
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in respect of Great Britain certain articles of Directive 98/30/EC of the European Parliament and of the Council of 22nd June 1998 concerning common rules for the internal market in natural gas (O.J. L204, 21.7.1998, p. 1) (“the Directive”). They amend the Pipelines Act 1962, the Gas Act 1986, the Gas Act 1995 and the Petroleum Act 1998.

The amendments to those Acts implement articles 7.2, 10.2, 12 to 15, 21 and 23 of the Directive in relation to those gas facilities and pipelines in respect of which there is no, or insufficient, pre-existing implementing legislation. Articles 14 and 15 require procedures to be put in place enabling natural gas undertakings and customers to be able to negotiate access to gas pipelines, certain gas storage facilities, liquid natural gas (“LNG”) treatment facilities and gas processing facilities on the basis of publication by the owner of the pipeline or facility of his main commercial conditions for access. Article 21.1 requires such negotiations to be conducted in good faith. Articles 7.2 and 10.2 impose on gas transmission and distribution pipeline owners and gas storage and LNG facility owners a duty not to discriminate between system users or classes of system users. Article 21.2 requires Member States to designate a competent authority to settle disputes relating to access to the system and article 23 contains separate requirements in respect of access to upstream pipelines. Articles 12 and 13 relate to accounts and require integrated natural gas undertakings to keep separate internal accounts in respect of transmission, distribution, storage and non-gas activities.

Schedule 1—amendments to the Pipelines Act 1962 (“the 1962 Act”)

This Schedule amends sections 9, 9A, 10, 58, 65(2) and 66(1) of the 1962 Act and inserts five new sections, 10B to 10F. The effect of the amendments to sections 9 and 9A (paragraphs 1 and 2) is that an application for a right to have substances conveyed in a proposed upstream petroleum pipe-line should be made under new section 10E, rather than under section 9 or 9A, and an application for a right to have gas conveyed in a proposed gas pipe-line should be made under sections 10 and 10C.

Paragraph 3 amends section 10(1) of the 1962 Act, so that applications for a right to have gas conveyed in a gas pipe-line may be made under section 10. “Gas pipe-line” is defined in paragraph 9 to include all gas pipe-lines which fall within the definition, regardless of their length, so that gas pipe-lines under 16.093km in length which are not additional pipes will now be covered by section 10. As a result of this, gas pipe-lines which are also additional pipe-lines do not need to be included in section 10(7) as being treated as constructed pursuant to a pipe-line construction authorisation (paragraph 4). Paragraph 5 adds a notice served under new section 10E(9) (granting a right to have substances conveyed in an upstream petroleum pipe-line) to section 10A(2), so that if a pipe-line in respect of which such a notice has been served is subsequently diverted, the notice applies to the diverted pipe-line.

New section 10B allows for the possibility of exemption from the requirements of section 10C where they are already satisfied by market arrangements which promote competition. New section 10C imposes duties on owners of, and applicants for rights in respect of, gas pipe-lines, which are additional to the provisions in section 10, in order to implement articles 15 and 21.2 of the Directive. Section 10D provides enforcement mechanisms for the duties in section 10C(1), (3) and (6).

New section 10E implements article 23 of the Directive and inserts a free-standing provision dealing with access by third parties to upstream petroleum pipelines. Such pipelines are now excluded from section 10 by the amendment in paragraph 3. Upstream petroleum pipelines are defined, in accordance with the definition in article 2.2 of the Directive, in paragraph 9 as pipelines forming

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part of a petroleum production project (which includes such a project used to store gas), or used to convey petroleum from such a project to a terminal, that is, gas processing facilities (other than those owned by public gas transporters), facilities for the initial treatment and blending of petroleum or international interconnector reception facilities (paragraph 6).

The amendment in paragraph 7 ensures that sections 9A and 10 do not apply to additional pipe-lines which are owned by public gas transporters. Paragraph 8 amends section 65(2) of the 1962 Act (definition of “pipe-line”), so that, for the purposes of access to upstream petroleum pipe-lines, it includes cooling and treating apparatus. Paragraph 9 amends the definition of “owner” of pipe-lines in section 66(1) of the 1962 Act, so that for the purposes of third party access to upstream petroleum pipe-lines and gas pipe-lines, it also includes those persons who own capacity in a pipe-line, where they hold that capacity for a year or more and are entitled to dispose of it to others.

Schedule 2—amendments to the Gas Act 1986 (“the 1986 Act”)

Schedule 2 inserts five new sections into the 1986 Act, sections 19A to 19E (paragraph 1), and amends section 22(1) of that Act (paragraph 2). Section 19B provides a way for applicants to gain access to gas storage facilities, in order to implement articles 15 and 21.2 of the Directive in respect of such facilities and section 19D does this in respect of LNG facilities. The possibility of exemption from the requirements of the new sections exists for gas storage facilities and LNG facilities, where such requirements are already met by market arrangements, and for storage facilities to which access is not necessary for the operation of an economically efficient gas market (sections 19A and 19C). Section 19E contains interpretative provisions in respect of both new sections and enforcement provisions for the new duties. The section also requires owners of storage facilities to keep separate accounts for their storage activities in order to implement articles 12 and 13 of the Directive. The amendment in paragraph 2 applies section 22 of the 1986 Act to directions made under new sections 19B and 19D and to the new duties in sections 19B and 19D. Section 22 makes the obligation to comply with such directions and duties a duty owed to any person who may be affected by the contravention of them, and the breach of that duty actionable by such persons. The Director General of Gas Supply may also take civil proceedings to enforce the directions made under sections 19B or 19D and certain duties in those sections.

Schedule 3—amendments to the Gas Act 1995 (“the 1995 Act”)

Schedule 3 amends section 12 of the 1995 Act, which provides for access by third parties to gas processing facilities. Paragraph 1 substitutes for subsection (1) of section 12 eight new subsections in order to impose an additional duty on owners of gas processing facilities to publish the main commercial conditions for access to their facility and an additional duty on owners, and applicants for rights in respect of such facilities, to negotiate in good faith. The dispute settlement authority is the Secretary of State, who would consider any disputes under the remaining provisions of section 12 of the 1995 Act. Section 22 of the 1986 Act (enforcement) is applied to the new duty in section 12(1E), and the Secretary of State may enforce the duty in subsection 12(1) by civil proceedings (paragraph 4).

Schedule 4—amendments to the Petroleum Act 1998 (“the 1998 Act”)

Schedule 4 amends sections 15 to 18, 21, 27 and 28 of the 1998 Act and inserts seven new sections into it, sections 17A to 17G. Paragraphs 1 and 2 insert references to new sections 17G(6) and 17G(7) into sections 15(6) and 16(1) respectively, so that before serving a notice varying the capacity or the route of a controlled petroleum pipeline (section 15) or increasing the capacity of, or modifying a controlled petroleum pipeline (section 16), on someone other than the owner of the pipeline, the Secretary of State must give that person an opportunity to make applications under section 17F.

Paragraph 3 amends section 17 of the 1998 Act (which provides that applicants for access to submarine pipelines may apply to the Secretary of State for a notice granting a right to have things

conveyed by such a pipeline) so that it does not apply to controlled petroleum pipelines. Access to such pipelines is dealt with in new section 17F, which implements article 23 on submarine upstream petroleum pipelines. Paragraph 3 also makes section 17 subject to new section 17B where applicable. Section 17B makes additional provision in respect of applications to the Secretary of State under section 17 for access to submarine downstream gas pipelines (defined as those submarine pipelines conveying gas to or from a place outside Great Britain), to implement articles 15 and 21.2 of the Directive. Section 17A provides for exemption from section 17B. New section 17D provides a way for applicants to obtain access to offshore downstream gas storage facilities, with the possibility of exemption from that section by the Director General of Gas Supply (who would also be the dispute settlement authority for access to offshore storage) in section 17C. New section 17H contains enforcement provisions in respect of the new duties imposed in sections 17B and 17D.

Paragraph 5 adds a reference to section 17F(9) to section 18(6)(b) of the 1998 Act, so that failure to comply with a notice under section 17F(9) granting third party access to a controlled petroleum pipeline may result in the withdrawal of the authorisation for the pipeline. Paragraph 6 makes the vesting of pipelines in the Secretary of State on termination of an authorisation subject to a notice under section 17F(9). Paragraph 7 makes failure by an owner of a pipeline in respect of which no authorisation for the use of the pipeline is required by section 14(1) to comply with a notice served on him under section 17F(9) an offence. Paragraph 8 amends the definition of “owner” of a pipeline in section 27(1) of the 1998 Act, so that, for the purposes of third party access to downstream gas pipelines and controlled petroleum pipelines, as well as meaning those persons designated as owner of the pipeline by an order made by the Secretary of State, it also includes persons in whom the pipeline is vested and those persons who own capacity in a pipeline, where they hold that capacity for a year or more and are entitled to dispose of it to others.

Implementation of remaining provisions of the Directive

The remainder of the Directive is largely already implemented in Great Britain by pre-existing legislation, notably the 1986 Act, and by conditions in licences issued by the Director General of Gas Supply under section 7 and 7A of that Act. The central requirement of the Directive in article 18 to enable certain customers to contract for, or be sold natural gas in accordance with articles 15 and 16 of the Directive has already been exceeded in Great Britain as a result of the provisions of the 1986 Act and the 1995 Act, which enable all final customers on public distribution systems to choose their gas supplier. Access to the majority of the pipeline system in Great Britain may be obtained in accordance with article 16 of the Directive by any person who holds a shipper’s licence under section 7A of the 1986 Act and who contracts with a licensed public gas transporter on the terms set out in the network code which such transporters are obliged by their licence conditions to publish.

A regulatory impact assessment of the costs and benefits that will result from these Regulations will be available in the Libraries of the Houses of Parliament when the Regulations are laid before Parliament, and from the Energy Utilities Directorate, Bay 2119, 1 Victoria Street, London SW1H 0ET.

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