



Utilities Act 2000

2000 CHAPTER 27

PART V

AMENDMENT OF THE GAS ACT 1986

Gas licensing

74 Gas licence conditions

(1) Section 7B of the 1986 Act (general provisions about licences) is amended as follows.

(2) After subsection (2) there is inserted—

“(2A) Where the Authority proposes to refuse the application, it shall give to the applicant a notice—

- (a) stating that it proposes to refuse the application;
- (b) stating the reasons why it proposes to refuse the application; and
- (c) specifying the time within which representations with respect to the proposed refusal may be made,

and shall consider any representations which are duly made and not withdrawn.”

(3) In subsection (4)—

- (a) in paragraph (a) for “section 4 or 4A above” there is substituted “sections 4AA, 4AB and 4A”; and
- (b) paragraph (b) (which is superseded by provision made in section 4AA) is omitted.

(4) After subsection (4) there is inserted—

“(4A) Without prejudice to the generality of paragraph (a) of subsection (4), conditions included in a licence under section 7 by virtue of that paragraph—

- (a) may require the licence holder to enter into agreements with other persons for the use of any pipe-line system of his (wherever situated

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and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions;

- (b) may include provision for determining the terms on which such agreements are to be entered into.”

(5) In subsection (5)(a)(iii) for “specified or described” there is substituted “referred to”.

(6) In subsection (6) the words “specified or described in the licence” shall cease to have effect.

(7) After subsection (10) there is inserted—

“(11) In this section “prescribed” means prescribed in regulations made by the Authority.”

75 Exceptions from section 5 of 1986 Act

Section 5(2) of and Schedule 2A to the 1986 Act shall cease to have effect.

76 Gas transporters

(1) The authorised areas of persons holding gas transportation licences under section 7 of the 1986 Act (licensing of public gas transporters) shall cease to be exclusive and, accordingly, section 7 is amended as follows.

(2) In subsection (1), for “public gas transporter” (the expression defined in that subsection) there is substituted “gas transporter”.

(3) In paragraph (a) of subsection (2), for the words from “so much of” to the “and” preceding paragraph (b), there is substituted “any area specified in the licence as it has effect for the time being;”.

(4) After subsection (4) there is inserted—

“(4A) The Authority may, with the consent of the licence holder, direct that any licence under this section shall have effect as if any area or pipe-line system specified in the direction were not specified in the licence; and references in this Part to, or to the grant of, a restriction under this section, or a restriction of such a licence, shall be construed as references to, or to the giving of, such a direction.”

(5) In subsections (5) and (6) the words “or extension”, in each place where they appear and, in subsection (5), the words “or, in the case of an extension, such shorter time as may be prescribed” shall cease to have effect.

(6) Subsections (7) and (8) shall cease to have effect.

(7) References in any enactment in force immediately before the commencement of this section to a public gas transporter or to the holder of a licence under section 7 of the 1986 Act shall have effect after that commencement as if they were references to a gas transporter.

77 Restriction on use of certain pipe-lines for providing a supply of gas

- (1) After section 10 of the 1986 Act (duty of gas transporters to make a connection in certain circumstances) there is inserted—

“10A Restriction on use of certain pipe-lines for providing a supply

- (1) Any pipe-line of a gas transporter—
- (a) for the construction of which the execution of works has begun before the commencement of section 76 of the Utilities Act 2000 (abolition of geographical exclusivity of authorised areas of gas transporters); and
 - (b) which is situated in an area which, immediately before the commencement of that section, is the authorised area of a public gas transporter (the “other transporter”),
- shall not be used for the purpose of giving a supply of gas to any premises in that area at a rate less than 2,196,000 kilowatt hours per year unless the other transporter consents in writing to such use.
- (2) If the other transporter refuses or fails to give consent under subsection (1) consent may instead be given in writing by the Authority where it considers it appropriate to do so.
- (3) Consent given under this section may not be withdrawn.
- (4) In this section “pipe-line” has the same meaning as in the Pipe-lines Act 1962.”.
- (2) In section 28(8) of the 1986 Act (definition of “relevant requirement”) after “or (14)” there is inserted “10A(1).”.

78 Construction of pipe-lines by gas transporters

- (1) Section 22A of the 1986 Act (prohibition on execution of works for the construction of pipe-lines) is amended as follows.
- (2) In subsection (1)—
- (a) for the words “A public gas transporter shall not at any time execute in an authorised area of another public gas transporter” there is substituted “A gas transporter shall not at any time execute within 23 metres from a pipe-line of another gas transporter (the “other transporter”)”;
 - (b) in paragraph (b), the words “in that area” (in both places where they appear) shall cease to have effect;
 - (c) after paragraph (c) there is inserted “; and
 - (d) (subject to subsection (1C)) where the existing pipe-line is a relevant main of the other transporter, that transporter has consented in writing to the construction of the proposed pipe-line, either unconditionally or subject to conditions.”.
- (3) After subsection (1) there is inserted—
- “(1A) Subsection (1) does not apply if the proposed pipe-line is required to enable a gas transporter to comply with any duty imposed by section 10(2).

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(1B) Conditions imposed under subsection (1)(d) may relate to matters arising after the construction of the proposed pipe-line, including the use to be made of the pipe-line.

(1C) If the other transporter—

- (a) refuses or fails to give consent under subsection (1)(d); or
- (b) gives such consent subject to conditions,

consent may instead be given in writing by the Authority where it considers it appropriate to do so.

(1D) Consent under subsection (1C) may only be given unconditionally or, in a case falling within subsection (1C)(b), subject to the same conditions as were imposed by the other transporter.

(1E) A condition imposed on a gas transporter under this section shall be enforceable by civil proceedings by the other transporter for an injunction or for interdict or for any other appropriate relief.”

- (4) In subsection (3), after the definition of “pipe-line” there is inserted “; “relevant main” has the meaning given by section 10(12).”

79 Duty to facilitate competition

(1) Section 9 of the 1986 Act (general powers and duties of gas transporters) is amended as follows.

(2) In subsection (1)(b)—

- (a) after “him” there is inserted “—
 - (i);
 - and
- (b) after “premises” there is inserted “; or
 - (ii) to connect to that system a pipe-line system operated by an authorised transporter.”

(3) After subsection (1) there is inserted—

“(1A) It shall also be the duty of a gas transporter to facilitate competition in the supply of gas.”

(4) In subsection (2)(a), after “premises” there is inserted “, or a pipe-line system operated by an authorised transporter,”.

80 Gas transporters' duty to make a connection

(1) Section 10 of the 1986 Act (duty of gas transporters to make a connection in certain circumstances) is amended as follows.

(2) After subsection (3) there is inserted—

“(3A) A gas transporter may require any person who requires a connection under subsection (2)(b) to accept any terms—

- (a) indemnifying the transporter in respect of any liability connected with the laying of the pipe;

- (b) which it is reasonable in all the circumstances for that person to be required to accept.”
- (3) After subsection (5) there is inserted—
 - “(5A) Where in pursuance of subsection (2)(b) a gas transporter connects any premises to a relevant main by a pipe supplied and laid by the owner or occupier of the premises, the cost of making the connection shall, if and to the extent that the transporter so requires and the conditions of his licence so allow, be defrayed by the person supplying and laying the pipe.”
- (4) In subsection (6)(b) after “rights” there is inserted “or liabilities”.
- (5) In the words following subsection (6)(b), for “or rights” there is substituted “, rights or liabilities”.
- (6) In subsection (12) for “his authorised area” there is substituted “an authorised area of his”.

81 Standard conditions of gas licences

- (1) The standard conditions for the purposes of gas licences of any type (that is to say, licences under section 7, section 7A(1) or section 7A(2) of the 1986 Act) may contain provision—
 - (a) for any standard condition included in a licence of that type not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
 - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
 - (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
- (2) Such conditions as may be determined by the Secretary of State before the commencement of subsection (3), and published by him in such manner as he considers appropriate, in relation to gas licences of any type shall, subject to such modifications of the conditions made under Part I of the 1986 Act after the determination under this subsection, be standard conditions for the purposes of licences of that type (in place of the standard conditions which would otherwise be incorporated in licences of that type granted immediately before that commencement).
- (3) In section 8(1) of the 1986 Act (standard conditions of licences to be incorporated in gas licences)—
 - (a) the words “and sections 23(2), 26(1A) and 27(2) below” shall be omitted; and
 - (b) for “section 8(2) of the Gas Act 1995” there is substituted “section 81(2) of the Utilities Act 2000”.

82 Modification of standard conditions of gas licences

- (1) In section 8(7) of the 1986 Act (standard conditions of licences to be incorporated in gas licences)—
 - (a) after “such that” there is inserted—

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- “(a) the licence holder would not be unduly disadvantaged in competing with other holders of a licence under that subsection; and
(b)”;
and
(b) after “the holder of the licence” there is inserted “being modified”.
- (2) In section 23 of the 1986 Act (modification of conditions by agreement), for subsection (6) there is substituted—
- “(6) The Authority shall not make any modifications under subsection (1)(a) unless the licence holder has consented to the modifications and, in the case of standard conditions of a licence under subsection (1) or (2) of section 7A, the Authority is of the opinion that the modifications—
- (a) are requisite to meet the circumstances of the particular case; and
(b) are such that—
- (i) the licence holder would not be unduly disadvantaged in competing with other holders of licences under that subsection; and
(ii) no other holder of such a licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).
- (6A) The modification under subsection (1)(a) of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.”
- (3) For subsections (7) to (9) of that section there is substituted—
- “(7) The Authority may not under subsection (1)(b) make any modifications of the standard conditions of any licences unless—
- (a) no notice of objection to those modifications is given to the Authority within the time specified in the notice under subsection (3) by any relevant licence holder;
(b) if one or more relevant licence holders give notice of objection to the Authority within that time—
- (i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be prescribed; and
(ii) the percentage given by subsection (8) is less than such percentage as may be prescribed; or
(c) subsection (10) applies to the case.
- (8) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share in such manner as may be prescribed.”
- (4) For subsection (12) of that section there is substituted—
- “(12) In this section—
“prescribed” means prescribed by order made by the Secretary of State;

“relevant licence holder”, in relation to proposed modifications under subsection (1)(b) of standard conditions of licences of any type, means the holder of a licence of that type which-

- (a) is to be modified under the proposals by the inclusion of any new standard condition; or
- (b) includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 81(1) of the Utilities Act 2000) at the time specified in the notice under subsection (3).

(13) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

83 Modification following Competition Commission report

(1) In section 24(5) of the 1986 Act (modification references to the Competition Commission), after “this section” there is inserted “or in carrying out functions under section 26A”, after “the investigation” there is inserted “or the carrying out of those functions” and after “such investigation” there is inserted “or such functions”.

(2) In section 26 of that Act (modification of licence conditions following report of Competition Commission) after subsection (4) there is inserted—

“(4A) After considering any representations or objections made in response to proposals set out in a notice under subsection (3), the Authority shall give notice to the Competition Commission—

- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
- (b) stating the reasons for making the modifications.

(4B) The Authority shall include with the notice under subsection (4A) a copy of any representations or objections received in relation to the notice under subsection (3).

(4C) If the period of four weeks from the date on which the notice under subsection (4A) is given elapses without a direction under section 26A(1)(a) having been given to it, the Authority shall—

- (a) make the modifications set out in the notice; or
- (b) if a direction under section 26A(1)(b) has been given, make the modifications which are not specified in the direction.”

(3) After subsection (5) of that section there is inserted—

“(6) The modification under subsection (1) of part of a standard condition of a particular licence in consequence of a reference under section 24(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.”

(4) After section 26 of that Act there is inserted—

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“26A Competition Commission’s power to veto modifications following report

- (1) The Competition Commission (in this section referred to as “the Commission”) may, within the period of four weeks after the date on which it is given a notice under section 26(4A), direct the Authority—
 - (a) not to make the modifications set out in that notice; or
 - (b) not to make such of the modifications as may be specified in the direction;and the Authority shall comply with any such direction.
- (2) The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under section 26(4A) and on the application of the Commission, direct that the period for giving a direction under subsection (1) (and, accordingly, the period mentioned in section 26(4C)) shall be extended by 14 days.
- (3) The power to give a direction under subsection (1) may only be exercised in respect of such of the modifications set out in the notice under section 26(4A) (a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the Commission gives a direction under subsection (1), the Commission—
 - (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
 - (b) shall itself make such modifications of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
 - (i) if the direction was given under subsection (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
 - (ii) if the direction was given under subsection (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 26(4C) (b).
- (5) In exercising its function under subsection (4)(b) the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence.
- (6) Before making modifications under subsection (4)(b) the Commission shall give notice—
 - (a) stating that it proposes to make the modifications and setting them out;
 - (b) stating the reason why it proposes to make them;
 - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (7) A notice under subsection (4)(a) or (6) shall be given—
- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders.
- (8) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) Where, in consequence of a reference under section 24(1A), the Commission modifies under subsection (4)(b) the standard conditions of licences of any type (that is to say, licences under section 7 or section 7A(1) or 7A(2)) the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time.
- (10) Where the Commission modifies the standard conditions of licences of any type as mentioned in subsection (9) the Authority—
- (a) shall 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) shall publish the modifications made for those purposes in such manner as it considers appropriate.
- (11) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 24(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (12) The provisions mentioned in subsection (13) are to apply in relation to the exercise by the Commission of its functions under this section as if—
- (a) in section 82(1) and (2) of the Fair Trading Act 1973 references to a report of the Commission under that Act were references to a notice under subsection (4)(a), (6) or (8) of this section;
 - (b) in section 85 of that Act references to an investigation on a reference made to the Commission were references to an investigation by the Commission for the purposes of the exercise of its functions under this section.
- (13) The provisions are—
- (a) section 82(1) and (2) of the Fair Trading Act 1973 (general provisions as to reports under that Act);
 - (b) section 85 of that Act (attendance of witnesses and production of documents);
 - (c) section 24 of the Competition Act 1980 (modification of provisions about the Competition Commission's general functions); and
 - (d) Part II of Schedule 7 to the Competition Act 1998 (the Competition Commission's general functions).

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(14) This section does not apply to the modification of a licence following a report of the Commission made before the commencement of section 83(4) of the Utilities Act 2000.”

(5) In section 27 of that Act (modification of licences by order under enactments other than the 1986 Act), after subsection (1) there is inserted—

“(1A) The modification under subsection (1)(a) of part of a standard condition of a particular licence in consequence of a reference under section 24(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.”

84 The gas code

(1) Schedule 2B to the 1986 Act is amended as follows.

(2) After paragraph 6 (meters for disabled persons) there is inserted—

“Use of pre-payment meters

6A A pre-payment meter installed by an authorised supplier on any premises shall not be used to recover any sum other than a sum owing to an authorised supplier in respect of the supply of gas to those premises or the provision of the meter.”

(3) In paragraph 7 (recovery of gas charges etc.)—

(a) in sub-paragraph (1)(a) for the words from “the consumer’s” to “him” there is substituted “any premises of his (in this paragraph referred to as “the premises”)”;

(b) sub-paragraph (2) shall cease to have effect; and

(c) in sub-paragraph (3) for paragraphs (a) and (b) there is substituted—

“(a) install a pre-payment meter on the premises in place of the existing meter; or

(b) cut off the supply to the premises by disconnecting the service pipe at the meter or by such other means as he thinks fit;

and the supplier may recover any expenses incurred in so doing from the consumer.”

(4) In paragraph 23(2), for paragraph (c) there is substituted—

“(c) exercising a power conferred by paragraph 3(5) or 7(3)(a) (and testing gas fittings, and making any adjustments required for their safe operation, after the exercise of the power).”

85 Transfer of gas licences

For section 8AA of the 1986 Act (assignment of gas licences) there is substituted—

“8AA Transfer of licences

(1) A licence—

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- (a) shall be capable of being transferred by the licence holder, with the consent of the Authority, in accordance with this section and subject to any term of the licence relating to its transfer;
 - (b) may include conditions which must be complied with before the licence can be transferred.
- (2) A transfer may relate to the whole or any part of the licence.
- (3) The reference in subsection (2) to part of a licence is a reference to a part of the activities authorised by the licence (whether described by reference to activities being carried on by the licence holder or to activities which he is authorised to carry on).
- (4) Such consent may be given subject to compliance with such modification or other conditions as the Authority considers necessary or expedient.
- (5) In the case of a partial transfer, conditions imposed under subsection (4) may make as respects so much of the licence as is proposed to be retained by the transferor provision different from that made as respects so much of the licence as is proposed to be transferred.
- (6) In deciding whether to give its consent to a proposed transfer, the Authority shall apply the same criteria as it would apply if the Authority were deciding whether—
 - (a) in the case of a general transfer, to grant a corresponding licence to the transferee; or
 - (b) in the case of a partial transfer—
 - (i) to grant to the transferee a licence corresponding to so much of the licence as is proposed to be transferred; and
 - (ii) to grant to the transferor a licence corresponding to so much of the licence as is proposed to be retained.
- (7) The Authority shall—
 - (a) give the Health and Safety Executive not less than 28 days' notice of any proposal to consent to any proposed transfer; and
 - (b) give that Executive and the Secretary of State not less than 28 days' notice of any proposal to impose a modification condition.
- (8) If, before the expiry of the time specified in a notice given to the Secretary of State under subsection (7)(b), the Secretary of State directs the Authority not to impose the condition, the Authority shall comply with the direction.
- (9) Before giving consent to the transfer of a licence, the Authority shall give notice—
 - (a) stating that it proposes to grant consent to the transfer;
 - (b) stating the reasons why it proposes to give consent; and
 - (c) specifying the time from the date of publication of the notice (not being less than two months) within which representations or objections with respect to the transfer may be made,and shall consider any representations or objections that are duly made and not withdrawn.

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- (10) A notice under subsection (9) shall be given by publishing the notice in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the transfer.
- (11) A purported transfer of a licence shall be void—
- (a) if the licence is not capable of transfer or the Authority has not given its consent;
 - (b) if the purported transfer is in breach of a condition of the licence; or
 - (c) if there has, before the purported transfer, been a contravention of a condition subject to compliance with which the Authority's consent is given.
- (12) In this section—
- “transfer” includes any form of transfer or assignment or, in Scotland, assignation;
- “modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence.”

86 Exemptions from gas licensing

- (1) In subsection (1) of section 6A of the 1986 Act (exemptions from prohibition) the words “, after consultation with the Director,” shall be omitted.
- (2) After subsection (1) of that section there is inserted—
- “(1A) Before making an order under subsection (1) the Secretary of State shall give notice—
- (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
 - (b) stating the reasons why he proposes to make the order in the terms proposed; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made,
- and shall consider any representations which are duly made in respect of the proposals and not withdrawn.
- (1B) The notice required by subsection (1A) shall be given—
- (a) by serving a copy of it on the Authority 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 those likely to be affected by the proposed order.”

(3) For subsections (2) and (3) of that section there is substituted—

“(2) Notice of an exemption granted to a person shall be given—

 - (a) by serving a copy of the exemption on him; and
 - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.

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- (2A) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
- (a) persons of that class; and
 - (b) other persons who may be affected by it.
- (3) An exemption may be granted—
- (a) indefinitely; or
 - (b) for a period specified in, or determined by or under, the exemption.”
- (4) For subsection (5) of that section there is substituted—
- “(5) The Secretary of State may by order revoke an order by which an exemption was granted to a person or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) at the person’s request;
 - (b) in accordance with any provision of the order by which the exemption was granted; or
 - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (6) The Secretary of State may by order revoke an order by which an exemption was granted to persons of a class or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) in accordance with any provision of the order by which the exemption was granted; or
 - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (7) The Secretary of State may by direction withdraw an exemption granted to persons of a class from any person of that class—
- (a) at the person’s request;
 - (b) in accordance with any provision of the order by which the exemption was granted; or
 - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (8) Before—
- (a) making an order under subsection (5)(b) or (c) or (6); or
 - (b) giving a direction under subsection (7)(b) or (c),
- the Secretary of State shall consult the Authority and give notice of his proposal to do so (with reasons) and of a period within which representations may be made to him.
- (9) The notice under subsection (8) shall be given—
- (a) where the Secretary of State is proposing to make an order under subsection (5)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;
 - (b) where he is proposing to make an order under subsection (6), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and

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- (c) where he is proposing to give a direction under subsection (7)(b) or (c), by serving a copy of it on the person from whom he proposes to withdraw the exemption.”

87 Reasons for decisions under 1986 Act

For section 38A of the 1986 Act (duty to consider representations and give reasons) there is substituted—

“38A Reasons for decisions

- (1) This section applies to the following decisions of the Authority or the Secretary of State, namely—
 - (a) the revocation of a licence;
 - (b) the modification of the conditions of a licence;
 - (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of section 7B(5)(a)(i) or (ii);
 - (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of section 7B(5)(a)(iii);
 - (e) the determination of a dispute referred under section 27A(1);
 - (f) the making of a final order, the making or confirmation of a provisional order or the revocation of a final order or of a provisional order which has been confirmed.
- (2) As soon as reasonably practicable after making such a decision the Authority or the Secretary of State shall publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.
- (3) The Authority shall send a copy of a notice published in respect of a decision mentioned in paragraph (a), (b), (c), (d) or (f) of subsection (1) to the licence holder to whose licence, or to whom, the decision relates.
- (4) In preparing a notice under subsection (2) the Authority or the Secretary of State shall 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 it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.
- (5) This section does not apply to a decision resulting in any provision which the Secretary of State has under section 36(3) directed the Authority not to enter in the register required to be kept under that section.
- (6) In this section “final order” and “provisional order” have the same meanings as in section 28.”

88 Altering activities requiring gas licence

After section 41B of the 1986 Act (which is inserted by section 98 below) there is inserted—

“Alteration of activities requiring licence

41C 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—
 - (a) the conveyance of gas through pipes to premises or to pipe-line systems operated by gas transporters;
 - (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.

Status: This is the original version (as it was originally enacted).

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
 - (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.

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.
- (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 the Health and Safety Commission under section 4A (advice about health and safety in relation to gas).
- (7) The provisions mentioned in subsection (8) are to apply in relation to references under this section as if—
 - (a) the functions of the Commission in relation to those references were functions under the Fair Trading Act 1973;

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- (b) the expression “merger reference” included a reference under this section;
 - (c) in section 70 of the Fair Trading Act 1973—
 - (i) references to the Secretary of State were references to the Authority; and
 - (ii) the reference to three months were a reference to six months.
- (8) The provisions are—
- (a) sections 70 (time limit for report on merger), 85 (attendance of witnesses and production of documents) and 93B (false or misleading information) of the Fair Trading Act 1973;
 - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Commission’s general functions); and
 - (c) section 24 of the Competition Act 1980 (modification of provisions about performance of such functions).

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—
 - (a) the effects adverse to the public interest which that fact has or may be expected to have; and
 - (b) any modifications to the conditions specified in the reference in accordance with section 41E(3)(a) which they consider appropriate.
- (4) Section 82 of the Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the Commission on references under section 41E as it applies to reports of the Commission under that Act.
- (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.

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—
 - (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.

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.”

Status: This is the original version (as it was originally enacted).

Gas performance standards

89 Repeal of section 10(2) to (5) of Gas Act 1995

Subsections (2) to (5) of section 10 of the Gas Act 1995 shall cease to have effect and, accordingly, sections 33A to 33E of the 1986 Act are not liable to expire in accordance with those subsections.

90 Standards of performance in individual cases

- (1) In section 33A of the 1986 Act—
 - (a) in subsection (3)(a), after “section” there is inserted “or their rights under section 33AA”; and
 - (b) subsections (6) to (9) shall cease to have effect.
- (2) After section 33A of the 1986 Act there is inserted—

“33AA Standards of performance in individual cases: gas transporters

- (1) The Authority may make regulations prescribing such standards of performance in connection with the activities of gas transporters, so far as affecting customers or potential customers of gas suppliers, as in the Authority’s opinion ought to be achieved in individual cases.
- (2) Regulations under this section may only be made with the consent of the Secretary of State.
- (3) If a gas transporter fails to meet a prescribed standard, he shall make to any customer or potential customer of a gas supplier who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.
- (4) The regulations may—
 - (a) prescribe circumstances in which gas transporters are to inform customers or potential customers of gas suppliers of their rights under this section;
 - (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) as, in the Authority’s opinion, ought to be achieved in all cases;
 - (c) make provision as to the manner in which compensation under this section is to be made;
 - (d) prescribe circumstances in which gas transporters are to be exempted from any requirements of the regulations or this section; and
 - (e) if the Authority is of the opinion that the differences are such that no gas transporter would be unduly disadvantaged in competing with other gas transporters, make different provision with respect to different gas transporters.
- (5) Provision made under subsection (4)(c) may—
 - (a) require or permit compensation to be made on behalf of gas transporters by gas suppliers to customers or potential customers;

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- (b) require gas suppliers to provide services to gas transporters in connection with the making of compensation under this section.
- (6) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.

33AB Standards of performance in individual cases: disputes

- (1) Any dispute arising under section 33A or 33AA or regulations made under either of those sections—
 - (a) may be referred to the Authority by either party or, with the agreement of either party, by the Council; and
 - (b) on such a reference, shall be determined by order made by the Authority or, if it thinks fit, by such person (other than the Council) as may be prescribed.
- (2) A person making an order under subsection (1) shall include in the order his reasons for reaching his decision with respect to the dispute.
- (3) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.
- (4) An order under subsection (1) shall be final and shall be enforceable—
 - (a) in England and Wales, as if it were a judgment of a county court; and
 - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (5) In this section “prescribed” means prescribed by regulations made by the Authority with the consent of the Secretary of State.”

91 Overall standards of performance

After section 33B of the 1986 Act there is inserted—

“33BA Overall standards of performance: gas transporters

- (1) The Authority may from time to time—
 - (a) determine such standards of overall performance in connection with the activities of gas transporters as, in its opinion, ought to be achieved by them; and
 - (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.
- (2) Different standards may be determined for different gas transporters if the Authority is of the opinion that the differences are such that no gas transporter would be unduly disadvantaged in competing with other gas transporters.
- (3) It shall be the duty of every gas transporter to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.”

92 Standards of performance: procedures

After section 33BA of the 1986 Act (which is inserted by section 91 above) there is inserted—

“33BAA Procedures for prescribing or determining standards of performance

- (1) Before prescribing standards of performance in regulations under section 33A or 33AA, or determining standards of performance under section 33B or 33BA, the Authority shall—
 - (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
 - (b) publish a notice of its proposals in accordance with subsections (2) and (3) and consider any representations which are duly made in respect of those proposals; and
 - (c) consult the Council and other persons or bodies mentioned in subsection (4).
- (2) The notice required by subsection (1)(b) is a notice—
 - (a) stating that the Authority proposes to prescribe or determine standards of performance and setting out the standards of performance proposed;
 - (b) stating the reasons why it proposes to prescribe or determine those standards of performance; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.
- (3) A notice required by subsection (1)(b) shall be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals.
- (4) The persons or bodies to be consulted by the Authority under subsection (1)(c) are—
 - (a) gas suppliers (in the case of standards of performance under section 33A or 33B) or gas transporters and gas suppliers (in the case of standards of performance under section 33AA or 33BA); and
 - (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the regulations or determination.
- (5) The Authority shall make arrangements for securing that notices under subsection (1)(b), regulations under section 33A or 33AA and determinations under section 33B or 33BA are made available to the public by whatever means it considers appropriate.”

93 Information with respect to levels of performance

- (1) Section 33C of the 1986 Act is amended as follows.
- (2) In subsection (1), paragraph (c) (and the word “and” preceding it) shall cease to have effect.

(3) After subsection (1) there is inserted—

“(1A) The Authority shall from time to time collect information with respect to—
(a) the compensation made by gas transporters under section 33AA;
(b) the levels of overall performance achieved by gas transporters.”

(4) In subsection (2)(b) the words “or 33BB above” shall cease to have effect.

(5) After subsection (2) there is inserted—

“(2A) At such times as the Authority may direct, each gas transporter shall give the following information to the Authority—
(a) as respects each standard prescribed by regulations under section 33AA, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
(b) as respects each standard determined under section 33BA, such information with respect to the level of performance achieved by the transporter as the Authority may direct.”

(6) Subsection (3) shall cease to have effect.

94 Information to be given to customers

For section 33D of the 1986 Act there is substituted—

“33D Information to be given to customers about overall performance

- (1) The Authority may make regulations requiring such information as may be specified or described in the regulations about—
- (a) the standards of overall performance determined under section 33B or 33BA; and
 - (b) the levels of performance achieved as respects those standards,
- to be given by gas suppliers or gas transporters to customers or potential customers of gas suppliers.
- (2) Regulations under this section may include provision—
- (a) as to the form and manner in which and the frequency with which information is to be given; and
 - (b) requiring information about the matters mentioned in subsection (1)(a) or (b) and relating to gas transporters to be given by gas transporters to gas suppliers and by gas suppliers to their customers or potential customers.”

Enforcement of obligations

95 Financial penalties

(1) After section 30 of the 1986 Act there is inserted—

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“30A Penalties

- (1) Where the Authority is satisfied that a licence holder—
 - (a) has contravened or is contravening any relevant condition or requirement; or
 - (b) has failed or is failing to achieve any standard of performance prescribed under section 33A or 33AA,the Authority may, subject to section 30C, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.
- (2) The Authority shall not impose a penalty on a licence holder under subsection (1) where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
- (3) Before imposing a penalty on a licence holder under subsection (1) the Authority shall give notice—
 - (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
 - (b) setting out the relevant condition or requirement or the standard of performance in question;
 - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
 - (d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (4) Before varying any proposal stated in a notice under subsection (3)(a) the Authority shall give notice—
 - (a) setting out the proposed variation and the reasons for it; and
 - (b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after imposing a penalty, the Authority shall give notice—
 - (a) stating that it has imposed a penalty on the licence holder and its amount;
 - (b) setting out the relevant condition or requirement or the standard of performance in question;
 - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and

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- (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.
- (6) The licence holder may, within 21 days of the date of service on him of a notice under subsection (5), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.
- (7) Any notice required to be given under this section shall be given—
 - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
 - (b) by serving a copy of the notice on the licence holder; and
 - (c) by serving a copy of the notice on the Council.
- (8) No penalty imposed by the Authority under this section may exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Secretary of State).
- (9) An order under subsection (8) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (10) Any sums received by the Authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (11) The power of the Authority under subsection (1) is not exercisable in respect of any contravention or failure before the commencement of section 95 of the Utilities Act 2000.

30B Statement of policy with respect to penalties

- (1) The Authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) The Authority may revise its statement of policy and where it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

30C Time limits on the imposition of penalties

- (1) Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of

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the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period—

- (a) the notice under section 30A(3) relating to the penalty is served on the licence holder under section 30A(7), or
 - (b) a notice relating to the contravention or failure is served on the licence holder under section 38(1).
- (2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 30A(3) was served on the licence holder under section 30A(7)—
- (a) within three months from the confirmation of the provisional order or the making of the final order, or
 - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

30D Interest and payment of instalments

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under subsection (6) of section 30A in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the Authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under that subsection, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

30E Appeals

- (1) If the licence holder on whom a penalty is imposed is aggrieved by—
 - (a) the imposition of the penalty;
 - (b) the amount of the penalty; or
 - (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,the licence holder may make an application to the court under this section.
- (2) An application under subsection (1) must be made—
 - (a) within 42 days from the date of service on the licence holder of a notice under section 30A(5), or
 - (b) where the application relates to a decision of the Authority on an application by the licence holder under section 30A(6), within 42 days from the date the licence holder is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4), the court—

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- (a) may quash the penalty;
 - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
 - (c) in the case of an application under subsection (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
- (a) that the imposition of the penalty was not within the power of the Authority under section 30A;
 - (b) that any of the requirements of subsections (3) to (5) or (7) of section 30A have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance; or
 - (c) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.
- (9) 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.

30F Recovery of penalties

Where a penalty imposed under section 30A(1), or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 30E during the period within which such an application can be made, or
- (b) an application has been made under that section and determined,

the Authority may recover from the licence holder, as a civil debt due to it, any of the penalty and any interest which has not been paid.”

- (2) In section 28 of the 1986 Act (orders for securing compliance with certain provisions)
- (a) subsection (7A) (power to impose financial penalty in a final order under section 28) and subsection (9) (payment of sums received by way of financial penalty under section 28 to be paid into the Consolidated Fund) shall cease to have effect;

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- (b) in subsection (8) (interpretation) for “and 30” there is substituted “to 30F”.
- (3) Section 30(2)(b) of the 1986 Act (power of court to quash or substitute a monetary penalty on an application under section 30) shall cease to have effect.
- (4) In section 36 of the 1986 Act (keeping of a register)—
 - (a) in subsection (1), for “and final and provisional orders” there is substituted “, final and provisional orders and penalties imposed under section 30A(1)”;
 - (b) in subsection (2), after paragraph (e) there is inserted “; and
 - (f) every notice under section 30A(5).”
- (5) In section 38(1) of the 1986 Act (power to require information, etc.)—
 - (a) for “Director” in each place where it appears, there is substituted “Authority”;
 - (b) after “requirement” there is inserted “or may be failing, or may have failed, to achieve any standard of performance prescribed under section 33A or 33AA,”;
 - (c) for the words from “his functions” to “signed by him” there is substituted “its functions under section 28 or 30A to 30F in relation to that matter, by notice in writing”;
 - (d) for “him” there is substituted “it”.

96 Licence enforcement

- (1) The 1986 Act is amended as follows.
- (2) In subsection (1) of section 28 (orders for securing compliance with certain provisions), for “and (5)” there is substituted “, (5) and (5A)”.
- (3) In subsections (2), (4) and (6) of that section, for “subsection (5)” there is substituted “subsections (5) and (5A)”.
- (4) In subsection (5) of that section paragraphs (aa) and (b) shall cease to have effect.
- (5) After subsection (5) of that section there is inserted—

“(5A) The Authority is not required to make a final order or make or confirm a provisional order if it is satisfied—

 - (a) that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
 - (b) that the contraventions were or the apprehended contraventions are of a trivial nature.”
- (6) In section 29 (procedural requirements for making or confirming orders under section 28), in subsections (1)(c) and (4)(b), for “28” there is substituted “21”.
- (7) Subsections (2) to (6) do not have effect in relation to—
 - (a) a provisional order which has been made before the commencement of the subsection making the amendment; or
 - (b) a final order in respect of which notice has been given under section 29(1) of the 1986 Act before the commencement of the subsection making the amendment.

Remuneration and service standards

97 Links between directors' remuneration and gas service standards

After section 33E of the 1986 Act there is inserted—

“Service standards and remuneration

33F Remuneration and service standards

- (1) This section applies to any company which is authorised by a licence to carry on activities subject to price regulation.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
 - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3); and
 - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to levels of performance as respects service standards in connection with activities subject to price regulation.
- (4) A description under subsection (2)(b) must include in particular—
 - (a) a statement of when the arrangements were made;
 - (b) a description of the service standards in question;
 - (c) an explanation of the means by which the levels of performance as respects those service standards are assessed; and
 - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) must also state—
 - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3); or
 - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.
- (6) A description under subsection (5) must—
 - (a) include in particular the matters listed in subsection (4)(a), (b) and (c); and
 - (b) where the arrangements described are different from any arrangements described under subsection (2)(b), state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) must be made to the Authority in such manner as may be required by the Authority.

Status: This is the original version (as it was originally enacted).

- (8) The statement required by subsection (2)—
- (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
 - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—
- “activities subject to price regulation”, in relation to any company, are activities for which—
- (a) a maximum price which may be charged by the company, or a method for calculating such a maximum price; or
 - (b) a maximum revenue which may be received by the company, or a method for calculating such a maximum revenue,
- is determined by or under the licence granted under this Part;
- “company” means a company within the meaning of the Companies Act 1985 which is limited by shares;
- “remuneration” in relation to a director of a company—
- (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
 - (b) includes remuneration in respect of any of his services while a director of the company;
- “service standards” in relation to any company, means standards relating to the quality of service received by customers or potential customers of the company, including any such standards which are—
- (a) set by or under any conditions included in a licence granted under this Part;
 - (b) prescribed by the Authority in regulations made under section 33A and 33AA;
 - (c) determined by the Authority under section 33B or 33BA; or
 - (d) set or agreed to by the company.”

Miscellaneous

98 Help for disadvantaged groups of gas customers

After section 41 of the 1986 Act there is inserted—

Adjustment of charges

41A Adjustment of charges to help disadvantaged groups of customers

- (1) If the Secretary of State considers that members of any group (a “disadvantaged group”) of customers of authorised suppliers are treated less favourably than other customers of theirs as respects charges for gas, he may make an order

containing a scheme for the adjustment of charges for gas with a view to eliminating or reducing the less favourable treatment.

- (2) The scheme may include—
 - (a) provision for the adjustment of charges by authorised shippers or authorised transporters (as well as by suppliers); and
 - (b) in relation to charges payable to suppliers, provision for the adjustment of charges payable by customers who are not members of the disadvantaged group (as well as by persons who are).
- (3) The scheme shall—
 - (a) describe the disadvantaged group;
 - (b) specify the persons whose charges are covered by the scheme; and
 - (c) set out the basis of the adjustment of the charges.
- (4) If the scheme does not relate to the whole of Great Britain, it shall specify the area or areas to which it relates.
- (5) The scheme may—
 - (a) require authorised suppliers, authorised shippers or authorised transporters to supply information of any specified description, in any specified form, to any other such persons; and
 - (b) provide for the modification of conditions of licences, for the purpose of facilitating the implementation of the scheme.
- (6) 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.

41B Orders: supplementary

- (1) Before making an order under section 41A, the Secretary of State shall give notice—
 - (a) stating that he proposes to make an order and setting out its effect;
 - (b) stating the reasons why he proposes to make the order; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given—
 - (a) by serving a copy of it on the persons whose charges are covered by the proposed order; and
 - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing the proposed order to the attention of other persons likely to be affected by it.
- (3) An order under section 41A shall continue in force for such period not exceeding three years as is specified in the order; but that does not prevent the making of another order to come into force at the end of that period.

Status: This is the original version (as it was originally enacted).

- (4) The Secretary of State may by order require authorised suppliers, authorised shippers or authorised transporters to supply information of any specified description, in any specified form, to any other such persons for the purpose of enabling the making of an order under section 41A.
- (5) The Authority—
 - (a) shall monitor the effect of orders under section 41A and report its findings to the Secretary of State whenever he directs it to do so; and
 - (b) may require authorised suppliers, authorised shippers or authorised transporters to supply to the Authority, in any specified form, such information as it requires for carrying out that duty.
- (6) In section 41A references to customers do not include customers of a description excluded by an order made by the Secretary of State.
- (7) In this section and section 41A “authorised shipper” means a person authorised by a licence or exemption to arrange with any gas transporter for gas to be introduced into, conveyed by means of, or taken out of a pipe-line system operated by that transporter.”

99 Energy efficiency requirements for gas transporters and suppliers

For section 33BB of the 1986 Act (promotion of efficient use of gas) there is substituted—

“33BC Promotion of the efficient use by consumers of gas

- (1) The Secretary of State may by order impose—
 - (a) on each gas transporter (or each gas transporter of a specified description); and
 - (b) on each gas supplier (or each gas supplier of a specified description), an obligation to achieve, within a specified period and in accordance with the order, the energy efficiency target to be determined by the Authority under the order for that transporter or supplier (and that obligation is referred to in this section as an “energy efficiency obligation”).
- (2) In this section “energy efficiency target” means a target for the promotion of improvements in energy efficiency, that is to say, efficiency in the use by consumers of gas conveyed through pipes, electricity or any other source of energy which is specified in the order.
- (3) An order under this section may specify criteria by reference to which the Authority is to determine energy efficiency targets for the gas transporters and gas suppliers on whom obligations are imposed by the order.
- (4) The Secretary of State and the Authority shall carry out their respective functions under this section in the manner he or it considers is best calculated to ensure that no gas transporter is unduly disadvantaged in competing with other gas transporters and no gas supplier is unduly disadvantaged in competing with other gas suppliers.
- (5) The order may make provision generally in relation to the energy efficiency obligations which it imposes, including in particular provision—

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- (a) as to the treatment of persons who become gas transporters or gas suppliers after the beginning of the period to which the order relates;
 - (b) as to the action which qualifies for the purpose of meeting the whole or any part of an energy efficiency target;
 - (c) as to the method by which improvements in energy efficiency attributable to any qualifying action are to be assessed;
 - (d) requiring transporters and suppliers to give to the Authority specified information, or information of a specified nature, about their proposals for complying with their energy efficiency obligations;
 - (e) requiring the Authority to determine—
 - (i) whether any proposed action qualifies for the purpose of achieving the whole or any part of a person’s energy efficiency target; and
 - (ii) if so, what improvement in energy efficiency is to be attributed for that purpose to the proposed action or to any result of that action specified in the determination; and
 - (f) requiring transporters or suppliers to produce to the Authority evidence of a specified kind demonstrating that they have complied with their energy efficiency obligations.
- (6) The order may make provision authorising the Authority to require a transporter or supplier to provide it with specified information, or information of a specified nature, relating to—
- (a) his proposals for complying with his energy efficiency obligation; or
 - (b) the question whether he has complied with that obligation.
- (7) The order may make provision as to circumstances in which—
- (a) a person’s energy efficiency target may be altered during the period to which the order relates;
 - (b) the whole or any part of a person’s energy efficiency target may be treated as having been achieved by action taken otherwise than by or on behalf of that person;
 - (c) any action taken before the period to which the order relates may be treated as qualifying action taken during that period;
 - (d) the whole or any part of a person’s energy efficiency target may be transferred to another gas transporter or gas supplier or to an electricity distributor or electricity supplier (within the meaning of Part I of the Electricity Act 1989); or
 - (e) a person may carry forward the whole or any part of his energy efficiency target for the period to which the order relates to a subsequent period.
- (8) The order may—
- (a) provide for exceptions from any requirement of the order;
 - (b) provide that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of this Part;
 - (c) make supplementary, incidental and transitional provision; and
 - (d) subject to subsection (4), make different provision for different cases (including different provision in relation to different transporters or suppliers).

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- (9) The order may include provision for treating the promotion of the supply to premises of—
- (a) electricity generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity;
 - (b) heat produced in association with electricity or steam produced from (or air or water heated by) such heat; or
 - (c) any gas or liquid subjected to a cooling effect produced in association with electricity,
- as promotion of improvements in energy efficiency.
- (10) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.
- (11) Before making an order under this section the Secretary of State shall consult the Authority, the Council, gas transporters and gas suppliers and such other persons as he considers appropriate.
- (12) An order under this section shall not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.”

100 Exercise of powers to make regulations

For section 47(7) of the 1986 Act (power to make regulations to be exercisable by statutory instrument) there is substituted—

- “(7) Any power to make regulations conferred by this Part on the Secretary of State or the Authority shall be exercisable by statutory instrument.
- (8) Any statutory instrument containing regulations under this Part made by the Secretary of State shall, except as otherwise provided by this Act, be subject to annulment in pursuance of a resolution of either House of Parliament.”

101 Standards of gas quality

After section 15A of the 1986 Act (billing disputes) there is inserted—

“16 Standards of gas quality

- (1) The Authority may, with the consent of the Secretary of State, prescribe—
- (a) standards of pressure and purity to be complied with by gas transporters in conveying gas to premises or to pipe-line systems operated by other gas transporters; and
 - (b) other standards with respect to the properties, condition and composition of gas so conveyed.
- (2) Before making any regulations under this section the Authority shall consult such persons and organisations as it considers appropriate and such gas transporters as appear to it to be affected by the regulations.

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- (3) The Authority shall appoint competent and impartial persons for the purpose of—
- (a) carrying out tests of gas, apparatus or equipment in accordance with regulations under this section; and
 - (b) assisting the Authority in exercising functions under this section and regulations made under it.
- (4) Regulations under this section may make provision—
- (a) for requiring tests of gas conveyed by gas transporters to be carried out by persons appointed under subsection (3) or by gas transporters for the purpose of ascertaining whether the gas conforms with the standards prescribed by the regulations;
 - (b) for requiring such tests to be carried out on the basis of samples taken by persons appointed under subsection (3) or by gas transporters; and
 - (c) for requiring samples of gas taken under paragraph (b) to be provided by gas transporters for the purpose of carrying out such tests.
- (5) Regulations under this section may make provision—
- (a) for requiring such premises, apparatus and equipment as the Authority may direct to be provided and maintained by gas transporters for the purpose of carrying out tests required under subsection (4)(a);
 - (b) for requiring tests of apparatus and equipment so provided to be carried out by persons appointed under subsection (3); and
 - (c) for requiring gas transporters to carry out tests of apparatus and equipment so provided and maintained by them.
- (6) Regulations under this section may make provision—
- (a) as to the places or premises and the times at which, and the manner in which—
 - (i) tests under this section are to be carried out;
 - (ii) samples of gas are to be taken and provided under this section; and
 - (iii) results of tests under this section are to be notified or made available;
 - (b) for the Authority to require by direction any matter which may be required by regulations by virtue of paragraph (a);
 - (c) for persons representing the gas transporter concerned to be present during the carrying out of any tests carried out by persons appointed under subsection (3);
 - (d) for the results of tests under this section to be made available to other licence holders and to the public;
 - (e) for requiring gas transporters to notify the results of such tests carried out by them to the Authority or to any person appointed under subsection (3);
 - (f) for conferring powers of entry on property owned or occupied by gas transporters for the purpose of carrying out tests under this section and otherwise for the purposes of the regulations.
- (7) Subject to subsection (8), the Authority may by notice in writing require a gas transporter to give to the Authority, or to any person appointed by it for the purpose, within such time and at such place as may be specified in the notice,

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such information as the Authority may reasonably require for the purpose of making regulations under this section or of giving directions under such regulations.

- (8) A gas transporter shall not be required under subsection (7) to give any information which he could not be compelled to give in evidence in civil proceedings before the High Court or, in Scotland, the Court of Session.
- (9) Every person who is a gas transporter during any period shall pay to the Authority such proportion as the Authority may determine of such part of its expenses for that period as the Authority may determine to be attributable to its functions in connection with the testing of gas for the purposes of this section.
- (10) It shall be the duty of every gas transporter to conduct his business in such a way as can reasonably be expected to secure compliance with the standards set under subsection (1)."

102 Maximum prices for reselling gas

In section 37 of the 1986 Act (maximum prices for reselling gas)—

- (a) in subsection (1), for “shall” (in the first place it appears) and “gas suppliers” there is substituted respectively “may” and “authorised suppliers”; and
- (b) in subsections (2) and (4) for “a gas supplier” there is substituted “an authorised supplier”.