

**EXPLANATORY MEMORANDUM TO
THE GAS TRANSPORTER (MODIFICATION OF LICENCE CONDITIONS)
REGULATIONS 2011**

2011 No. 2803

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Gas Transporter (Modifications of Licence Conditions) Regulations 2011 (“the Regulations”) make amendments to gas transporter licences in order to implement, and address matters arising out of or related to, certain requirements of Directive 2009/73/EC (“the Gas Directive”) of the European Parliament and of the Council, concerning common rules for the internal market in gas.

2.2 The Gas Directive, together with Directive 2009/72/EC; Regulation 2009/715/EC on conditions for access to the natural gas transmission networks (as amended) (“the Gas Regulation”)¹; Regulation 2009/713/EC establishing the Agency for the Co-operation of European Regulators; and Regulation 2009/714/EC on conditions for access to the network for cross-border exchanges in electricity, are collectively known as the European Union (EU) Third Energy Package (“the Third Package”). The Third Package repeals Directives 2003/54/EC and 2003/55/EC and Regulations 2003/1228/EC and 2005/1775/EC.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Regulations supplement the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704) (“the Principal Regulations”). The Principal Regulations were laid in Parliament on 18th July 2011, made on 9 November and came into force on 10 November, and are the main implementing regulations in Great Britain for the Third Package. The Principal Regulations amend primary legislation and the standard conditions of gas and electricity licences.

3.2 These Regulations ensure complete transposition by amending the Standard Special Conditions of gas transporter licences, which have effect in place of standard conditions in certain types of gas transporter licence, thus ensuring that all gas transporters are subject to all of the requirements of the Third Package.

4. **Legislative Context**

¹ The Gas Regulation was amended by Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation 2009/715/EC of the European Parliament and of the Council on conditions for access to the natural gas transmission networks.

4.1 The Regulations are made under Section 2(2) of the European Communities Act 1972 to implement EU law on common rules for the internal market in gas (to the extent that the existing regulatory regime does not provide sufficient coverage), and address matters arising out of or relating to those rules.

4.2 The Regulations supplement the Principal Regulations, which are the main implementing regulations of the Third Package.

4.3 A Transposition Note for the Regulations is attached at Annex 1.

5. Territorial Extent and Application

5.1 The Regulations do not extend to Northern Ireland. Northern Ireland is carrying out its own implementation measures in respect of the Third Package.

6. European Convention on Human Rights

6.1 The Secretary of State for the Department of Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the Electricity and Gas (Internal Markets) Regulations 2011 are compatible with the Convention rights.

7. Policy background

7.1 Since the mid-90s, the European Parliament and European Council have put in place legislation that aims to support the creation of a single energy market within the EU, by introducing competition and removing barriers to cross-border trade. This gradual transition has been progressed to date through two previous packages of legislation.

7.2 The Third Package sets out a number of new requirements on Member States and regulatory authorities. It includes new requirements on Member States which aim to reinforce retail market competition, increase consumer choice and consumer protection. It also gives national regulators more powers and duties and encourages cross-border co-operation, to ensure that regulation across Member States is applied consistently.

7.3 The Third Package also includes a number of measures which aim to improve security of supply by, for example, improving network access and encouraging further investment through the unbundling of transmission system ownership.

7.4 Further background can be found in the Explanatory Memorandum to the Electricity and Gas (Internal Market) Regulations 2011 (SI 2011/ 2704). This can be found at:

http://www.legislation.gov.uk/ukdsi/2011/9780111513965/pdfs/ukdsiem_9780111513965_en.pdf

7.5 The particular requirements of the Third Package to which the Regulations relate are intended to ensure consistent technical and regulatory standards across Europe relating to gas transportation and to facilitate an integrated market.

8. Consultation outcome

8.1 DECC issued an eight week Call for Evidence on 1 April 2010, in which it highlighted the major new requirements in the Third Package and sought initial views on changes that might be needed to the GB framework. Following the responses to the Call for Evidence, DECC issued a twelve week consultation on 1 July where it responded to the issues raised and sought further views on initial proposals for complying with aspects of the Third Package.

8.3 Between October and November 2010, DECC published two further supplementary consultation documents, one on proposals relating to the procedure for modifying licence conditions mentioned above, and one on the proposals relating to the provision of third party access to licence-exempt electricity and gas networks.

8.4 The Government confirmed its position in a Government Response published on 14 January 2011. The Response included plans to ensure that gas transporters could no longer carry out gas production activities. It also set out new licence modification arrangements, replacing the current licence modification process with an ex post right of appeal.

8.5 We laid the Principal Regulations in July 2011. They were debated in the House of Commons and the House of Lords. The Lords approval motion was agreed on 19th October. The Commons approval was given on 31st October. They were made on 9 November and came into force on 10 November.

8.6 It has been necessary to make separate regulations to make the necessary changes to Standard Special Conditions of gas transporter licences as we were not in a position to include these modifications in the Principal Regulations. The Principal Regulations were made under the affirmative resolution procedure. The reasons for this were set out in the Explanatory Memorandum to those regulations but do not apply to these regulations.

9. Guidance

9.1 DECC does not propose to produce any guidance in relation to the Regulations.

10. Impact

10.1 The principal impact of the Regulations is on gas transporters, whose licences the Regulations modify. Gas transporters own and operate gas pipeline systems conveying gas to premises or to other gas transporter's systems.

10.2 The Regulations modify the Standard Special Conditions of gas transporter licenses which have effect in certain gas transporter licences in place of the standard conditions amended by the Principal Regulations. The main modifications include introducing requirements for gas transporters to ensure that there is sufficient cross-

border capacity for the integration of European transmission infrastructure and requirements to facilitate improvements to the process by which customers switch supplier. They also supplement the changes introduced in the Principal Regulations relating to the unbundling certification of Transmission System Operators.

10.3 The Regulations also strengthen the powers of the Gas and Electricity Markets Authority (the designated regulatory authority for Great Britain) by removing the special modification procedures for Standard Special Conditions. The previous modification procedures for Standard Special Conditions, which prevented the Authority from modifying Standard Special Conditions if a certain number of licence holders objected, were incompatible with the requirements in the Third Package relating to the independence and autonomy of the designated regulatory authority from industry. The Regulations also enable the Gas and Electricity Markets Authority to propose code modifications where this is necessary in order to comply with or implement the Gas Regulation or binding decisions of the European Commission or the Agency for the Co-operation of Energy Regulators.

10.4 The Impact Assessments relevant to the principal regulations also include the assessment for the Gas Transporter (Modification of Licence Conditions) Regulations 2011 and were laid with the principal regulations. These Impact Assessments can be found at Annex 1.

11. Regulating small business

11.1 The only parties subject to the Regulations are Gas Transporter Licence holders. No current holder of a Gas Transporter Licence is a small business. If a small business were to become a Gas Transporter licensee it is possible that the Gas and Electricity Markets Authority could decide to make its licence subject to the Standard Special Conditions but it is more likely that the standard conditions of Gas Transporter licences would apply.

12. Monitoring & review

12.1 DECC will be responsible for monitoring the implementation of the Third Package. The Regulations include a review clause, which places an obligation on the Secretary of State to review the Regulations every five years from the day on which these Regulations come into force.

13. Contact

13.1 Phil Hicken (0300 068 6059, Phil.Hicken@decc.gsi.gov.uk) and Amy Sinclair (0300 068 5016, Amy.Sinclair@decc.gsi.gov.uk) at the Department of Energy and Climate Change can answer any queries in relation to this instrument.

Annex 1 – see separate attachment

EU THIRD PACKAGE – TRANSPOSITION NOTE

DIRECTIVE – GAS DIRECTIVE (2009/73/EC)

The Gas Transporter (Modification of Licence Conditions) Regulations 2011 - Annex

These Regulations implement certain obligations in the Gas Directive (listed below) in relation to gas transporters whose licences are subject to standard special conditions.

A separate note has been prepared in relation to the way in which the remainder of the Gas Directive has been implemented in GB (including the way in which obligations listed below have been imposed on gas transporters whose licences are not subject to standard special conditions).

Article	Objective	Implementation
3 (6) (a)	Requires Member States to ensure that customers who wish to switch suppliers are switched within three weeks, whilst respecting contractual conditions.	The insertion of paragraph 6A into Standard Special Condition of the Gas Transporter Licence A11 facilitates supplier transfers.
7 (4)	Requires that where vertically integrated Transmission System Operators (TSOs) participate in a joint undertaking, they establish and implement a compliance programme that must be approved by the Agency for the Co-operation of Energy Regulators (ACER).	Standard Special Condition B5 of the Gas Transporter Licence places a new requirement on gas transporters who are vertically integrated undertakings to comply with a compliance programme, where they participate in a joint undertaking, for the promotion of regional cooperation.
10 (4)	Requires regulatory authorities to open a certification procedure to ensure continuing compliance with Article 9 of the Gas Directive.	New Standard Special Condition B4 of the Gas Transporter Licence places an obligation on gas transporters to notify the regulatory authority of changes affecting certification.
13 (2)	Sets out the tasks of transmission, storage and LNG operators. This includes an obligation on TSOs to build cross-border capacity where reasonable and necessary for European integration.	New Standard Special Condition B3 of the Gas Transporter Licence places an obligation on licensees to ensure that there is sufficient cross-border capacity for the integration of European transmission infrastructure.
26	Sets out the requirement that generation and	Amendments to Standard Special Conditions A33 and A35 of the Gas

	production undertakings must be legally and functionally unbundled from distribution.	Transporter Licence better implement functional unbundling of distribution from gas production.
31	Requires gas undertakings to draw up, submit, audit and publish their annual accounts, and keep separate accounts for transmission, distribution, LNG and storage and other activities.	New paragraph 1A has been inserted into Standard Special Condition A30 of the Gas Transporter Licence to better implement the necessary accounting requirements.
32	Requires Member States to ensure the implementation of the third party access system for transmission, distribution and LNG facilities.	Standard Special Condition A5 of the Gas Transporter Licence, governing obligations as regard charging methodology, has been amended to ensure compliance with relevant legally binding decisions of the European Commission and ACER, and the Gas Regulation.
39 (4)	Requires Member States to guarantee the independence and autonomy of the regulatory authority and to ensure that its exercises its powers impartially and transparently.	We have deleted Standard Special Conditions A1, A2, B1, B2, D1 and D2 of the Gas Transporter Licence, which prevented the Authority from modifying standard special conditions if a certain number of licence holders objected, as these were incompatible with the requirements relating to the National Regulatory Authority's independence and autonomy from industry.
41 (1) (d), (4), (5)	These provisions require the Regulatory Authority's independence and autonomy, and place duties upon it to ensure compliance with and implementation of any relevant legally binding decisions of the European Commission and/or ACER.	In addition to the deletion of Standard Special Conditions A1, A2, B1, B2, D1 and D2 mentioned above, Standard Special Conditions A5 and A11 of the Gas Transporter Licence have been amended to enable the regulatory authority to propose code modifications in order to implement binding decisions and ensure compliance with the Third Package Gas Regulation. In addition, Standard Special Condition A26 of the Gas Transporter Licence has been amended to enable the Authority to request information in relation to its functions under the Gas Directive or Gas Regulation.

