

SCHEDULE 1

Regulation 2(1)

AMENDMENTS TO THE PIPE-LINES ACT 1962

1.—(1) After section 9(1) there shall be inserted—

“(1A) Subsections (2), (3) and (5) of this section apply only to pipe-lines constructed pursuant to a pipe-line construction authorisation which are neither upstream petroleum pipe-lines nor gas pipe-lines, and references in those subsections to “pipe-line” and “line” shall be construed accordingly.”

(2) In section 9(2), for the words “the foregoing subsection” there shall be substituted “subsection (1)”.

(3) After section 9(6) there shall be inserted—

“(7) Where a gas pipe-line is proposed to be constructed pursuant to a pipe-line construction authorisation to which a condition is attached by virtue of subsection (1), any person other than the applicant for the pipe-line construction authorisation may make applications under section 10 and, if applicable, section 10C in respect of the proposed pipe-line, and those sections and section 10B shall have effect as if references to a pipe-line were references to the pipe-line as it would be once constructed in accordance with the condition, and as if references to the owner of the pipe-line were references to the proposed owner of it.

(8) Where an upstream petroleum pipe-line is proposed to be constructed pursuant to a pipe-line construction authorisation to which a condition is attached by virtue of subsection (1), any person other than the applicant for the pipe-line construction authorisation may make applications under section 10E in respect of the proposed pipe-line, and sections 10E and 10F shall have effect as if references to a pipe-line were references to the pipe-line as it would be once constructed in accordance with the condition, and as if references to the owner of the pipe-line were references to the proposed owner of it.”

2.—(1) After section 9A(1) there shall be inserted—

“(1A) Subsections (2), (3) and (5) apply only to additional pipe-lines which are neither upstream petroleum pipe-lines nor gas pipe-lines, and references in those subsections to “pipe-line” and “line” shall be construed accordingly.”

(2) After section 9A(6) there shall be inserted—

“(7) Where a gas pipe-line which is an additional pipe-line is proposed to be constructed, and the Secretary of State has served a notice in respect of the pipe-line under subsection (1) on the person who made the application for planning permission, any other person may make applications under section 10 and, if applicable, section 10C in respect of the proposed pipe-line, and those sections and section 10B shall have effect as if references to a pipe-line were references to the pipe-line as it would be once constructed in accordance with the condition, and as if references to the owner of the pipe-line were references to the proposed owner of it.

(8) Where an upstream petroleum pipe-line which is an additional pipe-line is proposed to be constructed, and the Secretary of State has served a notice in respect of the pipe-line under subsection (1) on the person who made the application for planning permission, any other person may make applications under section 10E in respect of the pipe-line; and sections 10E and 10F shall have effect as if references to a pipe-line were references to the pipe-line as it would be once constructed in accordance with the notice, and as if references to the owner of the pipe-line were references to the proposed owner of it.”

3. In section 10(1), for the words “a pipe-line constructed pursuant to a pipe-line construction authorisation may” there shall be substituted—

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- “(a) a gas pipe-line; or
- (b) any pipe-line other than a gas pipe-line which—
  - (i) is constructed pursuant to a pipe-line construction authorisation; and
  - (ii) is not an upstream petroleum pipe-line;may, subject in the case of a gas pipe-line to which section 10C applies to the provisions of that section,”.

4. In section 10(7), after the words “additional pipe-line” there shall be inserted “other than a gas pipe-line”.

5. In section 10A(2), for the words “notice served under section 9(2), 9A(2) or 10(4)”, there shall be substituted “notice served under section 9(2), 9A(2), 10(4) or 10E(9)”.

6. After section 10A there shall be inserted—

**“Application of section 10C to certain gas pipe-lines.**

**10B.**—(1) Section 10C applies to gas pipe-lines other than exempt interconnectors.

(2) An owner of an interconnector may apply in writing to the Secretary of State for an exemption for the interconnector.

(3) An exemption shall be given in writing and may be given—

- (a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
- (b) unconditionally or subject to such conditions as the Secretary of State considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the interconnector concerned not less than four months before the coming into force of the revocation.

(5) The Secretary of State shall give an exemption with respect to an interconnector where he is satisfied that the requirements of section 10C(1), (3) and (6) are already met with respect to the interconnector concerned by existing market arrangements which promote competition.

**Additional provisions relating to certain gas pipe-lines.**

**10C.**—(1) The owner of a gas pipe-line to which this section applies (a “relevant gas pipe-line”)—

- (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas conveyed in the pipe-line on that person’s behalf; and
- (b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9 August.

(3) The owner of a relevant gas pipe-line shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas conveyed in the pipe-line.

(4) Any person who seeks a right to have gas conveyed on his behalf in a relevant gas pipe-line (“the applicant”) shall, before making an application to the Secretary of State under section 10, apply to the owner of the pipe-line by giving him notice of what is being sought.

(5) Such a notice shall, in particular, specify—

- (a) the kind of gas to be conveyed (which must be of the kind the pipe-line is designed to convey); and
- (b) the quantities of gas to be conveyed.

(6) Where an applicant gives notice under subsection (4), he and the owner of the pipe-line shall negotiate in good faith and endeavour to reach agreement on the application.

(7) If the owner and the applicant do not reach any such agreement, the applicant may make an application to the Secretary of State under section 10 with respect to the pipe-line.

(8) The Secretary of State shall not entertain such an application under section 10 unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (6).

(9) For the purpose of considering an application under section 10 with respect to a relevant gas pipe-line, the Secretary of State may by notice require the owner or the applicant to provide him with such financial information relating to the owner's or applicant's activities with respect to relevant gas pipe-lines as he may specify or describe in the notice.

(10) The Secretary of State shall not disclose to any person information obtained under subsection (9) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(11) In this section “main commercial conditions” means—

- (a) such information as would enable a potential applicant for a right to have gas conveyed in a relevant gas pipe-line to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) the other significant terms on which such a right would be granted; and
- (c) such other information as the Secretary of State may from time to time specify by notice.

#### **Enforcement of certain duties in section 10C.**

**10D.**—(1) The duty in section 10C(6) shall be a duty owed to any person who may be affected by a failure to comply with it.

(2) Where a duty is owed by virtue of subsection (1) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(3) In any proceedings brought against a person in pursuance of subsection (2), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the duty.

(4) Compliance with the duties in section 10C(1) and (3) shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or other appropriate relief or remedy.

#### **Provisions for securing that upstream petroleum pipe-lines are so used as to reduce necessity for construction of others.**

**10E.**—(1) This section applies to upstream petroleum pipe-lines.

(2) Any person who seeks a right to have things conveyed by an upstream petroleum pipe-line of which he is not the owner (“the applicant”) shall, before making an application

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to the Secretary of State under subsection (5), apply to the owner of the pipe-line for the right.

(3) An application under subsection (2) shall be made by giving notice to the owner specifying what is being sought.

(4) Such a notice shall, in particular, specify—

- (a) the kind of things to be conveyed (which must be of a kind the pipe-line is designed to convey); and
- (b) the quantities to be conveyed.

(5) If the owner and the applicant do not reach agreement on the application, the applicant may apply to the Secretary of State for a notice under subsection (9) securing to the applicant the right to have conveyed by the pipe-line in respect of which he has made an application to the owner under subsection (2) the quantities specified in the notice under subsection (3) of things of a kind so specified.

(6) The Secretary of State shall not entertain an application under subsection (5) unless he is satisfied that the parties have had a reasonable time in which to reach agreement between themselves on the application under subsection (2).

(7) Where a person applies to the Secretary of State under subsection (5) and the Secretary of State is satisfied as mentioned in subsection (6), the Secretary of State shall serve on the owner of the pipe-line and the applicant notice of the time (being some time not less than twenty-one days from the date of the service of the notice) at which the question of conferring on the applicant the right sought by him will be considered by the Secretary of State, and the owner and the applicant shall be entitled to be heard when that question is so considered.

(8) When considering the application, the Secretary of State shall (so far as relevant) take into account—

- (a) capacity which is or can reasonably be made available in the pipe-line in question;
- (b) any incompatibilities of technical specification which cannot reasonably be overcome;
- (c) difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future production of petroleum;
- (d) the owner's reasonable needs for the transport and processing of petroleum;
- (e) the interests of all users and operators of the pipe-line;
- (f) the need to maintain security and regularity of supplies of petroleum; and
- (g) the number of parties involved in the dispute.

(9) Where the Secretary of State is satisfied that, if he served a notice under this subsection, the pipe-line in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of conveying, on behalf of its owner, the quantities of things which the owner requires or may reasonably be expected to require, the Secretary of State may serve such a notice on the owner and the applicant.

(10) A notice under subsection (9) may contain such provisions as the Secretary of State considers appropriate for any of the following purposes—

- (a) to secure to the applicant the right to have conveyed by the pipe-line the quantities specified in the notice under subsection (3) of the things of a kind so specified;
- (b) to secure that the exercise of the right is not prevented or impeded;
- (c) to regulate the charges which may be made for the conveyance of things by virtue of the right; and

(d) to secure to the applicant the right to have a pipe-line of his connected to the pipe-line by the applicant or owner.

(11) A notice under subsection (9) may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in subsection (10)(a) or (d) of amounts specified in the notice or determined in accordance with the notice.

### **Section 10E: supplemental.**

**10F.**—(1) For the purpose of considering an application under section 10E(5), the Secretary of State may by notice require the owner or the applicant to provide him with such information relevant to the application as may be specified or described in the notice.

(2) The information mentioned in subsection (1) may, in particular, include financial information relevant to the owner’s or the applicant’s activities with respect to petroleum production projects and upstream petroleum pipe-lines.

(3) The Secretary of State shall not disclose to any person any information obtained under subsection (1) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(4) If the owner of a pipe-line fails to comply with a requirement imposed by a notice served under section 10E(9) with reference to the pipe-line he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale; and, if the failure continues after his conviction, he shall be guilty of a further offence and liable, in respect thereof, to a fine not exceeding twenty-five pounds for each day on which the failure continues.”

7. After section 58(4) there shall be inserted—

“(4A) References in sections 9A and 10 of this Act to an additional pipe-line shall be construed as not including references to a pipe-line constructed by and vested in, or proposed to be constructed by and proposed to be vested in, a public gas transporter within the meaning of Part I of the Gas Act 1986.”

8. At the end of section 65(2), there shall be inserted—

“and

(g) for the purposes of sections 9(8), 9A(8), 10E and 10F only, apparatus for treating and cooling petroleum which is to flow through, or through any part of, the pipe or system”.

9. In section 66(1)—

(a) after the definition of “diversion”, there shall be inserted—

““foreign sector of the continental shelf” means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;

“gas” means any substance which consists wholly or mainly of—

- (a) methane ethane, propane, butane, hydrogen or carbon monoxide;
- (b) a mixture of two or more of those gases; or
- (c) a combustible mixture of one or more of those gases and air;

“gas pipe-line” means—

- (a) a pipe-line, other than an upstream petroleum pipe-line, which is used to convey gas to premises or to a pipe-line system operated by a public gas

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transporter and in respect of which an exemption has been granted by or under the Gas Act 1986 from the requirement for a public gas transporter's licence; or

(b) an interconnector;

“gas processing facility” means any facility in Great Britain operated otherwise than by a public gas transporter (within the meaning of Part I of the Gas Act 1986) which carries out gas processing operations;

“gas processing operation” means any of the following operations, namely—

(a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipe-line system operated by a public gas transporter (within the meaning of Part I of the Gas Act 1986) or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain;

(b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and

(c) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person;”

(b) after the definition of “in”, there shall be inserted—

““interconnector” means a pipe-line, other than an upstream petroleum pipe-line or a pipe-line operated by a public gas transporter (within the meaning of Part I of the Gas Act 1986), which is used to convey gas to or from a place outside Great Britain;”

(c) in the definition of “owner”, at the end of paragraph (c), there shall be added—

“and, for the purposes of section 10 in the case of gas pipe-lines only (other than section 10(1)), and for the purposes of sections 10B to 10F (other than the first reference in section 10E(2)), includes a person who has the right to use capacity in the pipe-line, where such right has been acquired by that person on terms that—

(i) he is entitled to use the capacity for a period of one year or more; and

(ii) the right is capable of being assigned or otherwise disposed of to another person;”

(d) after the definition of “owner” there shall be inserted—

““petroleum” includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, whether or not it has undergone any processing; but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

“petroleum production project” means a project carried out by virtue of a licence granted under section 3 of the Petroleum Act 1998, or an equivalent project in a foreign sector of the continental shelf, and includes such a project which is used for the storage of gas;”

(e) after the definition of “street works consent” there shall be inserted—

““terminal” includes—

(a) facilities for such initial blending and other treatment as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;

(b) gas processing facilities; and

(c) a facility for the reception of gas prior to its conveyance to a place outside Great Britain;

“upstream petroleum pipe-line” means a pipe-line or one of a network of pipe-lines operated or constructed as part of a petroleum production project or used to convey petroleum from the site of one or more such projects—

- (a) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;
- (b) directly to a terminal; or
- (c) indirectly to a terminal by way of one or more other terminals, whether or not such intermediate terminals are of the same kind as the final terminal.”