

## SCHEDULE 11

Regulation 2

### Energy

#### Interpretation

1. In this Schedule—

“aggregation” means combining multiple customer loads or generated electricity for sale, purchase or auction in the electricity market of Great Britain;

“downstream oil activity” means any of the following activities—

- (a) the import of any of crude oil, intermediates, components and finished fuels;
- (b) the storage of any of crude oil, intermediates, components and finished fuels;
- (c) the production of intermediates, components and finished fuels through refining or blending processes;
- (d) the distribution of petroleum-based fuels to storage sites by road, pipeline, rail or ship;
- (e) the delivery of petroleum-based fuels to retail sites, airports or end users;

“existing upstream petroleum facility” means an upstream petroleum facility that began operating before the first day of the month that is 12 calendar months before the month in which a person gains control, by virtue of one or more of the cases described in subsection (2), (5) or (6) of section 8 of the Act, of the qualifying entity;

“gas” means any substance which is or (if it were in a gaseous state) would be gas within the meaning set out in section 48(1) of the Gas Act 1986;<sup>(1)</sup>

“gas interconnector” has the meaning set out in section 5(8) of the Gas Act 1986;<sup>(2)</sup>

“gas processing facility” has the meaning set out in section 90(1) of the Energy Act 2011;<sup>(3)</sup>

“gas processing operation” has the meaning set out in section 90(2) of the Energy Act 2011;

“generate” in relation to electricity means carrying on an act within section 4(1)(a) of the Electricity Act 1989;<sup>(4)</sup>

“generating asset” means an asset used to generate electricity;

“group undertaking” has the meaning set out in section 1161(5) of the Companies Act 2006;<sup>(5)</sup>

“LNG import or export facility” has the meaning set out in section 12(6) of the Gas Act 1995;<sup>(6)</sup> but does not include facilities in the territorial sea adjacent to Great Britain or the sea in any area designated under section 1(7) of the Continental Shelf Act 1964;<sup>(7)</sup>

“new upstream petroleum facility” means an upstream petroleum facility that had not begun operating before the first day of the month that is 12 calendar months before the month in which a person gains control, by virtue of one or more of the cases described in subsection (2), (5) or (6) of section 8 of the Act, of the qualifying entity;

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(1) 1986 c. 44.

(2) Subsection (8) was substituted by section 149(1) and (3) of the Energy Act 2004 (c. 20).

(3) 2011 c. 16.

(4) 1989 c. 29. Section 4 was amended by sections 28(2) and 28(3)(a) of the Utilities Act 2000 (c.27), sections 89(2), 135(2), 135(3), 135(4), 145(2) and 145(3) of the Energy Act 2004 and section 147(2) of the Energy Act 2013 (c. 32). There are other amendments which are not relevant.

(5) 2006 c. 46.

(6) 1995 c. 45. Section 12 of the Gas Act 1995 was amended by section 92(11)(b) of the Energy Act 2011 (c. 16).

(7) 1964 c. 29. Section 1(7) of the Continental Shelf Act 1964 was amended by Schedule 3, paragraph 1 to the Oil and Gas (Enterprise) Act 1982 (c. 23) and section 103 of the Energy Act 2011 (c. 16).

“oil equivalent” means petroleum and, for the purposes of assessments of throughput, where petroleum is in a gaseous state 1,100 cubic meters of this petroleum at a temperature of 15 degrees Celsius and pressure of one atmosphere is counted as equivalent to one tonne;

“petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998<sup>(8)</sup>, and includes petroleum that has undergone any processing;

“petroleum licence” means a licence granted under section 3 of the Petroleum Act 1998<sup>(9)</sup> or section 2 of the Petroleum (Production) Act 1934<sup>(10)</sup>;

“petroleum production project” has the meaning set out in section 90(2) of the Energy Act 2011;

“terminal” has the meaning set out in section 90(2) of the Energy Act 2011, but does not include gas processing facilities in the United Kingdom or LNG import or export facilities;

“upstream petroleum facility” means a terminal, upstream petroleum pipeline or unit of infrastructure that is or will be necessary to a petroleum production project;

“upstream petroleum pipeline” has the meaning set out in section 90(2) of the Energy Act 2011, but does not include gas interconnectors.

### Activity - energy

2. A qualifying entity carrying on any of the activities set out in paragraph 3.
3. The activities referred to in paragraph 2 are—
  - (a) in respect of any existing upstream petroleum facility that meets the conditions set out in paragraph 4(2)—
    - (i) owning;
    - (ii) operating;
    - (iii) holding a petroleum licence in respect of; or
    - (iv) where the qualifying entity meets the condition set out in paragraph 4(3), enabling the operation of;
  - (b) in respect of any new upstream petroleum facility that meets the conditions set out in paragraph 4(4)—
    - (i) owning;
    - (ii) operating;
    - (iii) holding or applying for a petroleum licence in respect of; or
    - (iv) where the qualifying entity meets the condition set out in paragraph 4(5)—
      - (aa) developing;
      - (bb) enabling the operation of; or
      - (cc) enabling the development of;
  - (c) holding a transmission licence, distribution licence or interconnector licence under section 6 of the Electricity Act 1989<sup>(11)</sup> or carrying on any activity in pursuance of an

<sup>(8)</sup> 1998 c. 17.

<sup>(9)</sup> Section 3 was amended by sections 48(3)(a), 48(3)(b) and 48(4) of the Scotland Act 2016 (c. 11) and SI 2016/898.

<sup>(10)</sup> 1934 c. 36. This Act was repealed by section 51 of and Schedule 5 to the Petroleum Act 1998 (c. 17), subject to the savings provisions set out in Schedule 3.

<sup>(11)</sup> 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and was amended by sections 136(1) and 145(5) of the Energy Act 2004. There are other amendments which are not relevant.

- exemption from section 4(1)(b), 4(1)(bb) or 4(1)(d) of the Electricity Act 1989 granted to the qualifying entity by order under section 5(1) of the Electricity Act 1989~~(12)~~;
- (d) where the qualifying entity meets the condition set out in paragraph 4(6)—
- (i) holding a generation licence under section 6 of the Electricity Act 1989 or carrying on any activity in pursuance of an exemption from section 4(1)(a) of the Electricity Act 1989 granted to the qualifying entity by order under section 5(1) of the Electricity Act 1989; or
  - (ii) carrying on aggregation;
- (e) holding a licence under section 7 or 7ZA of the Gas Act 1986~~(13)~~ or carrying on any activity in pursuance of an exemption from sections 5(1)(a) or 5(1)(aa) of the Gas Act 1986 ~~(14)~~ granted to the qualifying entity by order under section 6A(1) of the Gas Act 1986~~(15)~~;
- (f) owning or operating—
- (i) any gas processing facility in Great Britain that meets the condition set out in paragraph 4(8); or
  - (ii) any LNG import or export facility that meets the condition set out in paragraph 4(9);
- (g) where the qualifying entity meets the conditions set out in paragraph 4(10), supplying petroleum-based road, aviation or heating fuels (including liquefied petroleum gas) to persons in the United Kingdom.

## Conditions

- 4.—(1) This paragraph sets out the conditions referred to in paragraph 3.
- (2) The conditions referred to in paragraph 3(a) are that the existing upstream petroleum facility—
- (a) has a throughput of greater than 3,000,000 tonnes of oil equivalent over the 12 calendar months preceding the month in which a person gains control, by virtue of one or more of the cases described in subsection (2), (5) or (6) of section 8 of the Act, of the qualifying entity; and
  - (b) is—
    - (i) situated in whole or in part in the United Kingdom; or
    - (ii) used in connection with the supply of petroleum to persons in the United Kingdom.
- (3) The condition referred to in paragraph (3)(a)(iv) is that the qualifying entity is an owner or operator of the existing upstream petroleum facility.
- (4) The conditions referred to in paragraph 3(b) are that the new upstream petroleum facility—
- (a) has an expected throughput of greater than 3,000,000 tonnes of oil equivalent in its first 12 calendar months of operation; and
  - (b) is or will be—
    - (i) situated in whole or in part in the United Kingdom; or

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**(12)** Section 5 was substituted by section 29 of the Utilities Act 2000 and amended by *SI 2012/2400*. There are other amendments which are not relevant.

**(13)** *1986 c. 44*. Section 7 was substituted by section 5 of the Gas Act 1995 (*c. 45*) and amended by sections 3(2), 76(2), 76(3) and 76(4) of and Schedule 6(I), paragraph 4 and Schedule 8, paragraph 1 to the Utilities Act 2000 (*c. 27*), section 149(5), section 197(9) and Schedule 23 Part 1 to the Energy Act 2004 (*c. 2*) and by *S.I. 2011/2704*. Section 7ZA was added by section 149(6) of the Energy Act 2004 (*c. 20*).

**(14)** Section 5 was substituted by section 3(1) of the Gas Act 1995 (*c. 45*) and amended by Schedule 6(I), paragraph 3 to the Utilities Act 2000 and sections 149(2)(a) and 149(2)(b) and 149(3) of the Energy Act 2004 (*c. 20*). There are other amendments which are not relevant.

**(15)** Section 6A was substituted by section 4 of the Gas Act 1995 (*c. 45*) and amended by Schedule 8, paragraph 1 to the Utilities Act 2000 and *SI 2012/2400*. There are other amendments which are not relevant.

- (ii) used in connection with the supply of petroleum to persons in the United Kingdom.
- (5) The condition referred to in paragraph 3(b)(iv) is that the qualifying entity is or will be an owner or operator of the new upstream petroleum facility.
- (6) The condition referred to in paragraph 3(d) is that—
  - (a) the qualifying entity is an owner or operator of any individual generating asset that has a total installed capacity equal to or greater than 100 megawatts; or
  - (b) the relevant capacity of the qualifying entity is equal to or greater than one gigawatt.
- (7) For the purposes of sub-paragraph (6)(b), the “relevant capacity” of the qualifying entity is the total of—
  - (a) the total installed capacity of any generating assets owned or operated by the qualifying entity;
  - (b) the total installed capacity of any generating assets owned or operated by the acquirer or group undertakings of the acquirer;
  - (c) the amount of customer load and generated electricity available to the qualifying entity for aggregation; and
  - (d) the amount of customer load and generated electricity available to the acquirer or group undertakings of the acquirer for aggregation.
- (8) The condition referred to in paragraph 3(f)(i) is that the gas processing facility has the technological capacity to carry on gas processing operations in relation to greater than 6 million cubic metres of gas per day.
- (9) The condition referred in paragraph 3(f)(ii) is that the LNG import or export facility has the technological capacity to carry on the importation, regasification or liquefaction of greater than 6 million cubic metres of gas per day.
- (10) The conditions referred to in paragraph 3(g) are that—
  - (a) the qualifying entity carries on any downstream oil activity; and
  - (b) the qualifying entity—
    - (i) has capacity of greater than 500,000 tonnes; or
    - (ii) owns a facility in the United Kingdom that has capacity of greater than 50,000 tonnes.
- (11) For the purposes of sub-paragraph (10)—
  - (a) a qualifying entity “has capacity of greater than” a specified number of tonnes if any downstream oil activity was carried on in the United Kingdom by that qualifying entity in relation to greater than that number of tonnes of oil in at least one of the three calendar years preceding the year in which a person gains control, by virtue of one or more of the cases described in subsection (2), (5) or (6) of section 8 of the Act, of the qualifying entity; and
  - (b) a facility “has capacity of greater than” a specified number of tonnes if it was used for the purposes of any downstream oil activity in relation to greater than that number of tonnes of oil in at least one of the three calendar years preceding the year in which a person gains control, by virtue of one or more of the cases described in subsection (2), (5) or (6) of section 8 of the Act, of the qualifying entity.