

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Miscellaneous

Costs of policing at gas facilities

Section 85 – Policing at gas facilities: England and Wales

231. *Section 85* allows the Secretary of State to require gas transporters to pay certain costs of policing gas facilities in England and Wales. *Subsection (1)* sets out the circumstances in which these new powers may be exercised by the Secretary of State: the Secretary of State must consider that the provision of “extra police services” is necessary because there is a risk of loss or of disruption to the supply of gas which would have a serious impact on the United Kingdom (or a part of it).
232. *Subsection (2)* defines “extra police services” to mean either the use of police services from the Ministry of Defence Police under section 2(2)(e) of the Ministry of Defence Police Act 1987 (agreement by Secretary of State to provide MOD police services) or from English and Welsh police forces under section 25(1) of the Police Act 1996 (provision of special services on request).
233. *Subsection (3)* provides that the Secretary of State may require a designated gas transporter to pay all or part of the costs of the extra policing incurred by the Secretary of State.
234. *Subsection (4)* defines “gas facility” and *subsection (5)* explains what is meant in *subsection (3)* by a gas transporter having an interest in a gas facility.

Section 86 – Policing at gas facilities: Scotland

235. *Section 86* makes corresponding provision for Scotland. *Subsection (1)* of this section makes identical provision to that which applies in England and Wales.
236. *Subsection (2)* defines “extra police services” to mean either the use of police services from the Ministry of Defence Police under section 2(2)(e) of the Ministry of Defence Police Act (as for England and Wales) or police services provided under an agreement, entered into at the request of the Secretary of State, between the occupier of the gas facility and the police authority, chief constable of the police force or joint police board, for the police area where the gas facility is situated.
237. *Subsection (3)* provides that where the services of the Ministry of Defence Police have been used the Secretary of State may require a designated gas transporter to pay all or part of the costs of the extra policing incurred by the Secretary of State.
238. *Subsection (4)* provides that if requested by the occupier of the gas facility the Secretary of State must require a designated gas transporter to pay the reasonable costs incurred by the occupier under any agreement entered into at the Secretary of State’s request,

between the occupier of the gas facility and the police authority, chief constable of the police force or joint police board, for the police area where the gas facility is situated.

Section 87 – Designated gas transporters

239. *Subsection (1)* of this section provides that the Secretary of State may by order designate a person as a gas transporter for the purposes of sections 85 to 90. A designated gas transporter must be a holder of licence issued under section 7 of the Gas Act 1986. Such an order is subject to negative resolution procedure (see *subsection (3)*).

Section 88 – Costs of policing at gas facilities: recovery of costs

240. This section makes provision for the designated gas transporter to be able to recoup the costs that it has had to pay for the extra policing from its customers. *Subsection (1)* of this section empowers the Secretary of State to determine the amount of the costs to be paid by the designated gas transporter under section 85 or 86, the manner and time when the costs are to be paid and the persons to whom the costs are to be paid.
241. *Subsection (2)* provides that where a designated gas transporter is required to pay costs under section 86, the occupier of the gas facility can recover the costs directly from the designated gas transporter.
242. *Subsection (3)* provides that, despite any licence condition to the contrary, a designated gas transporter can, in determining its charges for conveying gas, take into account: (a) any payments it has made under sections 85 or 86; and (b) reasonable costs that it has incurred as a party to an agreement under section 13 of the Police (Scotland) Act 1967 for the guarding, patrolling and watching of the gas facility entered into at the Secretary of State's request.
243. *Subsection (4)* makes provision for the Secretary of State to direct the Gas and Electricity Markets Authority (GEMA) to allow the designated gas transporter to take into account in determining its charges: (a) any payments it has made under sections 85 or 86; or (b) any payments made or costs incurred in or in relation to a specified period.
244. *Subsection (5)* imposes a consultation requirement upon the Secretary of State to consult GEMA and the designated gas transporter prior to making a direction under *subsection (4)*.

Section 89 – Costs of policing at gas facilities: supplementary provisions

245. This section sets out an additional consultation obligation upon the Secretary of State. Under *subsection (1)* the Secretary of State must consult a designated gas transporter and GEMA prior to: (a) requiring the designated gas transporter to pay costs under sections 85 or 86 for the first time; (b) requiring the gas transporter to pay costs in respect of a particular gas facility; and (c) requiring the gas transporter to pay the costs of extra police services provided on a subsequent occasion at a gas facility.
246. *Subsection (2)* states that the Secretary of State is not required to: (a) consult anyone other than GEMA or the designated gas transporter before requiring a designated gas transporter to pay costs under section 85 or 86; or (b) to take into account representations made after 28 days from when the designated gas transporter or GEMA were first consulted under *subsection (1)*.

Section 90 – Application of provisions to costs incurred before commencement

247. This section makes provision for sections 85 – 89 to apply to the costs of providing extra policing at key gas sites from 16 January 2007 up to the day before these provisions come into force, in the same way that these provisions will apply after this period. All the provisions relating to costs of policing at gas facilities will be commenced two months after Royal Assent (see section 100(3)).