



# Energy Act 2023

## 2023 CHAPTER 52

### PART 3

#### LICENSING OF HYDROGEN PIPELINE PROJECTS

##### *Introductory*

#### **130 Key definitions for Part 3**

(1) In this Part—

“designated person” means a person in relation to whom a designation under [section 131\(1\)](#) has effect (and any reference to designation, in relation to a person, is to be construed accordingly);

“designated project”, in relation to a person, means a hydrogen pipeline project in relation to which the person is designated;

“gas transporter licence” means a licence under section 7 of the Gas Act 1986;

“hydrogen” means any gas that consists wholly or mainly of hydrogen;

“hydrogen pipeline project” means a project involving the construction, alteration or operation of a pipeline for the purpose of the conveyance of hydrogen.

(2) References in this Part to the extension or restriction of a licence are to the giving of a direction in respect of the licence under (respectively) section 7(4) or (4A) of the Gas Act 1986.

##### *Designation in relation to hydrogen pipeline projects*

#### **131 Designation**

(1) The Secretary of State may by notice given to a person designate the person in relation to a hydrogen pipeline project.

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- (2) The Secretary of State may designate a person in relation to a hydrogen pipeline project only if the Secretary of State is of the opinion—
  - (a) that it is likely to be appropriate for conditions described in [section 137\(1\)\(a\)](#) and [\(b\)](#) to be included in any gas transporter licence held by the person for the purposes of the project (whether or not the person already holds such a licence), and
  - (b) that the project is likely to result in value for money.
- (3) A person may be designated only with the person’s consent.
- (4) A designation may not relate to more than one hydrogen pipeline project (but a person who is designated in relation to one project may be designated separately in relation to another).

### **132 Designation: procedure**

- (1) The Secretary of State must publish a statement setting out—
  - (a) the procedure that the Secretary of State expects to follow in determining whether to exercise the power under [section 131\(1\)](#), and
  - (b) how the Secretary of State expects to determine whether the conditions in [section 131\(2\)](#) are met.
- (2) A duty imposed by [subsection \(1\)](#) may be satisfied by things done before the passing of this Act (as well as by things done after that time).
- (3) A designation notice must include—
  - (a) a description of the hydrogen pipeline project to which the designation relates,
  - (b) the Secretary of State’s reasons for the designation,
  - (c) details of any conditions to which the designation is subject, and
  - (d) the date of the notice.
- (4) The Secretary of State must give the GEMA a copy of a designation notice.
- (5) The Secretary of State must publish a designation notice, but may exclude from publication any material the disclosure or publication of which the Secretary of State considers—
  - (a) would be likely to prejudice the commercial interests of any person, or
  - (b) would be contrary to the interests of national security.
- (6) In this section, “designation notice” means a notice under [section 131\(1\)](#).

### **133 Revocation of designation**

- (1) The Secretary of State may by notice given to a designated person revoke the person’s designation in relation to a hydrogen pipeline project if—
  - (a) either of the conditions in [section 131\(2\)](#) ceases to be met in relation to the project,
  - (b) the Secretary of State determines that a condition to which the designation is subject has not been met, or
  - (c) the person consents to the designation being revoked.

- (2) Section 132(3)(a), (b) and (d), (4) and (5) applies (with necessary modifications) in relation to the revocation of a person's designation as it applies in relation to the designation of a person.
- (3) Where the Secretary of State gives a notice to a person under subsection (1), the person's designation in relation to the hydrogen pipeline project in question ceases to have effect at the end of the day on which the notice is given to the person.
- (4) The revocation of a person's designation in relation to a hydrogen pipeline project does not affect anything done in relation to the licence by the Secretary of State under or by virtue of this Part while the person was designated in relation to the project.

#### *Grant etc of gas transporter licence*

### **134 Grant, extension or restriction of gas transporter licence by Secretary of State**

- (1) The Secretary of State may exercise the power under section 7(2) of the Gas Act 1986 (grant of gas transporter licences) so as to grant a gas transporter licence to a designated person, subject to subsection (2).
- (2) The Secretary of State may only grant a gas transporter licence which authorises the conveyance of hydrogen through pipes for the purposes of the person's designated project.
- (3) The Secretary of State may exercise the power under section 7(4) of the Gas Act 1986 (direction to extend licence) so as to extend a gas transporter licence where—
  - (a) the licence is held by a designated person, and
  - (b) the extension authorises the conveyance of hydrogen through pipes for the purposes of the person's designated project.
- (4) The Secretary of State may exercise the power under section 7(4A) of the Gas Act 1986 (direction to restrict licence) so as to restrict a gas transporter licence where—
  - (a) the licence is or was held by a designated person, and
  - (b) the restriction is in connection with the revocation of the person's designation in relation to a hydrogen pipeline project.
- (5) In its application for the purposes of subsections (1), (3) and (4), the Gas Act 1986 has effect as if—
  - (a) in the following provisions, references to the GEMA were to the Secretary of State—
    - (i) section 7(5) and (6)(a);
    - (ii) section 7B(9);
    - (iii) section 8(3), (4) and (5)(a);
  - (b) in sections 7(6)(b) and 8(5)(b), references to the Secretary of State were to the GEMA;
  - (c) in section 7B(4)(c), the reference to the GEMA included a reference to the Secretary of State, but only for the purpose of enabling the inclusion of conditions requiring the rendering of a payment on the grant of a licence;
  - (d) section 7B(9) also required a copy of the licence to be sent to the GEMA.
- (6) When granting or extending a gas transporter licence by virtue of this section, the Secretary of State must have regard to—

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- (a) costs, expenditure or liabilities of any description that the designated person may reasonably be expected to incur in carrying out its activities;
  - (b) the need to secure that the designated person is able to finance its activities;
  - (c) the need to secure that the designated person has appropriate incentives in relation to the carrying on of its activities;
  - (d) such other matters as the Secretary of State considers appropriate.
- (7) References in subsection (6) to a designated person’s activities are to the person’s activities for the purposes of—
- (a) the designated project to which the grant or extension relates, and
  - (b) in the case of an extension, any other designated project already authorised by the person’s gas transporter licence.
- (8) A gas transporter licence granted, extended or restricted by the Secretary of State by virtue of [this section](#) has effect for all purposes as if it had been granted, extended or restricted by the GEMA.

### **135 Applications for grant etc of gas transporter licence**

- (1) The Secretary of State may by regulations make provision about the making, consideration and determination of relevant applications, including provision—
- (a) about the person to whom a relevant application must be made;
  - (b) about the form and manner in which a relevant application must be made;
  - (c) imposing timing requirements in relation to the making of a relevant application;
  - (d) requiring a relevant application to be accompanied by such information and documents as may be specified in the regulations;
  - (e) requiring a relevant application to be accompanied by such fee (if any) as may be—
    - (i) specified in the regulations, or
    - (ii) determined, by the person to whom the application is made, in accordance with the regulations;
  - (f) about the matters to be taken into account in determining a relevant application;
  - (g) requiring a determination to be accompanied by reasons;
  - (h) requiring determinations to be published;
  - (i) conferring functions on the Secretary of State or the GEMA (including functions involving the exercise of a discretion);
  - (j) for anything falling to be determined under the regulations to be determined—
    - (i) by the Secretary of State, the GEMA or another person specified in the regulations, and
    - (ii) in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be so specified.
- (2) “Relevant application” means an application within any of the following paragraphs (whether made to the Secretary of State or the GEMA)—
- (a) an application by a designated person for the grant of a gas transporter licence that authorises the conveyance of hydrogen through pipes for the purposes of the person’s designated project;

- (b) an application by a designated person for the extension of a gas transporter licence held by the person so that it authorises the conveyance of hydrogen through pipes for the purposes of the person's designated project;
  - (c) an application by a person who is or has been designated for the restriction of a gas transporter licence held by the person, in connection with the person's designation in relation to a hydrogen pipeline project ceasing to have effect.
- (3) Provision made by virtue of subsection (1)(j)(ii) may in particular be made by reference to a document as amended from time to time.
- (4) Regulations under this section—
- (a) may provide for cases in which an application is not required;
  - (b) may provide for a relevant application that has been rejected by one person to be dealt with afresh by another person.
- (5) Before making regulations under this section, the Secretary of State must consult the GEMA.
- (6) Section 7B(1) to (2A) of the Gas Act 1986 does not apply to an application for the grant, extension or restriction of a gas transporter licence so far as the application is one to which regulations under this section apply.
- (7) Any sums received by the Secretary of State or the GEMA by virtue of this section are to be paid into the Consolidated Fund.
- (8) Regulations under this section are subject to the negative procedure.
- (9) For the purposes of section 5A(1) to (10) of the Utilities Act 2000 (duty of the GEMA to carry out impact assessment), a function exercisable by the GEMA by virtue of regulations under this section is to be treated as if it were a function exercisable by it under or by virtue of Part 1 of the Gas Act 1986.

#### *Modification of gas transporter licence*

### **136 Modification of gas transporter licence by Secretary of State**

- (1) The Secretary of State may modify—
- (a) the conditions of a designated person's gas transporter licence;
  - (b) the terms of a designated person's gas transporter licence;
  - (c) the standard conditions incorporated in gas transporter licences by virtue of section 8 of the Gas Act 1986;
  - (d) a document maintained in accordance with the conditions of licences of a relevant type or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power under subsection (1) only for the purpose of—
- (a) facilitating or supporting the financing of the design, construction, commissioning or operation of a hydrogen pipeline project (or of hydrogen pipeline projects generally), or
  - (b) promoting value for money in connection with a hydrogen pipeline project (or in connection with hydrogen pipeline projects generally).

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- (3) When making modifications under [subsection \(1\)\(a\)](#) or [\(b\)](#), the Secretary of State must have regard to—
- (a) the duties in sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets);
  - (b) the interests of existing and future consumers of gas conveyed through pipes, including their interests in relation to the cost and security of supply of gas;
  - (c) costs, expenditure or liabilities of any description that the designated person may reasonably be expected to incur in carrying out its activities;
  - (d) the need to secure that the designated person is able to finance its activities;
  - (e) the need to secure that the designated person has appropriate incentives in relation to the carrying on of its activities;
  - (f) such other matters as the Secretary of State considers appropriate.

In paragraph [\(b\)](#), “gas” has the same meaning as in Part 1 of the Gas Act 1986 (see section 48(1) of that Act).

- (4) The Secretary of State may modify the conditions or terms of a gas transporter licence held by a person who is or was a designated person in connection with the revocation of the person’s designation in relation to a hydrogen pipeline project.
- (5) For the purposes of [subsection \(1\)](#), each of the following is a relevant type of licence—
- (a) a gas transporter licence;
  - (b) a licence under section 7A(1) of the Gas Act 1986 (gas supply licence);
  - (c) a licence under section 7AA of that Act (gas system planner licence);
  - (d) a licence under section 7AC of that Act (code manager licence).
- (6) References in this section to a designated person’s activities are to the person’s activities for the purposes of—
- (a) the designated project to which the modification relates, and
  - (b) any other designated project authorised by the person’s gas transporter licence.

### **137 Scope of modification powers under [section 136](#)**

- (1) Modifications made under [section 136\(1\)\(a\)](#) may include, for example, provision—
- (a) about the revenue that the designated person may receive in respect of its activities (its “allowed revenue”);
  - (b) about how the designated person’s allowed revenue is to be calculated;
  - (c) about the amounts that the designated person is entitled to receive, or is required to pay, under any hydrogen transport revenue support contract (within the meaning of Chapter 1 of Part 2) to which it is a party;
  - (d) about activities that the designated person must, may or may not carry on;
  - (e) about the management of the designated person’s activities, including the manner in which they are carried out;
  - (f) conferring functions on the GEMA, including provision enabling or requiring the designated person to refer for determination, decision or approval by the GEMA matters specified, or of a description specified, in the licence;
  - (g) for the amendment of the licence for the purpose of implementing a determination or decision of the GEMA or the Competition and Markets Authority;

- (h) requiring the designated person to comply with any direction or instruction, or to have regard to any guidance, given by the GEMA in relation to matters specified, or of a description specified, in the licence;
  - (i) requiring the designated person to co-operate with the GEMA and to provide such information and assistance to the GEMA as it may require for the purposes of carrying out any of its functions;
  - (j) about the payment by the designated person, to the GEMA or to the Competition and Markets Authority, of such amounts as may be determined by or in accordance with the licence;
  - (k) about the disclosure or publication of information by the designated person.
- (2) Modifications made under [section 136\(1\)\(b\)](#) may include, for example, provision about the circumstances in which a licence may be revoked or suspended.
- (3) The powers under [section 136\(1\)](#) and (4) to “modify” include the power to amend, add to or remove; and references to modification in [section 136](#), this section and [section 138](#) are to be construed accordingly.
- (4) The powers conferred by [section 136\(1\)](#) and (4)—
- (a) may be exercised generally, only in relation to specified cases, or subject to exceptions (including by making provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently for different purposes or areas;
  - (c) include power to make incidental, supplementary, consequential or transitional modifications.
- (5) Provision included in a gas transporter licence, or in a document or agreement described in [section 136\(1\)\(d\)](#), by virtue of [section 136](#)—
- (a) need not relate to the activities authorised by the licence;
  - (b) may do anything authorised for gas transporter licences by [section 7B\(4A\)](#), (5)(a), (6) or (7) of the Gas Act 1986.
- (6) The modification under [section 136\(1\)](#) or (4) of part of a standard condition of a gas transporter licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986.
- (7) In [section 81\(2\)](#) of the Utilities Act 2000 (standard conditions of gas licences), after “[section 89](#)” (as inserted by [section 91\(13\)](#) of this Act) insert “, [section 136\(1\)](#) or (4)”.
- (8) References in this section to a designated person’s activities are to the person’s activities for the purposes of—
- (a) the designated project to which the modification relates, and
  - (b) any other designated project authorised by the person’s gas transporter licence.

### **138 Procedure etc relating to modifications under [section 136](#)**

- (1) Before making a modification under [section 136\(1\)](#) or (4), the Secretary of State must consult—
- (a) the holder of any licence being modified,
  - (b) the GEMA, and
  - (c) such other persons as the Secretary of State considers appropriate.

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- (2) If under [section 136\(1\)](#) the Secretary of State modifies the standard conditions of a gas transporter licence, the GEMA must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in gas transporter licences granted after that time, and
  - (b) publish the modification.
- (3) The Secretary of State must publish details of any modifications made under [section 136\(1\)](#) and (4) as soon as reasonably practicable after they are made.
- (4) The Secretary of State may exclude from publication under subsection (3) any material the disclosure or publication of which the Secretary of State considers—
  - (a) would be likely to prejudice the commercial interests of any person, or
  - (b) would be contrary to the interests of national security.

### *Information*

#### **139 Information and advice**

- (1) The Secretary of State may by regulations make provision about the provision and publication of information and advice in connection with the carrying out of functions of any person under or by virtue of this Part.
- (2) The provision that may be made by virtue of [subsection \(1\)](#) includes provision—
  - (a) for the Secretary of State to require the GEMA to provide information to a hydrogen transport counterparty or any other specified person;
  - (b) for a hydrogen transport counterparty to require the GEMA to provide information to it;
  - (c) for the Secretary of State to require a designated person, a hydrogen transport counterparty or any other specified person to provide information to the GEMA;
  - (d) for the GEMA to require a designated person, a hydrogen transport counterparty or any other specified person to provide information to the GEMA;
  - (e) for the Secretary of State to require a designated person, a hydrogen transport counterparty, the GEMA or any other specified person to provide information or advice to the Secretary of State or any other specified person;
  - (f) for the classification and protection of confidential or sensitive information;
  - (g) for the enforcement of any requirement imposed by virtue of any of [paragraphs \(a\) to \(f\)](#).
- (3) Section 105(1) of the Utilities Act 2000 (general restrictions on disclosure of information) does not apply to a disclosure required by virtue of this section.
- (4) The first regulations under this section are subject to the affirmative procedure.
- (5) Any other regulations under this section are subject to the negative procedure.
- (6) In this section—
  - “designated person” includes a person who has been a designated person;
  - “hydrogen transport counterparty” has the same meaning as in [Chapter 1 of Part 2](#) (see [section 56](#));



“specified person” means a person specified, or of a description specified, in regulations under this section.

- (7) See also section 34(4) of the Gas Act 1986 (general duty for the GEMA to give information, advice and assistance to the Secretary of State or the Competition and Markets Authority).

#### *Conditions of gas transporter licences*

### **140 Conditions of gas transporter licences for conveyance of hydrogen**

- (1) For the purposes of this section, “relevant licence” means a gas transporter licence so far as it authorises a person to convey hydrogen through pipes in connection with the carrying on of a hydrogen pipeline project.
- (2) Without prejudice to the generality of section 7B(4)(a) of the Gas Act 1986 (conditions of licences), conditions described in subsection (3) may be included in a relevant licence in respect of circumstances where a person other than the licence holder (“the candidate”)—
- (a) has applied for, or is considering whether to apply for, a relevant licence, or
  - (b) is considering whether to apply for financial support for activities relating to the production, transportation, storage or use of hydrogen.
- (3) The conditions referred to in subsection (2) are conditions that require the licence holder to comply with a direction given by the Secretary of State or the GEMA requiring the holder to provide to the candidate—
- (a) information in relation to the activities authorised by the licence, and
  - (b) any other assistance that the candidate may reasonably require for the purpose of determining whether to—
    - (i) apply for a relevant licence, or
    - (ii) apply for financial support as mentioned in subsection (2)(b).
- (4) A person (“P”) may not under section 8(3) of the Gas Act 1986 modify a condition of a relevant licence unless P is of the opinion that the modification is such that—
- (a) the licence holder would not be unduly disadvantaged in competing with one or more other holders of relevant licences, and
  - (b) no other holder of a relevant licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the relevant licence to be modified).

#### *Other*

### **141 Secretary of State directions to the GEMA**

- (1) In exercising any functions it has in relation to relevant gas transporter licences, the GEMA must comply with general or particular directions given to it by the Secretary of State for the purpose of promoting value for money in connection with a hydrogen pipeline project (or in connection with hydrogen pipeline projects generally).
- (2) In subsection (1), “relevant gas transporter licence” means a gas transporter licence, held by a designated person, that authorises the conveyance of hydrogen through pipes in connection with the person’s designated project.

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## **142**    **Repeal of Part 3**

- (1) The Secretary of State may by regulations repeal any of the preceding provisions of this Part.
- (2) So far as any of those provisions is still in force on a relevant date, the Secretary of State must—
  - (a) consider whether it is appropriate to repeal that provision, and
  - (b) if satisfied that it is not appropriate to do so, publish a statement no later than 3 months after that date explaining why not.
- (3) “Relevant date” in [subsection \(2\)](#) means 31 December 2040 and each five-year anniversary of that date.
- (4) Regulations under this section are subject to the affirmative procedure.