border exchanges of information

36.—(1) The Utilities Act 2000⁽⁵⁹⁾ is amended as follows.

⁽⁵⁸⁾ Inserted by regulation 33 of these Regulations.

⁽⁵⁹⁾ 2000 c. 27.

(2) In section 105 (general restrictions on disclosure of information), after subsection (11A)(60) insert—

“(11B) Nothing in this section applies to information to which section 105A applies.”.

(3) After section 105 insert—

“105A Restrictions on disclosure in respect of cross-border exchanges of information

(1) This section applies to any information provided to the Authority—

- (a) for the purpose of enabling it to carry out its functions as designated regulatory authority for Great Britain; and
- (b) by the designated regulatory authority for Northern Ireland or for another Member State (“the originating authority”) in accordance with Article 38(1) of the Electricity Directive or Article 42(1) of the Gas Directive.

(2) The Authority may disclose information to which this section applies only if—

- (a) the originating authority has confirmed in writing that the originating authority would be permitted to disclose the information in the circumstances in question; and
- (b) the Authority would be permitted under section 105 to disclose the information if it was received under or by virtue of an enactment listed in subsection (1) of that section.

(3) Subsection (1) applies whether the information is provided directly or indirectly by the originating authority.”.

PART 8

Enforcement

Enforcement provisions of the Gas Act 1986

37.—(1) Part 1 of the Gas Act 1986 (gas supply)(61) is amended as follows.

(2) In section 22 (effect of directions)(62)—

(a) in subsection (1)—

- (i) omit “, 19B(11), 19D(11)”;
- (ii) for the words from “and the obligation” to “are duties” substitute “is a duty”;

(b) in subsection (3) omit “or relevant duties”;

(c) omit subsection (5).

(3) For the italic heading preceding section 28(63) substitute—

(60) Subsection (11A) of section 105 was inserted by section 63(1) of, and paragraphs 18 and 20(d) of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17). Other amendments have been made to section 105 that are not relevant for these purposes.

(61) 1986 c. 44.

(62) Section 22 was amended by regulation 2(2) of, and paragraph 2 of Schedule 2 to, S.I. 2000/1937. Another amendment has been made that is not relevant for these purposes.

(63) Section 28 was amended by section 48(1) and (2) of the Competition and Service (Utilities) Act 1992 (c. 43); by section 10(1) of, and paragraph 27(1), (3) and (5) of Schedule 3 to, the Gas Act 1995 (c. 45); by sections 3(2), 77(2), 95(2)(b), 96(1), (2), (3) and (5) and 108 of, and paragraphs 1 and 12 of Part 1 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c. 27); by sections 25(8), 45(4), 52(1) and 63(1) of, paragraph 1 of Schedule 2 to, paragraph 1(1) and (2) of Schedule 5 to, and paragraphs 4 and 6 of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17); and by section 35 of, and paragraphs 1 and 2(1) of the Schedule to, the Energy Act 2010 (c. 27). Other amendments have been made that are not relevant for these purposes.

“Enforcement of obligations of regulated persons”.

(4) In each of the following provisions, for “licence holder” wherever it occurs substitute “regulated person”—

- (a) section 28 (orders for securing compliance with certain provisions);
- (b) section 29 (procedural requirements)(**64**);
- (c) section 30 (validity and effect of orders)(**65**);
- (d) section 30A (penalties)(**66**);
- (e) section 30C (time limits on the imposition of penalties)(**67**);
- (f) section 30E (appeals)(**68**);
- (g) section 30F (recovery of penalties)(**69**);
- (h) section 38(1) (power to require information etc)(**70**).

(5) In section 28(8)—

(a) after the definition of “provisional order” insert—

““regulated person” means a person who is one or more of the following—

- (a) a licence holder;
 - (b) a distribution exemption holder;
 - (c) a supply exemption holder;
 - (d) the owner of a storage facility;
 - (e) the owner of an LNG import or export facility;
 - (f) a gas undertaking which is a relevant producer or supplier;”;
- (b) in the definition of “relevant condition”, for “his licence” substitute “any licence held by that person”;
- (c) in the definition of “relevant requirement”, for the words from “him” to the end of the definition substitute “that person under a provision specified in Schedule 4B as a relevant provision in respect of that person”.

(6) After Schedule 4A (as inserted by regulation 41(7)) insert the Schedule set out in Schedule 3.

Saving provision in relation to enforcement action under section 22 of the Gas Act 1986

38. The amendments in regulation 37(1) do not affect any proceedings under section 22 of the Gas Act 1986 commenced before the day on which these Regulations come into force.

(64) Section 29 was amended by section 10(1) of, and paragraph 28 of Schedule 3 to, the Gas Act 1995 (c. 45) and by sections 3(2) and 96(1) and (6) of the Utilities Act 2000 (c. 27).

(65) Section 30 was amended by section 10(1) of, and paragraph 29 of Schedule 3 to, the Gas Act 1995 (c. 45) and by sections 95(3) and 108 of, and Schedule 8 to, the Utilities Act 2000 (c. 27). Another amendment has been made that is not relevant for these purposes.

(66) Section 30A was inserted by section 95(1) of the Utilities Act 2000 (c. 27).

(67) Section 30C was inserted by section 95(1) of the Utilities Act 2000 and subsequently amended by section 24(1) of the Energy Act 2010 (c. 27).

(68) Section 30E was inserted by section 95(1) of the Utilities Act 2000 (c. 27).

(69) Section 30F was inserted by section 95(1) of the Utilities Act 2000 (c. 27).

(70) Section 38(1) was amended by section 10(1) of, and paragraph 46(1) of Schedule 3 to, and Schedule 6 to, the Gas Act 1995 (c. 45) and by section 95(5) of the Utilities Act 2000 (c. 27).

Enforcement provisions of the Electricity Act 1989

39.—(1) Part 1 of the Electricity Act 1989 (electricity supply)(**71**) is amended as follows.

(2) For the italic heading preceding section 25(**72**) substitute—

“Enforcement of obligations of regulated persons”.

(3) In each of the following provisions, for “licence holder” wherever it occurs substitute “regulated person”—

- (a) section 25 (orders for securing compliance);
- (b) section 26 (procedural requirements)(**73**);
- (c) section 27 (validity and effect of orders)(**74**);
- (d) section 27A (penalties)(**75**);
- (e) section 27C (time limits on the imposition of financial penalties)(**76**);
- (f) section 27E (appeals)(**77**);
- (g) section 27F (recovery of penalties)(**78**);
- (h) section 28(1) (power to require information etc)(**79**).

(4) In section 25(8)—

(a) after the definition of “provisional order” insert—

““regulated person” means a person who is one or more of the following—

- (a) a licence holder;
 - (b) a distribution exemption holder;
 - (c) a supply exemption holder;
 - (d) an electricity undertaking which is a relevant producer or supplier;”;
- (b) in the definition of “relevant condition”, for “his licence” substitute “any licence held by that person”;
- (c) in the definition of “relevant requirement”, for the words from “him” to the end of the definition substitute “that person under a provision specified in Schedule 6A as a relevant provision in respect of that person”.

(5) After Schedule 6 insert the Schedule set out in Schedule 4.

(71) 1989 c. 29.

(72) Section 25 was amended by sections 3(2), 60(1) to (5) and 108 of, and paragraphs 24, 27 and 28 of Part 2 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c. 27); by section 54(3) of, and paragraph 12(1) and (5) of Schedule 10 to, the Competition Act 1998 (c. 41); by sections 25(8), 45(4), 52(2) and 63(1) of, paragraph 2 of Schedule 2 to, paragraph 2(1) and (2) of Schedule 5 to, and paragraphs 7 and 9 of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17); by section 107(1) of, and paragraph 3 of Schedule 5 to, the Energy Act 2008 (c. 32); and by section 35 of, and paragraphs 5 and 6(1) of the Schedule to, the Energy Act 2010 (c. 27).

(73) Section 26 was amended by sections 3(2) and 60(1) and (6) of the Utilities Act 2000 (c. 27).

(74) Amendments have been made that are not relevant for these purposes.

(75) Section 27A was inserted by section 59(1) of the Utilities Act 2000 (c. 27).

(76) Section 27C was inserted by section 59(1) of the Utilities Act 2000 (c. 27) and subsequently amended by section 24(2) of the Energy Act 2010 (c. 27).

(77) Section 27E was inserted by section 59(1) of the Utilities Act 2000 (c. 27). Amendments have been made that are not relevant for these purposes.

(78) Section 27F was inserted by section 59(1) of the Utilities Act 2000 (c. 27).

(79) Section 28(1) was amended by section 59(2) of the Utilities Act 2000 (c. 27).

Amendment of Electricity and Gas (Determination of Turnover for Penalties) Order 2002

40.—(1) The Electricity and Gas (Determination of Turnover for Penalties) Order 2002(**80**) is amended as follows.

(2) In each of the following, for “licence holder” wherever it occurs substitute “regulated person”—

- (a) the definitions of “applicable turnover” and “business year” in article 2;
- (b) article 3(1), (3) and (4).

PART 9**Licence modification procedure****Amendment of licence modification provisions in the Gas Act 1986**

41.—(1) The Gas Act 1986(**81**) is amended as follows.

(2) Section 23 (modification by agreement)(**82**) is amended as set out in paragraphs (3) to (5).

(3) For the heading and subsections (1) to (4) substitute—

“23 Modification of conditions of licences

(1) The Authority may make modifications of—

- (a) the conditions of a particular licence;
- (b) the standard conditions of licences of any type under section 7, 7ZA, or 7A(1) or (2)(**83**).

(2) Before making any modifications under this section, the Authority must give notice—

- (a) stating that it proposes to make modifications;
- (b) setting out the proposed modifications and their effect;
- (c) stating the reasons why it proposes to make the modifications; and
- (d) specifying the time within which representations with respect to the proposed modifications may be made.

(3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.

(4) A notice under subsection (2) must be given—

- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and
- (b) by sending a copy of the notice to—

(80) S.I. 2002/1111.

(81) 1986 c. 44.

(82) Section 23 was substituted by section 10(1) of, and paragraph 21 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2) and 82(2) to (4) of the Utilities Act 2000 (c. 27); and by section 150(8) and (9) of the Energy Act 2004 (c. 20).

(83) Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2), 76(1) to (6), and 108 of, and paragraphs 1 and 4 of Part 1 to Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); and by sections 149(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20). Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004. Section 7A was inserted by section 6(1) of the Gas Act 1995 and subsequently amended by section 108 of, and paragraphs 1 and 2(1) of Part 1 to Schedule 6 and Schedule 8 to, the Utilities Act 2000; and by section 149(1) and (7) of the Energy Act 2004.

- (i) each relevant licence holder,
- (ii) the Secretary of State,
- (iii) the Health and Safety Executive, and
- (iv) the Council.

(4A) The Authority must consider any representations which are duly made.”.

(4) In subsection (5), for “in the notice under subsection (3) above” substitute “by virtue of subsection (2)(d)”.

(5) For subsections (6) to (13) substitute—

“(6) Subsections (7) to (9) apply where, having complied with subsections (2) to (4A), the Authority decides to proceed with the making of modifications of the conditions of any licence under this section.

(7) The Authority must—

- (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,
- (b) state the effect of the modifications,
- (c) state how it has taken account of any representations duly made, and
- (d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).

(8) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 4A)(84).

(9) The date specified by virtue of subsection (8) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.

(10) In this section “relevant licence holder”—

- (a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
 - (i) which is to be modified by the inclusion of any new standard condition, or
 - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d); or
- (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.”.

(6) After section 23 insert—

“23A Modification of conditions under section 23: supplementary

(1) Subsections (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under section 23.

(2) If the conditions modified are standard conditions, the Authority must—

- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and

(84) Schedule 4A is inserted by regulation 41(8) of these Regulations.

- (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.
- (3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.
- (4) The modification of part of a standard condition of a particular licence under section 23 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 4A in relation to the decision to which the modification relates.”.
- (7) After section 23A, insert—

“Appeal from decisions of the Authority

23B Appeal to the Competition Commission

- (1) An appeal lies to the Competition Commission (“the Commission”) against a decision by the Authority to proceed with the modification of a condition of a licence under section 23.
- (2) An appeal may be brought under this section only by—
 - (a) a relevant licence holder (within the meaning of section 23);
 - (b) any other person who holds a licence of any type under section 7, 7ZA, or 7A(1) or (2) whose interests are materially affected by the decision;
 - (c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);
 - (d) the Council in the capacity of representing consumers whose interests are materially affected by the decision.
- (3) The permission of the Commission is required for the bringing of an appeal under this section.
- (4) The Commission may refuse permission to bring an appeal only on one of the following grounds—
 - (a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;
 - (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
 - (c) in relation to an appeal brought by the Council, that the interests of the consumers represented are not materially affected by the decision;
 - (d) in relation to any appeal—
 - (i) that the appeal is brought for reasons that are trivial or vexatious;
 - (ii) that the appeal has no reasonable prospect of success.
- (5) References in this section to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

23C Procedure on appeal to Commission

(1) The functions of the Commission with respect to appeals under section 23B are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (manner in which general functions are to be carried out)(**85**).

(2) Instead, Schedule 4A to this Act has effect.

23D Determination by Commission of appeal

(1) This section applies to every appeal brought under section 23B.

(2) In determining an appeal the Commission must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

- (a) in the carrying out of its principal objective under section 4AA(**86**);
- (b) in the performance of its duties under that section; and
- (c) in the performance of its duties under sections 4AB and 4A(**87**).

(3) In determining the appeal the Commission—

- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
- (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The Commission may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);
- (b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);
- (c) that the decision was based, wholly or partly, on an error of fact;
- (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 23(7)(b)(**88**);
- (e) that the decision was wrong in law.

(5) To the extent that the Commission does not allow the appeal, it must confirm the decision appealed against.

23E Commission's powers on allowing appeal

(1) This section applies where the Commission allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the Commission must do one or more of the following—

(85) 1998 c. 41. Amendments to Part 2 of Schedule 7 have been made that are not relevant for these purposes.

(86) Section 4AA was inserted by section 4 of the Utilities Act 2000 (c. 27) and subsequently amended by section 406(1) of, and paragraph 81 of Schedule 17 to, the Communications Act 2003 (c. 21); by sections 83(a) and (b), 149(1) and (8)(a), 178 and 179(2) and (3)(d) of the Energy Act 2004 (c. 20); by sections 83(1)(a) to (d), 102(1) to (3) and (7) and 108 of, and Schedule 6 to, the Energy Act 2008 (c. 32); and by section 16(1) to (3), (4)(a) and (b), (5), (6)(a) and (b), (7) and (8) of the Energy Act 2010 (c. 27).

(87) Section 4AB was inserted by section 10 of the Utilities Act 2000 (c. 27) and subsequently amended by section 63(1) of, and paragraphs 4 and 5 of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17). Section 4A was inserted by section 2 of the Gas Act 1995 (c. 45) and was subsequently amended by article 2 of, and the Schedule to, S.I. 2000/3343.

(88) Section 23(7)(b) is inserted by regulation 41(5) of these Regulations.

- (a) quash the decision (to the extent that the appeal is allowed);
 - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission;
 - (c) substitute the Commission's decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.
- (3) If the appeal is in relation to any other decision, the Commission must do one or both of the following—
- (a) quash the decision (to the extent that the appeal is allowed);
 - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission.
- (4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).
- (5) A person to whom a direction is given under that subsection must comply with it.
- (6) A direction given under that subsection to a person other than the Authority is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.
- (7) For the purposes of this section a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the Commission's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.
- (8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.
- (9) In this section and sections 23F and 23G any reference to a party to an appeal is to be read in accordance with Schedule 4A.

23F Time limits for Commission to determine an appeal

- (1) The Commission must—
 - (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
 - (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.
- (2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.
- (3) This subsection applies where—
 - (a) the Commission has received representations on the timing of the determination from a party to the appeal; and
 - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).
- (4) Where subsection (3) applies, the Commission must—
 - (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
 - (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (5) Where subsection (3) applies, the Commission must also—
 - (a) inform the parties to the appeal of the time limit for determining the appeal, and

(b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.

(6) In this section “price control decision” is to be read in accordance with section 23E.

(7) References in this section to the permission date are to the date on which the Commission gave permission to bring the appeal in accordance with section 23B(3).

23G Determination of appeal by Commission: supplementary

(1) A determination by the Commission on an appeal—

- (a) must be contained in an order made by the Commission;
- (b) must set out the reasons for the determination;
- (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
- (d) must be notified by the Commission to the parties to the appeal;
- (e) must be published by the Commission—
 - (i) as soon as reasonably practicable after the determination is made;
 - (ii) in such manner as the Commission considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).

(2) The Commission may exclude from publication under subsection (1)(e) any information which it is satisfied is—

- (a) commercial information, the disclosure of which would, or might in the Commission’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or
- (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the Commission’s opinion, significantly harm the individual’s interests.

(3) The Authority must take such steps as it considers requisite for it to comply with an order of the Commission made by virtue of subsection (1)(a).

(4) The steps must be taken—

- (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
- (b) in any other case, within a reasonable time.

(5) Subsections (2) to (4) of section 23A(89) apply where a condition of a licence is modified in accordance with section 23E as they apply where a condition of a licence is modified under section 23.”.

(8) After Schedule 4(90), insert the Schedule set out in Schedule 5.

(9) Omit sections 24 to 26A (modification references to the Competition Commission)(91).

(89) Section 23A is inserted by regulation 41(6) of these Regulations.

(90) 1986 c. 44. Amendments to Schedule 4 have been made that are not relevant for these purposes.

(91) Section 24 was amended by section 54(3) of, and paragraph 10(2) of Schedule 10 to, the Competition Act 1998 (c. 41); by article 20(a) and (b) of S.I. 1999/506; by section 10(1) of, and paragraph 22(1) to (6) of Schedule 3 to, the Gas Act 1995 (c. 45); by sections 3(2), 83(1) and 108 of, and paragraphs 1 and 8(1) to (4) of Part 1 of Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); by section 278 of, and paragraph 15(1) and (3)(a) and (b) of Schedule 25 and Schedule 26 to, the Enterprise Act 2002 (c. 40); and by section 149(1) and (9) of the Energy Act 2004 (c. 20). Sections 24A and 24B were inserted by section 278(1) of, and paragraph 15(1) and (4) of Schedule 25 to, the Enterprise Act 2002. Section 25 was amended by section 10(1) of, and paragraph 23(1), (3), (4) and (5)(a) and (b) of Schedule 3 to, the Gas Act 1995; by sections 54(3) and

Transitional and savings provision for the Gas Act 1986 in relation to modification of licence conditions, references to the Competition Commission and Competition Commission membership

42.—(1) The following provisions apply notwithstanding any amendment or repeal of any enactment made by this Part of these Regulations.

(2) Paragraphs (3) to (5) apply where—

- (a) the Authority has made a reference under section 24 of the 1986 Act before the operative date, but
- (b) the Commission has not made a report on that reference before that date.

(3) Sections 24 to 25 of the 1986 Act are to continue in force on and after the operative date in relation to the reference until—

- (a) the Commission has made a report on that reference; and
- (b) any actions required or permitted under those sections in connection with the reference have been taken.

(4) Any persons who are, immediately before the operative date, members of the Commission by virtue of section 104(1)(a) of the 2000 Act⁽⁹²⁾ are to continue as members of the Commission on and after the operative date for the purpose of performing functions of the Commission—

- (a) in relation to that section as amended by this Part of these Regulations; and
- (b) in relation to the reference mentioned in paragraph (2).

(5) Any persons who are, immediately before the operative date, members of a group selected under section 104(2) of the 2000 Act are to continue as members of the group on and after the operative date for the purpose of performing functions of the Commission in relation to the reference mentioned in paragraph (2).

(6) Paragraphs (7) and (8) apply where—

- (a) the Authority has given notice under section 23(3) of the 1986 Act⁽⁹³⁾ before the operative date; and
- (b) the period specified in the notice by virtue of section 23(3)(c) of that Act has not ended before that date.

(7) On and after the operative date the notice is to be treated for the purposes of sections 23 to 23G of, and Schedule 4A to, the 1986 Act⁽⁹⁴⁾ as if it were a notice given under section 23(2) of that Act.

(8) Any representations or objections made in accordance with section 23(3) of the 1986 Act in connection with the notice before the operative date are to be treated on and after the operative date as if they were representations made in accordance with section 23(2)(d) of that Act.

74(3) of, and paragraph 10(3) of Schedule 10 and Part 1 of Schedule 14 to, the Competition Act 1998; by article 20(b) of [S.I. 1999/506](#); by section 3(2) of the Utilities Act 2000; and by section 278 of, and paragraph 15(1) and (5)(a) and (b) of Schedule 25 to, the Enterprise Act 2002. Section 26 was amended by article 20(b) of [S.I. 1999/506](#); by section 10(1) of, and paragraph 24(1) to (4) of Schedule 3 to, the Gas Act 1995; by sections 3(2) and 83(2) and (3) of the Utilities Act 2000; and by section 150(8) and (9) of the Energy Act 2004. Section 26A was inserted by section 83(4) of the Utilities Act 2000 and subsequently amended by section 278(1) of, and paragraph 15(1) and (6)(a) and (b) of Schedule 25 to, the Enterprise Act 2002; and by section 150(10) of the Energy Act 2004.

⁽⁹²⁾ [2000 c. 27](#). Section 104 was amended by section 53(1)(a) and (b) and 101(2) of, and Part 2 of Schedule 9 to, the Water Act 2003 ([c. 37](#)) and by article 11 of, and paragraph 4(a) and (b) of Part 1 of the Schedule to, [S.I. 2005/3172](#).

⁽⁹³⁾ Section 23 was substituted by section 10(1) of, and paragraph 21 of Schedule 3 to, the Gas Act 1995 ([c. 45](#)) and subsequently amended by sections 3(2) and 82(2) to (4) of the Utilities Act 2000 ([c. 27](#)); and by section 150(8) and (9) of the Energy Act 2004 ([c. 20](#)).

⁽⁹⁴⁾ By virtue of regulation 42(9) of these Regulations references to sections 23 to 23G and Schedule 4A are references to those sections or Schedule as amended or inserted by these Regulations. Section 23 is amended by regulation 41(3) to (5) of these Regulations. Section 23A is inserted by regulation 41(6) of these Regulations. Sections 23B to 23G are inserted by regulation 41(7) of these Regulations. Schedule 4A is inserted by regulation 41(8) of these Regulations.

(9) The following references to provisions of the 1986 Act are to those provisions as amended or inserted by this Part of these Regulations—

- (a) the references in paragraph (7);
- (b) the reference to section 23(2)(d) in paragraph (8).

(10) In this regulation—

- (a) “the Authority” means the Gas and Electricity Markets Authority;
- (b) “the Commission” means the Competition Commission;
- (c) “the operative date” means the date on which these Regulations come into force;
- (d) “the 1986 Act” means the Gas Act 1986;
- (e) “the 2000 Act” means the Utilities Act 2000.

Amendment of licence modification provisions in the Electricity Act 1989

43.—(1) The Electricity Act 1989⁽⁹⁵⁾ is amended as follows.

(2) Omit section 11 (modification by agreement)⁽⁹⁶⁾.

(3) Section 11A (modification of standard conditions)⁽⁹⁷⁾ is amended as set out in paragraphs (4) to (6).

(4) For the heading and subsections (1) to (4) substitute—

“11A Modification of conditions of licences

(1) The Authority may make modifications of—

- (a) the conditions of a particular licence;
- (b) the standard conditions of licences of any type mentioned in section 6(1).

(2) Before making any modifications under this section, the Authority must give notice—

- (a) stating that it proposes to make modifications;
- (b) setting out the proposed modifications and their effect;
- (c) stating the reasons why it proposes to make the modifications; and
- (d) specifying the time within which representations with respect to the proposed modifications may be made.

(3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.

(4) A notice under subsection (2) must be given—

- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and
- (b) by sending a copy of the notice to—
 - (i) each relevant licence holder,
 - (ii) the Secretary of State, and
 - (iii) the Council.

⁽⁹⁵⁾ 1989 c. 29.

⁽⁹⁶⁾ Section 11 was amended by sections 3(2) and 34(1) and (2) of the Utilities Act 2000 (c. 27).

⁽⁹⁷⁾ Section 11A was inserted by section 35 of the Utilities Act 2000 (c. 27) and subsequently amended by section 197(8) and (9) and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

(4A) The Authority must consider any representations which are duly made.”.

(5) In subsection (5), for “in the notice under subsection (3)” substitute “by virtue of subsection (2)(d)”.

(6) For subsections (6) to (11) substitute—

“(6) Subsections (7) to (9) apply where, having complied with subsections (2) to (4A)(98), the Authority decides to proceed with the making of modifications of the conditions of any licence under this section.

(7) The Authority must—

- (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,
- (b) state the effect of the modifications,
- (c) state how it has taken account of any representations duly made, and
- (d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).

(8) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 5A)(99).

(9) The date specified by virtue of subsection (8) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.

(10) In this section “relevant licence holder”—

- (a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
 - (i) which is to be modified by the inclusion of any new standard condition, or
 - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d); or
- (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.”.

(7) After section 11A insert—

“11B Modification of conditions under section 11A: supplementary

(1) Subsections (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under section 11A.

(2) If the conditions modified are standard conditions, the Authority must—

- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and
- (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(98) Section 11A(2) to (4A) is inserted by regulation 43(4) of these Regulations.

(99) Schedule 5A is inserted by regulation 43(9) of these Regulations.

(4) The modification of part of a standard condition of a particular licence under section 11A does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 5A in relation to the decision to which the modification relates.”.

(8) After section 11B insert—

“Appeal from decisions of the Authority

11C Appeal to the Competition Commission

(1) An appeal lies to the Competition Commission (“the Commission”) against a decision by the Authority to proceed with the modification of a condition of a licence under section 11A.

(2) An appeal may be brought under this section only by—

- (a) a relevant licence holder (within the meaning of section 11A);
- (b) any other person who holds a licence of any type under section 6(1)(100) whose interests are materially affected by the decision;
- (c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);
- (d) the Council in the capacity of representing consumers whose interests are materially affected by the decision.

(3) The permission of the Commission is required for the bringing of an appeal under this section.

(4) The Commission may refuse permission to bring an appeal only on one of the following grounds—

- (a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;
- (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
- (c) in relation to an appeal brought by the Council, that the interests of the consumers represented are not materially affected by the decision;
- (d) in relation to any appeal—
 - (i) that the appeal is brought for reasons that are trivial or vexatious;
 - (ii) that the appeal has no reasonable prospect of success.

(5) References in this section to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

(100) Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and subsequently amended by sections 89(3), 136(1) and (2), 143(1), 145(1) and (5) to (7), and 197(9) of, and paragraphs 3 and 5 of Schedule 19 and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20); and by section 79 of, and paragraph 2 of Schedule 8 to, the Climate Change Act 2008 (c. 27).

11D Procedure on appeal to Commission

(1) The functions of the Commission with respect to appeals under section 11C are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (manner in which general functions are to be carried out)(**101**).

(2) Instead, Schedule 5A to this Act has effect.

11E Determination by Commission of appeal

(1) This section applies to every appeal brought under section 11C.

(2) In determining an appeal the Commission must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

- (a) in the carrying out of its principal objective under section 3A(**102**);
- (b) in the performance of its duties under that section; and
- (c) in the performance of its duties under sections 3B and 3C(**103**).

(3) In determining the appeal the Commission—

- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
- (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The Commission may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);
- (b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);
- (c) that the decision was based, wholly or partly, on an error of fact;
- (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 11A(7)(b)(**104**);
- (e) that the decision was wrong in law.

(5) To the extent that the Commission does not allow the appeal, it must confirm the decision appealed against.

11F Commission's powers on allowing appeal

(1) This section applies where the Commission allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the Commission must do one or more of the following—

(**101**) 1998 c. 41. Amendments to Part 2 of Schedule 7 have been made that are not relevant for these purposes.

(**102**) 1989 (c. 29). Section 3A was substituted by section 3 of the Utilities Act 2000 (c. 27) and subsequently amended by section 406(1) of, and paragraph 98 of Schedule 17 to, the Communications Act 2003 (c. 21); by sections 83(a) and (b), 143(1), 147(1) and (2)(b), 178, 179(2) and (3)(a), and 190(3) of, and paragraphs 3 and 4 of Schedule 19 to, the Energy Act 2004 (c. 20); by sections 83(2)(a) to (d), 102(4) to (7) and 108 of, and Schedule 6 to, the Energy Act 2008 (c. 32); and by sections 17(1) to (3), (4)(a) and (b), (5), (6)(a) and (b), (7) and (8) and 179(2) and (3)(a) of the Energy Act 2010 (c. 27).

(**103**) Section 3B was inserted by section 14 of the Utilities Act 2000 (c. 27) and subsequently amended by section 63(1) of, and paragraphs (7) and (8) of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17). Section 3C was inserted by section 15 of the Utilities Act 2000 (c. 27) and subsequently amended by article 22 of, and Schedule 3 to, S.I. 2008/960.

(**104**) Section 11A(7)(b) is inserted by regulation 43(6) of these Regulations.

- (a) quash the decision (to the extent that the appeal is allowed);
 - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission;
 - (c) substitute the Commission's decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.
- (3) If the appeal is in relation to any other decision, the Commission must do one or both of the following—
- (a) quash the decision (to the extent that the appeal is allowed);
 - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission.
- (4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).
- (5) A person to whom a direction is given under that subsection must comply with it.
- (6) A direction given under that subsection to a person other than the Authority is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.
- (7) For the purposes of this section a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the Commission's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.
- (8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.
- (9) In this section and sections 11G and 11H any reference to a party to an appeal is to be read in accordance with Schedule 5A.

11G Time limits for Commission to determine an appeal

- (1) The Commission must—
 - (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
 - (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.
- (2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.
- (3) This subsection applies where—
 - (a) the Commission has received representations on the timing of the determination from a party to the appeal; and
 - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).
- (4) Where subsection (3) applies, the Commission must—
 - (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
 - (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (5) Where subsection (3) applies, the Commission must also—
 - (a) inform the parties to the appeal of the time limit for determining the appeal, and

- (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.
- (6) In this section “price control decision” is to be read in accordance with section 11F.
- (7) References in this section to the permission date are to the date on which the Commission gave permission to bring the appeal in accordance with section 11C(3).

11H Determination of appeal by Commission: supplementary

- (1) A determination by the Commission on an appeal—
 - (a) must be contained in an order made by the Commission;
 - (b) must set out the reasons for the determination;
 - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
 - (d) must be notified by the Commission to the parties to the appeal;
 - (e) must be published by the Commission—
 - (i) as soon as reasonably practicable after the determination is made;
 - (ii) in such manner as the Commission considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The Commission may exclude from publication under subsection (1)(e) any information which it is satisfied is—
 - (a) commercial information, the disclosure of which would, or might in the Commission’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or
 - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the Commission’s opinion, significantly harm the individual’s interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the Commission made by virtue of subsection (1)(a).
- (4) The steps must be taken—
 - (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
 - (b) in any other case, within a reasonable time.
- (5) Subsections (2) to (4) of section 11B apply where a condition of a licence is modified in accordance with section 11F as they apply where a condition of a licence is modified under section 11A.”
- (9) After Schedule 5(105) insert the Schedule set out in Schedule 6.
- (10) Omit sections 12 to 14A (modification references to the Competition Commission)(106).

(105) Amendments to Schedule 5 have been made that are not relevant for these purposes.

(106) Section 12 was amended by section 54(3) of, and paragraph 12(2) of Schedule 10 to, the Competition Act 1998 (c. 41); by article 24 (a) and (b) of S.I. 1999/506; by sections 3(2), 36(1) to (7), 104(4) to (6) and 108 of, and paragraphs 24, and 25 of Part 2 of Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); and by sections 278(1) of, and paragraphs 20(1) and (3)(a) and (b) of Schedule 25, and Schedule 26 to, the Enterprise Act 2002 (c. 40). Sections 12A and 12B were inserted by section 278(1) of, and paragraphs 20(1) and (4) of Schedule 25 to, the Enterprise Act 2002. Section 13 was amended by sections 54(3) and 74(3) of, and paragraph 12(3) of Schedule 10 and Part 1 of Schedule 14 to, the Competition Act 1998; by article 24(b) of S.I. 1999/506; by sections 3(2) and 37(1), (2), (3)(a) and (b), (4) and (5) of the Utilities Act 2000; and by section 278(1) of, and paragraph 20(1), (5)(a) and (b) of Schedule 25 to, the Enterprise Act 2002. Section 14 was amended

Transitional and savings provision for the Electricity Act 1989 in relation to modification of licence conditions, references to the Competition Commission and Competition Commission membership

44.—(1) The following provisions apply notwithstanding any amendment or repeal of any enactment made by this Part of these Regulations.

(2) Paragraphs (3) to (5) apply where—

(a) the Authority has made a reference under section 12 of the 1989 Act before the operative date, but

(b) the Commission has not made a report on that reference before that date.

(3) Sections 12 to 13 of the 1989 Act are to continue in force on and after the operative date in relation to the reference until—

(a) the Commission has made a report on that reference; and

(b) any actions required or permitted under those sections in connection with the reference have been taken.

(4) Any persons who are, immediately before the operative date, members of the Commission by virtue of section 104(1)(b) of the 2000 Act(**107**) are to continue as members of the Commission on and after the operative date for the purpose of performing functions of the Commission—

(a) in relation to that section as amended by this Part of these Regulations; and

(b) in relation to the reference mentioned in paragraph (2).

(5) Any persons who are, immediately before the operative date, members of a group selected under section 104(2) of the 2000 Act are to continue as members of the group on and after the operative date for the purpose of performing functions of the Commission in relation to the reference mentioned in paragraph (2).

(6) Paragraphs (7) and (8) apply where—

(a) the Authority has given notice under section 11(2) or 11A(3) of the 1989 Act(**108**) before the operative date; and

(b) the period specified in the notice by virtue of section 11(2)(c) or 11A(3)(c) of that Act has not ended before that date.

(7) On and after the operative date the notice is to be treated for the purposes of sections 11A to 11H of, and Schedule 5A to, the 1989 Act(**109**) as if it were a notice given under section 11A(2) of that Act.

(8) Any representations or objections made in accordance with section 11(2)(c) or 11A(3)(c) of the 1989 Act in connection with the notice before the operative date are to be treated on and after the operative date as if they were representations made in accordance with section 11A(2)(d) of that Act.

(9) The following references to provisions of the 1989 Act are to those provisions as amended or inserted by this Part of these Regulations—

by article 24(b) of [S.I. 1999/506](#); and by sections 3(2) and 38(1) to (5) of the Utilities Act 2000. Section 14A was inserted by section 39 of the Utilities Act 2000 and subsequently amended by section 278 of, and paragraph 20(1), (6)(a) and (b) of Schedule 25 and Schedule 26 to, the Enterprise Act 2002.

(107) [2000 c. 27](#). Section 104 was amended by section 53(1)(a) and (b) and 101(2) of, and Part 2 of Schedule 9 to, the Water Act [2003 \(c. 37\)](#) and by article 11 of, and paragraph 4(a) and (b) of Part 1 of the Schedule to, [S.I. 2005/3172](#).

(108) Section 11 was amended by sections 3(2) and 34(1) and (2) of the Utilities Act [2000 \(c. 27\)](#). Section 11A was inserted by section 35 of the Utilities Act 2000 and subsequently amended by section 197(8) and (9) and Part 1 of Schedule 23 to, the Energy Act [2004 \(c. 20\)](#).

(109) By virtue of regulation 44(9) of these Regulations references to sections 11A to 11H and Schedule 5A are references to those sections and Schedule as amended or inserted by these Regulations. Section 11A is amended by regulation 44(4) to (6) of these Regulations. Section 11B is inserted by regulation 43(7) of these Regulations. Sections 11C to 11H are inserted by regulation 43(8) of these Regulations. Schedule 5A is inserted by regulation 43(9) of these Regulations.

- (a) the references in paragraph (7);
 - (b) the reference to section 11A(2)(d) in paragraph (8).
- (10) In this regulation—
- (a) “the Authority” means the Gas and Electricity Markets Authority;
 - (b) “the Commission” means the Competition Commission;
 - (c) “the operative date” means the date on which these Regulations come into force;
 - (d) “the 1989 Act” means the Electricity Act 1989;
 - (e) “the 2000 Act” means the Utilities Act 2000.

Minor and consequential amendments

45.—(1) In section 10(4) of the Electricity Act 1989 (duty to copy notice and comply with direction)(**110**) omit “, 11”.

(2) In paragraph 19A(9) of Schedule 7 to the Competition Act 1998 (manner in which general functions are to be carried out)(**111**), in the definition of “special reference group”—

- (a) in paragraph (d) omit “24 or”; and
- (b) in paragraph (e) omit “12 or”.

(3) In section 104(1) of the Utilities Act 2000 (specialist members of the Competition Commission)(**112**)—

- (a) in paragraph (a), for “section 24, 26A or” substitute “any of sections 23B to 23G(**113**) or section”; and
- (b) in paragraph (b), for “section 12, 14A or” substitute “any of sections 11C to 11H or section”.

PART 10

Miscellaneous provisions

Amendment of section 19E of the Gas Act 1986

46. In section 19E of the Gas Act 1986 (sections 19A to 19D: supplemental)(**114**)—

- (a) omit the definitions of “LNG import facility”, “main commercial conditions”, “new facility”, “owner”, “storage”, “storage facility” and “treatment”;
- (b) in the definition of “significant transaction”, in paragraph (a) for “liquid gas treated in an LNG import facility” substitute “treated in an LNG import or export facility”; and
- (c) omit subsection (4).

(**110**) 1989 c. 29.

(**111**) 1998 c. 41. Paragraph 19A was inserted by section 187(3) of the Enterprise Act 2002 (c. 40). The definition of ‘special reference group’ was amended by section 406(1) and (7) of, and paragraph 153(1) and (3) of Schedule 17, and Schedule 19(1) to, the Communications Act 2003 (c. 21); by section 1010(1) of, and paragraph 54 of Schedule 8 to, the Water Act 2003 (c. 37); and by article 11 of, and paragraph 3(a)(i) and (ii) of the Schedule to, S.I. 2005/3172. Other amendments have been made to Schedule 7 that are not relevant for these purposes.

(**112**) Section 104 was amended by section 53(1)(a) and (b) and 101(2) of, and Part 2 of Schedule 9 to, the Water Act 2003 (c. 37); and by article 11 of, and paragraph 4(a) and (b) of Part 1 of the Schedule to, S.I. 2005/3172.

(**113**) Sections 23B to 23G of the Gas Act 1986 (c. 44) are inserted by regulation 41(7) of these Regulations.

(**114**) 1986 c. 44. Section 19E was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Relevant amendments have been made by section 3(2) of the Utilities Act 2000 (c. 27); section 1177 of, and paragraph 202 of Part 2 of Schedule 1 to, the Corporation Tax Act 2010 (c. 4); and regulation 2(2) of, and paragraph 6(b) to (k) of Schedule 2 to, S.I. 2004/2043.

Amendment of section 48 of the Gas Act 1986

47.—(1) Section 48 of the Gas Act 1986 (interpretation of Part 1 and savings)(115) is amended as follows.

(2) In subsection (1)—

(a) for the definition of “owner” substitute—

““owner”—

(a) in relation to any premises or other property, includes a lessee;

(b) in relation to a storage facility or an LNG import or export facility, includes a person occupying or having control of the facility,

and cognate expressions shall be construed accordingly;”;

(b) insert at the appropriate places—

““the 2010 Amending Decision” means Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation 2009/715/EC of the European Parliament and of the Council on conditions for access to the natural gas transmission networks(116);”;

““the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;”;

““the Agency Regulation” means Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators(117);”;

““associated undertaking”, in relation to a person (“person A”), means a person who—

(a) has control of person A; or

(b) is under the control of a person who controls person A,

and sections 450 and 451(1) to (3) of the Corporation Tax Act 2010(118) (meaning of “control”) apply, with any necessary modifications, for the purposes of this definition as they apply for the purposes of Part 10 of that Act;”;

““designated regulatory authority” means an authority designated in accordance with Article 39 of the Gas Directive;”;

““designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A of the Utilities Act 2000(119);”;

““distribution exemption holder” means a person who—

(a) is carrying on an activity such as is mentioned in section 5(1)(a), the whole or part of which is also an activity of distribution within the meaning given by Article 2(5) of the Gas Directive; and

(b) is authorised to carry on that activity by an exemption;”;

““exempt distribution system” means a distribution system operated or controlled by a distribution exemption holder who is covered by an exemption granted to it in relation to that system;”

(115) Relevant amendments to section 48 of the Gas Act 1986 were made by section 10(1) of, and paragraph 54(1)(f) of Schedule 3 to, the Gas Act 1995 (c. 45). Other amendments have been made that are not relevant for these purposes.

(116) OJ No L 293, 11.11.2010, p. 67.

(117) OJ No L 211, 14.08.2009, p. 1.

(118) 2010 c. 4.

(119) 2000 c. 27.

“the Gas Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC(120);”;

“the Gas Regulation” means Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation 2005/1775/EC(121), as amended by the 2010 Amending Decision;”;

“gas undertaking” has the meaning given by section 8Q(122);”;

“LNG import or export facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964)(123) for—

- (a) the importation into Great Britain and regasification of liquid gas prior to its conveyance to a pipeline system operated by the holder of a licence under section 7 or section 7ZA, or the liquefaction of gas for the purpose of its export from Great Britain; and
- (b) any activity, including temporary storage of gas or liquid gas, which is necessary for that importation, regasification or liquefaction;”;

“main commercial conditions” means—

- (a) in the case of a storage facility, such information as would enable a potential applicant for a right to have gas or liquid gas stored in the facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) in the case of an LNG import or export facility, the terms setting out the cost or the method of determining the cost of acquiring the right to have gas or liquid gas treated in the facility;
- (c) the other significant terms on which such a right as is mentioned in paragraph (a) or (b) would be granted; and
- (d) such additional information as the Authority may from time to time specify by notice;”;

“relevant producer or supplier” has the meaning given by section 8Q;”;

“senior officer” means—

- (a) in relation to a company, a director;
- (b) in relation to a partnership, a partner;
- (c) in any other case, a person holding a position equivalent to that of a director or partner;”;

“storage”, in relation to liquid gas in a storage facility, includes any liquefaction of gas or regasification of liquid gas ancillary to the storage of liquid gas, and “stored”, in relation to liquid gas in a storage facility, shall be construed accordingly;”;

“storage facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for either or both of the following—

(120) OJ No L 211, 14.08.2009, p. 94.

(121) OJ No L 211, 14.08.2009, p. 36.

(122) Inserted by regulation 4 of these Regulations.

(123) 1964 c. 29. Areas have been designated under this section by S.I. 1987/1265, 2000/3062 and 2001/3670.

- (a) the storage in porous strata, or in cavities in strata, of gas which has been, or will be, conveyed in a pipeline system operated by the holder of a licence under section 7 or 7ZA;
 - (b) the storage of liquid gas which, if regasified, would be suitable for conveyance through pipes to premises in accordance with a licence under section 7,
- but the reference in paragraph (b) to the storage of liquid gas does not include such temporary storage as is mentioned in the definition of “LNG import or export facility”;;”;

““supply exemption holder” means a person who—

- (a) is carrying on the activity mentioned in section 5(1)(b); and
- (b) is authorised to carry on that activity by an exemption;;”;

““treatment”, in relation to gas or liquid gas in an LNG import or export facility, includes importation, regasification, liquefaction and temporary storage, and “treat” shall be construed accordingly;;”.

- (3) After subsection (1) insert—

“(1ZA) Until section 75 of the Utilities Act 2000 comes into force the references to an exemption in the definitions in subsection (1) above of “distribution exemption holder”, “exempt distribution system” and “supply exemption holder” to an exemption include an exception under Schedule 2A(124).”.

Amendment of section 64 of the Electricity Act 1989

48. In section 64(1) of the Electricity Act 1989 (interpretation of Part 1) insert at the appropriate places—

““the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;;”;

““the Agency Regulation” means Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators;;”;

““designated regulatory authority” means an authority designated in accordance with Article 35 of the Electricity Directive;;”;

““designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A of the Utilities Act 2000;;”;

““distribution exemption holder” means a person who—

- (a) is distributing electricity for the purpose mentioned in section 4(1)(bb); and
- (b) is authorised to do so by an exemption;;”;

““the Electricity Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(125);”;

““the Electricity Regulation” means Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation 2003/1228/EC(126);”;

(124) 1986 c. 44. Schedule 2A was inserted by section 3(2) of, and Schedule 1 to, the Gas Act 1995; and subsequently repealed by section 75 of the Utilities Act 2000 (c. 27) (the commencement date for section 75 is yet to be appointed in accordance with section 110(2) of the Utilities Act 2000).

(125) OJ No L 211, 14.08.2009, p. 55.

(126) OJ No L 211, 14.08.2009, p. 15.

““electricity undertaking” has the meaning given by section 100;”;

““exempt distribution system” means a distribution system operated or controlled by a distribution exemption holder who is covered by an exemption granted to it in relation to that system;”;

““senior officer” means—

- (a) in relation to a company, a director;
- (b) in relation to a partnership, a partner;
- (c) in any other case, a person holding a position equivalent to that of a director or partner;”;

““supply exemption holder” means a person who—

- (a) is carrying on the activity mentioned in section 4(1)(c); and
- (b) is authorised to do so by an exemption;”;

““regulated person” has the meaning given by section 25(8);”;

““relevant producer or supplier” has the meaning given by section 100;”.

Modifications of standard conditions of gas licences

49.—(1) Schedule 7 to these Regulations (which modifies the standard conditions of transporter, interconnector and supply licences granted under Part 1 of the Gas Act 1986(**127**)) has effect.

(2) In section 81(2) of the Utilities Act 2000 (standard conditions of gas transporter, supply and shipping licences)(**128**), after “made” insert “under section 2(2) of the European Communities Act 1972.”.

(3) In section 150(5) of the Energy Act 2004 (standard conditions of gas interconnector licences)(**129**), after “made” insert “under section 2(2) of the European Communities Act 1972.”.

Modifications of standard conditions of electricity licences

50.—(1) Schedule 8 to these Regulations (which modifies the standard conditions of transmission, distribution, supply and interconnector licences granted under Part 1 of the Electricity Act 1989(**130**)) has effect.

(2) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity generation, distribution and supply licences)(**131**), before paragraph (a) insert—

“(za) under section 2(2) of the European Communities Act 1972.”.

(3) In section 137(3) of the Energy Act 2004 (standard conditions of electricity transmission licences), before paragraph (a) insert—

(**127**) Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45). Relevant amendments were made by sections 3(2), 76(1) and (3) and 108 of, and paragraphs 1 and 4 of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27). Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004 (c. 20). Section 7A(1) was inserted by section 6(1) of the Gas Act 1995 and a relevant amendment made by section 3(2) of the Utilities Act 2000.

(**128**) 2000 c. 27. Section 81(2) was amended by sections 107 and 168(10) of, and paragraphs 12 and 14 of Schedule 5 to, the Energy Act 2004 (c. 20); and was subsequently amended by section 35 of, and paragraphs 11 and 14 of the Schedule to, the Energy Act 2010 (c. 27).

(**129**) 2004 c. 20.

(**130**) 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and a relevant amendment was made by section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20). Section 8A was inserted by section 33 of the Utilities Act 2000 and amended by section 137(5) and (6) and section 146(6) of the Energy Act 2004.

(**131**) Section 33(1) was amended by sections 143(1) and 197(9) of, paragraphs 20(a) and (c) of Schedule 19 to, and paragraph 20(b) of part 1 of Schedule 23 to, the Energy Act 2004 (c. 20). Subsection (1) was subsequently amended by section 7(7) of the Climate Change and Sustainable Energy Act 2006 (c. 19); section 107 and 108 of, paragraphs 12 and 13(b) of Schedule 5 to, and paragraphs 12 and 13(b) of Schedule 6 to, the Energy Act 2008 (c. 32); and section 35 of, and paragraphs 11 and 12 of the Schedule to, the Energy Act 2010 (c. 27).

“(za) under section 2(2) of the European Communities Act 1972.”

(4) In section 146(5) of the Energy Act 2004 (standard conditions of electricity interconnector licences), after “made” insert “under section 2(2) of the European Communities Act 1972.”

Review

51.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Third Package and ITC Regulation (relevant provisions of which are implemented by means of these Regulations) are implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which these Regulations come into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

(6) In this regulation—

“2010 Amending Decision” means Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation 2009/715/EC of the European Parliament and of the Council on conditions for access to the natural gas network(**132**);

“ITC Regulation” means Commission Regulation 2010/838/EU of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging(**133**);

“Third Package” means—

- (a) Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators(**134**);
- (b) Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation 2003/1228/EC(**135**);
- (c) Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation 2005/1775/EC(**136**), as amended by the 2010 Amending Decision;

(132) OJ No L 293, 11.11.2010, p. 67.

(133) OJ No L 250, 24.09.2010, p. 5.

(134) OJ No L 211, 14.08.2009, p. 1.

(135) OJ No L 211, 14.08.2009, p. 15.

(136) OJ No L 211, 14.08.2009, p. 36.

- (d) Directive [2009/72/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive [2003/54/EC](#)(**137**);
- (e) Directive [2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC](#)(**138**).

9th November 2011

Charles Hendry
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Department of Energy and Climate Change