



# Gas Act 1986

## 1986 CHAPTER 44

### PART I

#### GAS SUPPLY

#### *[<sup>F1</sup> Alteration of activities requiring licence]*

#### Textual Amendments

- F1** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### **41C** [<sup>F2</sup> Power to alter activities requiring licence.]

- (1) The Secretary of State may by order provide—
  - (a) that specified activities are to become licensable activities; or
  - (b) that specified activities are to cease to be licensable activities.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 5(1).
- (3) An order under this section may make consequential, transitional, incidental or supplementary provision including—
  - (a) amendments (or repeals) in any provision of this Act or any other enactment; and
  - (b) provision modifying any standard conditions of licences or (in the case of an order under subsection (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.
- (4) An order under this section may only provide for activities to become licensable activities if they are activities connected with—

*Status: Point in time view as at 26/11/2008.*

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- (a) the conveyance of gas through pipes to premises or to pipe-line systems operated by gas transporters;
  - [<sup>F3</sup>(aa) participation in the operation of a gas interconnector;]
  - (b) the supply to premises of gas conveyed through pipes; or
  - (c) arranging with gas transporters for gas to be introduced into, conveyed by means of or taken out of pipe-line systems operated by the gas transporters.
- (5) An order under this section providing for activities to become licensable activities may only be made on the application of the Authority made in accordance with section 41D.
- (6) An order under this section providing for activities to cease to be licensable activities may be made either—
- (a) on the application of the Authority made in accordance with section 41G; or
  - (b) following consultation by the Secretary of State in accordance with section 41H.
- (7) An order under this section may provide that it is to remain in force only for a period specified in the order.
- (8) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

#### Textual Amendments

- F2** Ss. 41C-41H and cross-heading inserted (1.10.2001) by [2000 c. 27, s. 88](#) (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)
- F3** S. 41C(4)(aa) inserted (14.8.2006) by [Energy Act 2004 \(c. 20\), ss. 149\(10\), 198\(2\)](#); S.I. 2006/1964, art. 2, [Sch.](#)

#### [<sup>F4</sup>41D] Application by Authority for order including new activities.

- (1) If the Authority proposes to make an application for an order providing for activities to become licensable activities, it shall give notice—
- (a) stating that it proposes to make an application for an order providing for the activities to become licensable activities;
  - (b) setting out the conditions which it would expect such an order to determine to be standard conditions for the purposes of licences authorising the undertaking of the activities and any other conditions which it would expect to be included in such licences; and
  - (c) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given by serving a copy on the Council and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of—
- (a) persons appearing to it to be carrying on, or be intending to carry on, the activities; and

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- (b) any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities.
- (3) If an objection has been duly made (and not withdrawn) by a person who is carrying on or intends to carry on the activities, the Authority shall make a reference to the Competition Commission under section 41E before making the application.
- (4) In any other case where the Authority considers it appropriate to make a reference to the Commission under section 41E before making the application, the Authority may make such a reference.
- (5) If a reference is made to the Commission, the application shall not be made unless the Commission has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest.
- (6) The application shall set out—
  - (a) the activities which the Authority considers should become licensable activities; and
  - (b) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question and any other conditions which the Authority would expect to be included in such licences.]

#### Textual Amendments

**F4** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F5</sup>41E] References to Competition Commission.

- (1) A reference to the Competition Commission under this section shall require the Commission to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Authority may, at any time, by notice given to the Commission vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the Commission shall give effect to the variation.
- (3) The Authority shall specify in the reference, or a variation of the reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
  - (a) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities specified in the reference and any other conditions which the Authority would expect to be included in such licences; and
  - (b) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have.

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- (4) As soon as practicable after making the reference, or a variation of the reference, the Authority shall serve a copy of it on the Council and publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of—
- (a) persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it; and
  - (b) any other persons appearing to the Authority to be likely to be affected by it.
- (5) The Authority shall, for the purpose of assisting the Commission in carrying out the investigation on the reference, give to the Commission—
- (a) any information which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within its power to give, in relation to any such matters,
- and the Commission shall take account of the information for the purpose of carrying out the investigation.
- (6) In determining for the purposes of this section whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the Commission shall have regard to—
- (a) the matters referred to in section 4AA;
  - (b) any social or environmental policies set out or referred to in guidance issued under section 4AB; and
  - (c) any advice given by [<sup>F6</sup>the Health and Safety Executive] under section 4A (advice about health and safety in relation to gas).

<sup>F7</sup>(7) .....

<sup>F7</sup>(8) ..... ]

#### Textual Amendments

- F5** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F6** Words in s. 41E(6)(c) substituted (1.4.2008) by The Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, Sch. 3 (with art. 21, Sch. 2)
- F7** S. 41E(7)(8) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 15(11), Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### [<sup>F8</sup>41EA References under section 41E: time limits

- (1) Every reference under section 41E above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 41E above shall not have effect (in particular for the purposes of section 41D(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.

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- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.]

#### Textual Amendments

**F8** S. 41EA, 41EB inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 15(12); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### [<sup>F8</sup>41EB References under section 41E: application of Enterprise Act 2002

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 41E above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 41E above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words [<sup>F9</sup>“the OFT, OFCOM,”] and “or the Secretary of State” were omitted.

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- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.]

#### Textual Amendments

- F8** S. 41EA, 41EB inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 15(12); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F9** Words in s. 41EB(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 16 para. 2 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

#### [<sup>F10</sup>41F Reports on references.

- (1) In making a report on a reference under section 41E, the Competition Commission shall include in the report definite conclusions on whether the fact that the activities specified in the reference (or the reference as varied) are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Commission shall also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions.
- (3) Where the Commission concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it shall specify in the report—
- the effects adverse to the public interest which that fact has or may be expected to have; and
  - any modifications to the conditions specified in the reference in accordance with section 41E(3)(a) which they consider appropriate.

[ For the purposes of section 41D(5), a conclusion contained in a report of the

<sup>F11</sup>(3A) Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(3B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 41E as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

[<sup>F12</sup>(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 41E.

(4A) In making any report on a reference under section 41E the Competition Commission must have regard to the following considerations before disclosing any information.

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- (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (4C) The second consideration is the need to exclude from disclosure (so far as practicable)
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.]
- (5) A report of the Commission on a reference under section 41E shall be made to the Authority.
- (6) On receiving the report, the Authority shall send a copy of it to the Secretary of State.
- (7) Subject to subsection (8), the Authority shall, not less than 14 days after the copy is received by the Secretary of State, send another copy to the Council and publish that other copy in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (8) If it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in subsection (7), direct the Authority to exclude that matter from the copy of the report to be sent to the Council and published under that subsection.]

#### Textual Amendments

- F10** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)
- F11** S. 41F(3A)(3B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 15(13)(a); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F12** Ss. 41F(4)-(4D) substituted for s. 41F(4) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 15(13)(b); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### [<sup>F13</sup>41G Application by Authority for order excluding activities.

- (1) Before making an application for an order providing for activities to cease to be licensable activities the Authority shall give notice—
- (a) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
- and shall consider any representations or objections duly made and not withdrawn.
- (2) The notice shall be given—

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- (a) by serving a copy on the Secretary of State, the Health and Safety Executive and the Council; and
  - (b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by such an order.
- (3) An application under this section shall set out—
- (a) the activities which the Authority considers should cease to be licensable activities; and
  - (b) the Authority’s reasons for proposing that the order be made.]

#### Textual Amendments

**F13** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F14</sup>41H Consultation by Secretary of State about order excluding activities.

- (1) If the Secretary of State proposes to make an order providing for activities to cease to be licensable activities (otherwise than on an application by the Authority under section 41G), he shall give notice—
- (a) stating that he proposes to make an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
- and shall consider any representations or objections duly made (and not withdrawn).
- (2) The notice shall be given—
- (a) by serving a copy on the Authority, the Health and Safety Executive and the Council; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by such an order.]

#### Textual Amendments

**F14** Ss. 41C-41H and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, arts. 1(2), 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F15</sup>41HANew licensable activities: smart meters

- (1) The Secretary of State may by order amend this Part so as to provide—
- (a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or
  - (b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 5(1).



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- (3) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.
- (4) In this section—
  - (a) “relevant meter” means a meter of a kind prescribed by the order;
  - (b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.
- (5) An order under this section may make consequential, transitional, incidental or supplementary provision, including—
  - (a) amendments (or repeals) in any provision of this Act or any other enactment;
  - (b) in the case of an order under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;
  - (c) provision modifying any standard conditions of licences.
- (6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision—
  - (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;
  - (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;
  - (c) specifying that a licence, and any modification of a licence, must be in writing;
  - (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  - (e) conferring functions on the Secretary of State or the Authority.
- (7) An order under this section may provide that it is to remain in force only for the period specified in the order.

#### **Textual Amendments**

**F15** Ss. 41HA-41HC inserted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), s. 110(1)(b), [Sch. 4 para. 1](#)

#### **41HB Section 41HA: supplemental**

- (1) Before making an order under section 41HA, the Secretary of State must consult—
  - (a) the Authority, and
  - (b) such other persons as the Secretary of State thinks appropriate.
- (2) The power to make such an order may not be exercised after the end of the period of 5 years beginning with the day on which section 41HA comes into force.
- (3) An order under section 41HA may not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Subsections (1) to (3) of section 47 apply in relation to orders under section 41HA as they apply in relation to regulations under this Part.

*Status: Point in time view as at 26/11/2008.*

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### Textual Amendments

**F15** Ss. 41HA-41HC inserted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), s. 110(1)(b), [Sch. 4 para. 1](#)

## 41HC Competitive tenders for licences for new licensable activities

- (1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.
- (2) In this section “new licensable activities” means one or more activities which are the subject of an order under section 41HA(1)(a).
- (3) The regulations may—
  - (a) provide for the determination to be made by the Secretary of State or the Authority;
  - (b) provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;
  - (c) provide for the inclusion in such a proposal of an invitation to apply for such a licence;
  - (d) impose conditions in relation to the making of an application for a licence;
  - (e) impose restrictions in relation to persons who may apply for a licence;
  - (f) impose requirements as to the period within which applications must be made;
  - (g) make provision for regulating the manner in which applications are to be considered or determined;
  - (h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person's suitability for being granted both the licence and an electricity licence;
  - (i) confer on the Authority or the Secretary of State functions in connection with tender exercises.
- (4) The regulations may also include provision—
  - (a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;
  - (b) about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (5) In this section—
 

“electricity licence” means a licence for an activity to which an order under section 56FA(1)(a) of the Electricity Act 1989 applies;

“prescribed” means prescribed in or determined under regulations under this section;

“tender costs”, in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;

“tender exercise” means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.

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- (6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.]

**Textual Amendments**

**F15** Ss. 41HA-41HC inserted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), s. 110(1)(b), [Sch. 4 para. 1](#)

[<sup>F16</sup>**41I Service by Authority of certain notices on Council.**

Where the Authority is required by any provision of this Part to publish a notice or any other document, the Authority shall send a copy of the document to the Council.]

**Textual Amendments**

**F16** S. 41I inserted (20.12.2000) by [2000 c. 27](#), s. [18\(5\)](#); S.I. 2000/3343, art. 2, [Sch.](#) (subject to transitional provisions in [arts. 3-15](#))

**Status:**

Point in time view as at 26/11/2008.

**Changes to legislation:**

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