

SCHEDULE 1

Regulation 20(2)

Duties of gas distribution exemption holders and supply exemption holders

“SCHEDULE 2AA

Section 6B

Duties of distribution exemption holders

*Third party access*

- 1.—(1) This paragraph applies where—
- (a) a customer owns or occupies premises which are connected to an exempt distribution system;
  - (b) the customer is taking a supply of gas through that system from—
    - (i) the distribution exemption holder that operates or has control of the system, or
    - (ii) a person related to the distribution exemption holder; and
  - (c) the customer—
    - (i) has served on the distribution exemption holder a notice expressing the customer’s interest in taking a supply of gas from a third party supplier through that system; and
    - (ii) has provided with the notice evidence that at least one third party supplier would be willing to supply the customer with gas through that system, and has identified any such third party supplier in the notice.
- (2) In this Schedule “expression of interest” means a notice served under sub-paragraph (1).
- (3) Within 5 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must provide any person related to it that is currently supplying the customer with gas with a copy of the expression of interest.
- (4) Within 10 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must serve on the customer—
- (a) a notice informing the customer that it will take the steps in sub-paragraph (6) with a view to giving a third party supplier access to its distribution system; or
  - (b) a notice informing the customer that the distribution exemption holder considers—
    - (i) that it would need to increase the capacity of its distribution system in order to give a third party supplier access to that distribution system; and
    - (ii) that one of the conditions in sub-paragraph (5) is met.
- (5) Those conditions are—
- (a) that it is not technically feasible to provide the increase in capacity in question;
  - (b) that providing that increase in capacity would have a significant and adverse economic impact on the distribution exemption holder or any other person.
- (6) Where the distribution exemption holder has served on the customer a notice under sub-paragraph (4)(a), the distribution exemption holder must—
- (a) serve on any third party supplier identified in the expression of interest a notice specifying—
    - (i) any metering arrangements that the distribution exemption holder considers would be required to enable access to be given; and

- (ii) whether it would be willing to give access through contractual arrangements which would not require a connection to be made or modified; and
    - (b) provide each such third party supplier with any other documents or information that it may reasonably request.
  - (7) The distribution exemption holder must serve the notice required by sub-paragraph (6)(a) within 20 working days beginning with the day on which it receives the expression of interest.
  - (8) The distribution exemption holder must provide any documents or information requested by a third party supplier under sub-paragraph (6)(b)—
    - (a) within 20 working days beginning with the day of the distribution exemption holder's receipt of the expression of interest; or
    - (b) if the request is made at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in paragraph (a) above, within 10 working days beginning with the day of the distribution exemption holder's receipt of the request.
- 2.—(1) This paragraph and paragraph 3 apply where a customer who has served an expression of interest relating to an exempt distribution system serves on the distribution exemption holder a notice—
- (a) confirming that the customer has entered into a contract with a third party supplier identified in the expression of interest for the supply of gas to premises which are connected to the exempt distribution system; and
  - (b) identifying that third party supplier.
- (2) Within 5 working days beginning with the day on which it receives the notice served under sub-paragraph (1), the distribution exemption holder must provide any person related to it that is currently giving a supply of gas to the customer with a copy of that notice.
- (3) If the distribution exemption holder has not, by the end of the 10 working day period mentioned in paragraph 1(4), served on the customer a notice under paragraph 1(4)(b), the distribution exemption holder must give the third party supplier such access to the distribution system to which the expression of interest relates as is necessary to enable the third party supplier to give a supply of gas to the customer.
- (4) Access under sub-paragraph (2) must be given either—
- (a) as soon as is reasonably practicable after the distribution exemption holder receives the notice served under sub-paragraph (1); or
  - (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.
- (5) Sub-paragraphs (6) to (11) apply if the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b) (whether before or after the service of the notice under sub-paragraph (1)).
- (6) Subject to sub-paragraph (7), the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of gas to the customer, and must give that access—
- (a) as soon as is reasonably practicable after the end of the period of 28 working days beginning with the day on which the customer serves the notice under sub-paragraph (1); or
  - (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.
- (7) If, before the end of the period mentioned in sub-paragraph (6)(a), the distribution exemption holder takes the steps mentioned in sub-paragraph (8)—

- (a) the distribution exemption holder is not required to give access in accordance with sub-paragraph (6), and
  - (b) sub-paragraph (9) applies.
- (8) The steps mentioned in sub-paragraph (7) are—
- (a) providing the third party supplier with evidence to show—
    - (i) that the distribution exemption holder would need to increase the capacity of its distribution system in order to give the third party supplier access to that distribution system; and
    - (ii) that one of the conditions in paragraph 1(5) is met; and
  - (b) sending a copy of the evidence to the customer.
- (9) If, within the period mentioned in sub-paragraph (10), the distribution exemption holder and the third party supplier enter into a contract for the provision to the third party supplier of such access as is necessary to enable it to give a supply of gas to the customer through the distribution system, the distribution exemption holder must give access to the third party supplier in accordance with the terms of the contract.
- (10) That period is—
- (a) the 14 days immediately following the period mentioned in sub-paragraph (6)(a); or
  - (b) any longer period that the distribution exemption holder, the third party supplier and the customer may agree in writing.
- (11) If, before the end of the 28 day period mentioned in sub-paragraph (6)(a), the distribution exemption holder, the third party supplier and the customer agree in writing to the extension of that period, sub-paragraphs (6) to (10) have effect as if sub-paragraph (6)(a) referred to the extended period instead of to the period of 28 working days there mentioned.
- 3.—(1)** The third party supplier mentioned in paragraph 2(1) may make an application to the Authority under this paragraph if—
- (a) the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b); and
  - (b) at the end of the period mentioned in paragraph 2(10), the distribution exemption holder is not under a duty (whether by virtue of sub-paragraph (6) or (9) of paragraph 2) to give access to the third party supplier.
- (2) The third party supplier may not make an application under this paragraph unless it has, no later than the 10th working day before the day on which the application is made, served on the distribution exemption holder a notice—
- (a) informing the distribution exemption holder that it intends to make an application under this paragraph; and
  - (b) inviting the distribution exemption holder to provide it with any further evidence it may wish to provide for the purpose mentioned in paragraph 2(8)(a).
- (3) The application must include—
- (a) any evidence provided by the distribution exemption holder under paragraph 2(8)(a) or sub-paragraph (2)(b) above;
  - (b) a description of the nature of the access required by the third party supplier (including any alternative forms of access that would be acceptable to it); and
  - (c) any evidence the third party supplier may wish to include—
    - (i) to show that the capacity of the distribution system would not need to be increased in order to give a third party supplier access to it;

- (ii) to show that a condition in paragraph 1(5) is not met; or
- (iii) as to the benefits that would be brought by any increase in capacity that may be necessary.

(4) The third party supplier must send a copy of the application to the distribution exemption holder and the customer.

(5) Where an application has been made under this paragraph the Authority may, at the request of the customer or the third party supplier (the “requesting party”), ask the distribution exemption holder to provide the Authority and the requesting party with information in respect of the measures that would be required to reinforce the distribution system in order to provide the necessary capacity.

(6) Except to the extent that sub-paragraph (7) applies, the distribution exemption holder must comply with any request made by the Authority under sub-paragraph (5).

(7) If the distribution exemption holder represents to the Authority that particular information should not be disclosed under sub-paragraph (6) because it is commercially sensitive, the Authority may determine that the information in question should be excepted from the duty to disclose information under that sub-paragraph, having regard to the need to preserve the confidentiality of commercially sensitive information.

(8) The distribution exemption holder may recover from the requesting party any costs reasonably incurred in providing any information requested under sub-paragraph (5).

(9) Where an application has been made under this paragraph the Authority—

- (a) must, if satisfied that the conditions in sub-paragraph (10) are met, determine that the distribution exemption holder is entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity;
- (b) must, if not satisfied that those conditions are met, determine that the distribution exemption holder is not entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity.

(10) Those conditions are—

- (a) that the distribution exemption holder would need to increase the capacity of its distribution system in order to give the third party supplier access to it; and
- (b) that either it is not technically feasible to provide that increase in capacity, or the benefits of the increase in capacity would be outweighed by the economic impact that the provision of the increase in capacity would have on the distribution exemption holder or any other person.

(11) The Authority must, as soon as is reasonably practicable after making its determination—

- (a) notify the distribution exemption holder of its determination; and
- (b) provide the customer and the third party supplier with a copy of that notice.

(12) If the Authority determines that the distribution exemption holder is not entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity—

- (a) the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of gas to the customer;
- (b) paragraph 1(6) to (8) applies as if the distribution exemption holder had served a notice under paragraph 1(4)(a) on the customer, and as if the references in paragraph 1(7) and (8)(a) to the “expression of interest” were to the notification under sub-paragraph (11) above; and
- (c) paragraph 5 has effect as if the reference in paragraph 5(3) to the “expression of interest” were to the notification under sub-paragraph (11) above.

- (13) Access under sub-paragraph (12)(a) must be given either—
- (a) as soon as is reasonably practicable after the distribution exemption holder receives the notification under sub-paragraph (11); or
  - (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

4.—(1) This paragraph applies where a distribution exemption holder is required under paragraph 2(3), (6) or (9) or 3(12)(a) to give a third party supplier access to its distribution system.

- (2) The duty must be performed for so long as the access is required.
- (3) In meeting the duty the distribution exemption holder must not—
  - (a) treat the third party supplier less favourably than any other supplier in respect of the terms and conditions for access to its distribution system, including those relating to any connection under paragraph 7(3);
  - (b) refuse to give access on the basis that the Authority has not yet approved its charging methodology; or
  - (c) act in a manner which unreasonably prevents, restricts or delays access to its distribution system by the third party supplier.

(4) The distribution exemption holder must grant the third party supplier such ancillary or incidental rights over its distribution system as are necessary to enable the third party supplier to meet its licence or statutory obligations, including any obligations of the third party supplier relating to metering functions.

(5) Where access has been given before a methodology for calculating a use of system charge has been given an approval that is required by virtue of paragraph 5(1), the distribution exemption holder may, within a reasonable period after receiving notification of the approval of the methodology, require the third party supplier to pay for that access an amount that is—

- (a) equivalent to the charge that would have been payable for that access had the methodology been approved before the access was given; and
- (b) payable within such period as the parties agree or, in the absence of such agreement, within such reasonable period after the distribution exemption holder demands the payment as may be specified by the distribution exemption holder.

#### *Charges for use of system*

5.—(1) Subject to paragraph 13(1), a distribution exemption holder on whom a customer has served an expression of interest must not impose a use of system charge unless the Authority has approved the methodology for calculating that charge under sub-paragraph (5) or paragraph 14(7).

(2) If such a distribution exemption holder proposes to impose a use of system charge in circumstances where, by virtue of sub-paragraph (1), the Authority's approval of the methodology for that charge is required the distribution exemption holder must—

- (a) prepare a record of the assets and liabilities associated with its distribution activities at the time of the receipt of the expression of interest;
- (b) prepare a statement (a “charging statement”) containing details of the proposed methodology for calculating the use of system charge;
- (c) provide the Authority with—
  - (i) the charging statement,
  - (ii) any evidence that the distribution exemption holder may wish to provide in support of the methodology proposed for calculating the use of system charge,

- (iii) a copy of the expression of interest, and
  - (iv) such other information or documents as the Authority may request;
  - (d) provide the relevant third party supplier with a copy of the charging statement.
- (3) Subject to sub-paragraph (4), all of the steps required by sub-paragraph (2) must be carried out within 20 working days beginning with the day of the distribution exemption holder's receipt of the expression of interest.
- (4) Where the Authority has requested further information or documents in accordance with sub-paragraph (2)(c)(iv) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in sub-paragraph (3), the further information or documents must be provided within 10 working days beginning with the day of the distribution exemption holder's receipt of the request.
- (5) Where a distribution exemption holder has complied with sub-paragraph (2)(c) the Authority must, as soon as is reasonably practicable—
- (a) decide whether to approve the methodology proposed by that distribution exemption holder; and
  - (b) notify the distribution exemption holder of that decision.
- (6) Where a distribution exemption holder receives a notice under sub-paragraph (5)(b), it must, as soon as is reasonably practicable after that receipt, provide the relevant third party supplier with a copy of that notice.
- (7) Where the Authority does not approve the methodology proposed by the distribution exemption holder, the Authority must give reasons for that decision.
- (8) Where the Authority does not approve the methodology proposed by the distribution exemption holder and the distribution exemption holder still wishes to impose a use of system charge the distribution exemption holder must—
- (a) submit to the Authority a charging statement containing details of a revised methodology;
  - (b) provide the Authority with a copy of such other information as the Authority may request in respect of that revised methodology; and
  - (c) provide the relevant third party supplier with a copy of the charging statement.
- (9) Where at any time a distribution exemption holder wishes to modify a methodology that has previously been approved under this Schedule and is used by it for calculating a use of system charge levied for the use of a distribution system other than a closed distribution system, the distribution exemption holder must—
- (a) submit to the Authority a charging statement containing details of the proposed revised methodology;
  - (b) provide the Authority with a copy of such other information as the Authority may request; and
  - (c) provide the relevant third party supplier, and any other third party supplier who would be affected by the modification proposed, with a copy of the charging statement.
- (10) If a distribution exemption holder takes the steps required by sub-paragraph (8) or (9), sub-paragraphs (5) to (7) apply as if it had complied with sub-paragraph (2)(c).
- (11) For the purposes of sub-paragraphs (2)(d), (6), (8)(c) and (9)(c), a duty to provide anything to "the relevant third party supplier" is a duty to provide it—
- (a) if at the time when the duty is discharged the distribution exemption holder has received a notice from the customer under paragraph 2(1), to the third party supplier identified in that notice; or

- (b) if at the time when the duty is discharged the distribution exemption holder has not received such a notice from the customer, to any third party supplier identified in the expression of interest.

6.—(1) Sub-paragraph (2) applies where a distribution exemption holder is under a duty to give access to its distribution system under paragraph 2(3), (6) or (9) or 3(12)(a).

(2) Where and for so long as the distribution exemption holder is imposing a use of system charge, it must—

- (a) prepare and maintain distribution accounts in respect of the distribution system for each regulatory year;
- (b) keep copies of those accounts for 6 years from the date of the transactions to which they relate; and
- (c) notify the Authority of the address where those accounts are held.

(3) In sub-paragraph (2)—

“distribution accounts” means accounting records in relation to the business (the “distribution business”) constituted by the distribution activities of the distribution exemption holder’s business that—

- (a) are sufficient to show and explain the transactions of the distribution business, separate from any other transactions of the distribution exemption holder’s business;
- (b) are sufficient to disclose with reasonable accuracy, at any time, the financial position of the distribution business at that time;
- (c) contain entries from day to day of all sums of money received and expended in the course of the distribution business and the matters in respect of which the receipt and expenditure takes place; and
- (d) contain a record of the assets and liabilities attributable to the distribution business;

“regulatory year”, in relation to a distribution business, means—

- (a) a period of 12 months beginning on 1 April in any calendar year and ending on 31 March of the next calendar year; or
- (b) where the distribution exemption holder wishes to align the accounting period for the distribution business with the accounting period for any other business it carries on or the business of any a person related to it, the period of 12 months used as the accounting period for that other business or the business of that related person.

### *Connection*

7.—(1) This paragraph applies where a distribution exemption holder is under a duty to give access to a third party supplier under paragraph 2(3), (6) or (9) or 3(12)(a).

(2) The third party supplier, or the customer who served the notice under paragraph 2(1), may require a connection to be made between the distribution exemption holder’s distribution system and—

- (a) the premises mentioned in paragraph 1(1)(a), or
- (b) a pipe-line system operated or controlled by—
  - (i) a gas transporter, or
  - (ii) another distribution exemption holder.

(3) The distribution exemption holder must, if required to make a connection pursuant to sub-paragraph (2) either—

- (a) connect the premises or pipe-line system to its distribution system and supply and lay any pipe that may be necessary for that purpose; or
  - (b) where the distribution exemption holder and the person requiring the connection have agreed that a person other than the distribution exemption holder is to supply and lay any pipe that may be necessary for the purpose of connection, connect the premises or pipe-line system to its distribution system once that pipe has been supplied and laid.
- (4) The duty under sub-paragraph (3) must be performed in accordance with such terms as are agreed under paragraphs 8 and 9, or paragraph 10, for so long as the connection is required.
- (5) In this paragraph and paragraphs 8 to 10—
- (a) any reference to a distribution exemption holder connecting any premises or pipe-line system includes a reference to maintaining the connection;
  - (b) any reference to requiring a connection includes a reference to requiring the connection to be maintained;
  - (c) any reference to supplying or laying a pipe includes a reference to the supply or laying of a pipe either by the installation of a new one or by the modification of an existing one; and
  - (d) any reference to a pipe includes a reference to any apparatus ancillary to the pipe.

**8.—(1)** Where a distribution exemption holder is under a duty to connect any premises, or another pipe-line system, to its distribution system in accordance with paragraph 7(3)(a)—

- (a) any expenses reasonably incurred in making the connection or in supplying and laying the pipe must, if and to the extent that the distribution exemption holder requires, be met by the person requiring the connection;
- (b) the distribution exemption holder may require the person requiring the connection to provide it with reasonable security for the payment to it of all money which may become due to it in respect of the supply and laying of the pipe;
- (c) if the person requiring the connection fails to provide any security required under paragraph (b), or any security given by the person requiring the connection becomes invalid or insufficient and that person fails to provide alternative or additional security, the distribution exemption holder may if it thinks fit—
  - (i) where the connection has not been made, refuse to supply or lay the pipe for so long as the failure continues, or
  - (ii) where the connection is being maintained, disconnect the premises or pipe-line system in question;
- (d) the distribution exemption holder may require the person requiring the connection to accept, in respect of the making of the connection and the supplying and laying of the pipe, any terms restricting any liability of the distribution exemption holder for economic loss resulting from negligence that it is reasonable in all the circumstances for that person to be required to accept.

(2) The reference in sub-paragraph (1)(a) to expenses reasonably incurred in supplying a pipe includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to supply it; and the reference in sub-paragraph (1)(b) to money which may become due in respect of the laying of the pipe is to be construed accordingly.

(3) Where any sum has been deposited with a distribution exemption holder by way of security under sub-paragraph (1)(b), the distribution exemption holder must, on repaying the amount, also pay interest on that amount, calculated on a daily basis at the rate of 1 per cent above LIBOR, for the period beginning with the day following that on which the amount was deposited and ending on the day on which the amount is repaid.



(4) In sub-paragraph (3), “LIBOR”, in relation to any day, means the sterling three-month London inter-bank offered rate in force for that day rounded if necessary to two decimal places.

(5) Where the distribution exemption holder is under a duty to connect any premises, or another pipe-line system to its distribution system in accordance with paragraph 7(3)(b)—

- (a) any expenses reasonably incurred in making the connection must, if and to the extent that the distribution exemption holder requires, be met by the person requiring the connection;
- (b) the distribution exemption holder may require the person requiring the connection to accept any terms—
  - (i) indemnifying the distribution exemption holder in respect of any liability connected with the laying of the pipe, and
  - (ii) which it is reasonable in all the circumstances for the person requiring the connection to be required to accept; and
- (c) the following will, from the time of the connection, vest in and become property, rights or liabilities of the distribution exemption holder—
  - (i) the pipe supplied and laid for the purpose of connection, and
  - (ii) any rights or liabilities of the owner or occupier of the premises, or of the person who operates or has control of the pipe-line system which relate to the laying, maintenance, repair, alteration or removal of the pipe.

(6) Nothing in paragraph 7 is to be taken as requiring the distribution exemption holder to make a connection if and to the extent that—

- (a) the distribution exemption holder is prevented from doing so by circumstances outside its control;
- (b) circumstances exist by reason of which the connection would or might involve danger to the public, and the distribution exemption holder has taken all reasonable steps to prevent the circumstances from occurring and to prevent them from having that effect; or
- (c) it is not reasonable in all the circumstances for the distribution exemption holder to be required to do so.

(7) Without prejudice to the generality of sub-paragraph (6), nothing in paragraph 7 is to be taken as requiring the distribution exemption holder to make a connection if any consent that is necessary for the connection to be made or, as the case may be, for the pipe to be supplied and laid, has not been given.

(8) Sub-paragraphs (1)(c)(ii) and (6)(c), do not permit a distribution exemption holder to disconnect any premises or pipe-line system unless the distribution exemption holder has given the owner and the occupier of the premises or (as the case may be) the person who operates or has control of the pipe-line system not less than 7 working days’ notice of its intention to disconnect.

(9) Nothing in paragraph 7 is to be taken as requiring a distribution exemption holder to connect any premises or pipe-line system if the supply of gas to the premises or pipe-line system is likely to exceed 75,000 therms in any period of 12 months.

**9.—(1)** This paragraph applies where a distribution exemption holder is required to connect its distribution system to any premises or pipe-line system under paragraph 7.

(2) Except where an agreement under paragraph 10(1) is in place, the distribution exemption holder must comply with the requirements of sub-paragraph (3) as soon as is reasonably practicable after the person requiring the connection has—

- (a) served on the distribution exemption holder a notice requesting that the distribution exemption holder offer terms for making the connection; and
- (b) provided the distribution exemption holder with the following information—

- (i) details of the premises or pipe-line system from which the connection to the distribution exemption holder's distribution system is required, including the location of the premises or pipe-line system,
  - (ii) the date on or by which the person requiring the connection proposes that the work necessary for the connection to be made should be carried out,
  - (iii) details of the person by whom the person requiring the connection proposes that the pipe should be supplied and laid,
  - (iv) the maximum pressure at which gas may be required to be conveyed through the connection,
  - (v) details of any other requirements that the person requiring the connection has, including any metering requirements, and
  - (vi) any other information in relation to the required connection reasonably requested by the distribution exemption holder.
- (3) The distribution exemption holder must serve on the person requiring the connection a notice—
- (a) raising any concerns that it has with the information provided in accordance with subparagraph (2)(b);
  - (b) proposing arrangements for any security that the person requiring the connection will be required to pay to it under paragraph 8(1)(b);
  - (c) proposing arrangements for any payment that the person requiring the connection will be required to make under paragraph 8(1)(a) or (5)(a);
  - (d) stating any terms that the person requiring a connection will be required to accept under paragraph 8(1)(d), restricting the distribution exemption holder's liability;
  - (e) stating any terms for indemnity that the person requiring a connection will be required to accept under paragraph 8(5)(b); and
  - (f) proposing any other terms on which it will make the connection.
- (4) The distribution exemption holder must negotiate in good faith with the person requiring the connection and endeavour to reach an agreement on the terms and conditions for that connection.

**10.—**(1) The distribution exemption holder may enter into an agreement with a person requiring a connection in pursuance of paragraph 7(2) for the making of a connection on such terms as may be agreed by the parties.

(2) So long as the agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided for under paragraphs 7 to 9.

**11.—**(1) Section 27A (determination of certain disputes)(1) has effect as if the disputes mentioned in section 27A(1) included a dispute arising under paragraphs 7 to 9 of this Schedule between a distribution exemption holder and a person requiring a connection in pursuance of paragraph 7(2).

- (2) In the application of section 27A in relation to such a dispute, that section is to be read as if—
- (a) subsection (2) provided that such a dispute, if relating to the connection of any premises to a pipe-line system operated or controlled by a distribution exemption holder, may not

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(1) 1986 c. 44. Section 27A was inserted by section 10(1) of, and paragraph 26 of Schedule 3 to, the Gas Act 1995 (c. 45). Subsequently, subsection (1) was amended by section 3(2) and section 108 of, and paragraphs 1, 2(1), and 10 of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27); subsection (2) was amended by section 3(2) and section 108 of, and paragraphs 1 and 2(1) of Part 1 of Schedule 6 to, the Utilities Act 2000; subsections (4) to (7) were amended by section 3(2) of the Utilities Act 2000; and subsection (5) was amended by section 108 of, and paragraphs 1 and 2(1) of Part 1 of Schedule 6 to, the Utilities Act 2000.

- be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made;
- (b) in subsection (5) the references to a gas transporter were to a distribution exemption holder, and the reference to a person requiring a connection to a main of the transporter were to a person requiring a connection in pursuance of paragraph 7(2) of this Schedule;
  - (c) subsection (6) and the reference to that subsection in subsection (8) were omitted; and
  - (d) the reference in subsection (7) to a dispute arising under section 11(1) were to a dispute arising under paragraph 8(1)(b) or (c) of this Schedule.
- (3) The references in sub-paragraphs (1) and (2)(b) to a person requiring a connection in pursuance of paragraph 7(2) are to be construed in accordance with paragraph 7(5).

#### *Closed distribution systems*

**12.—**(1) A distribution exemption holder may apply to the Authority for an exempt distribution system operated or controlled by it to be classified as a closed distribution system.

(2) Where the Authority has received an application from a distribution exemption holder under sub-paragraph (1) (a “closed distribution system application”), it must classify the distribution system as a closed distribution system if the Authority considers that all of the following criteria are met—

- (a) the distribution system is not used for the purpose of supplying gas to household customers, or is used to supply fewer than 50 household customers who—
    - (i) are employees of, or work for or otherwise render services to, the distribution exemption holder or a person related to the distribution exemption holder; and
    - (ii) take a supply of gas that is wholly or mainly from a gas production site embedded in the distribution system;
  - (b) the distribution system is wholly or mainly used for distributing gas within a geographically self-contained industrial, commercial or shared services site and is not integrated with any pipe-line system operated by a gas transporter; and
  - (c) the distribution system is wholly or mainly used either—
    - (i) by system users whose businesses, for technical or safety-related reasons, have operational or production processes that are integrated with those of other system users of that distribution system; or
    - (ii) for the purpose of supplying gas to premises owned or occupied by the distribution exemption holder or by a person related to the distribution exemption holder.
- (3) In sub-paragraph (2) “gas production site” means a site on which a person carries on an activity by virtue of which the person is a gas producer within the meaning of section 7(2).
- (4) A closed distribution system application must—
- (a) identify the distribution system to which the application relates;
  - (b) include any evidence available to the applicant to support that application; and
  - (c) provide any further information or documents that the Authority may request in respect of that application;
- (5) The Authority must decide whether to classify a distribution system as a closed distribution system as soon as is reasonably practicable after the Authority has received—
- (a) the closed distribution system application; and

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(2) The definition of “gas producer” in section 7 of the Gas Act 1986 (c. 44) is inserted by regulation 18(5).

(b) any further information or documents requested by it in under sub-paragraph (4)(c).

(6) The Authority must notify the distribution exemption holder of its decision as soon as is reasonably practicable after that decision has been made.

**13.**—(1) Paragraph 5(1) to (8) does not apply in relation to any use of system charge (or proposed use of system charge) that relates to a closed distribution system.

(2) Where a distribution exemption holder that operates or has control of a closed distribution system receives an expression of interest from a customer who owns or occupies premises that are connected to that system, it must—

- (a) include in any notice served under paragraph 1(4) a statement that its distribution system is a closed distribution system; and
- (b) within 7 working days beginning with the day on which it receives the expression of interest, by notice inform any third party supplier identified in the expression of interest that its distribution system is a closed distribution system.

**14.**—(1) Sub-paragraphs (2) and (3) apply if a customer has served an expression of interest with respect to a closed distribution system and—

- (a) the customer, or a third party supplier identified in the expression of interest, serves a notice on the distribution exemption holder requesting that the methodology for a proposed use of system charge be submitted to the Authority for approval; and
- (b) at the time of receiving the request the distribution exemption holder has not received any confirmation under paragraph 2(1) that the customer has entered into a contract with a third party supplier.

(2) From the time when the distribution exemption holder receives that request, paragraph 5(1) to (8) has effect in relation to the closed distribution system as if paragraph 13(1) did not have effect.

(3) For the purposes of the application of paragraph 5(2) in relation to the proposed use of system charge mentioned in sub-paragraph (1)(a), the reference in paragraph 5(3) to the “expression of interest” is to be read as a reference to the request mentioned in sub-paragraph (1)(a).

(4) Sub-paragraphs (5) to (11) apply where a customer who owns or occupies premises that are connected to a closed distribution system has served a notice under paragraph 2(1) confirming that it has entered into a contract with a third party supplier (“the confirmed third party supplier”) and—

- (a) the customer or the confirmed third party supplier serves on the distribution exemption holder that operates or has control of the closed distribution system a notice requesting that the methodology for a use of system charge that is being applied by the distribution exemption holder be submitted to the Authority for approval;
- (b) the methodology for calculating the charge has not previously been approved under this Schedule; and
- (c) at the time of receiving the notice under paragraph (a), the distribution exemption holder has received the notice served under paragraph 2(1).

(5) The distribution exemption holder must, within 20 working days beginning with the day on which it receives the request under sub-paragraph (4)(a)—

- (a) provide the Authority with—
  - (i) a charging statement in respect of the methodology for any use of system charge applied at the time of the request being made; and
  - (ii) such other information or documents as the Authority may specify; and
- (b) provide the customer and the confirmed third party supplier with a copy of that charging statement.

(6) Where the Authority has requested further documents or information in accordance with sub-paragraph (5)(a)(ii) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in sub-paragraph (5), those further documents or information must be provided within 10 working days beginning with the day of the distribution exemption holder's receipt of that request for further documents or information.

(7) Where the distribution exemption holder has complied with sub-paragraph (5)(a), the Authority must, as soon as is reasonably practicable—

- (a) decide whether to approve the methodology set out in the charging statement; and
- (b) notify the distribution exemption holder and the confirmed third party supplier of its decision.

(8) Where the Authority does not approve the methodology, the Authority must give reasons for that decision.

(9) Where the Authority has notified the distribution exemption holder of a decision that it does not approve the methodology, the distribution exemption holder must not continue to impose a use of system charge, except where the Authority has considered the methodology for such a charge by virtue of sub-paragraph (11) and has approved it.

(10) Where the Authority does not approve the methodology submitted under sub-paragraph (5) (a) the distribution exemption holder may—

- (a) submit to the Authority a charging statement containing details of a revised methodology;
- (b) provide the Authority with such other information or documents as the Authority may specify; and
- (c) send a copy of the charging statement to the customer and the confirmed third party supplier.

(11) If the distribution exemption holder takes the steps mentioned in sub-paragraph (10)(a) to (c), sub-paragraphs (7) and (8) apply as if it had complied with sub-paragraph (5)(a).

(12) Where at any time a distribution exemption holder wishes to modify a methodology that has previously been approved under this Schedule and is used by it for calculating a use of system charge levied for the use of a closed distribution system, the distribution exemption holder must—

- (a) submit to the Authority a charging statement containing details of the proposed revised methodology;
- (b) provide the Authority with a copy of such other information or documents as the Authority may request; and
- (c) send a copy of the charging statement to the customer, the confirmed third party supplier and any other third party supplier who would be affected by the modification proposed.

(13) If the distribution exemption holder takes the steps mentioned in sub-paragraph (12)(a) to (c), sub-paragraphs (7) and (8) apply as if it had complied with sub-paragraph (5)(a).

#### *Change of circumstance in respect of a closed distribution system*

**15.—**(1) If, after a system has been classified as a closed distribution system, there is a change of circumstance which affects, or might affect, whether the system continues to meet the criteria set out in paragraph 12(2), the distribution exemption holder that operates or has control of the distribution system must notify the Authority of the change as soon as is reasonably practicable after it occurs.

(2) If the distribution exemption holder that operates or has control of the distribution system wishes the system to continue to be classified as a closed distribution system, it must include in the notice an application to the Authority asking the Authority to confirm the classification.

(3) Any application under sub-paragraph (2) must—

- (a) identify the distribution system to which the application relates;
  - (b) include any evidence available to the applicant to support that application; and
  - (c) provide any further information or documents that the Authority may request in respect of that application.
- (4) Where the Authority has received a notice under sub-paragraph (1), it must, as soon as is reasonably practicable, either—
- (a) revoke the classification; or
  - (b) confirm the classification if—
    - (i) the notice includes an application made under sub-paragraph (2);
    - (ii) the Authority has received any further information or documents requested by it; and
    - (iii) the Authority considers that the criteria set out in paragraph 12(2) continue to be met.
- (5) The Authority must notify the applicant of its decision under sub-paragraph (4) as soon as is reasonably practicable after the decision has been made.

### *Interpretation*

#### 16.—(1) In this Schedule—

“charging statement” (in relation to a distribution exemption holder who proposes to impose a use of system charge) is to be construed in accordance with paragraph 5(2)(b);

“closed distribution system” means a system classified as a closed distribution system by the Authority under paragraph 12(2);

“customer” means a person who purchases gas for the person’s own consumption;

“distribution system” means a pipe-line system by means of which the person who operates or has control of the system conveys gas in circumstances such that—

- (a) that person is thereby carrying on an activity such as is mentioned in section 5(1)(a)(3); and
- (b) the whole or part of that activity is also an activity of distribution within the meaning given by Article 2(5) of the Gas Directive(4);

“expression of interest” has the meaning given by paragraph 1(2);

“household customer” means a customer who purchases gas for consumption by the customer’s own household;

“pipe-line system” includes the pipes and any associated apparatus comprised in that system;

“system user” in relation to a distribution system, means—

- (a) a person supplying gas that is being conveyed by means of that distribution system; or
- (b) a customer who owns or occupies premises that are connected to that distribution system;

“third party supplier”, in relation to a distribution exemption holder, means any authorised supplier that is not related to the distribution exemption holder;

“use of system charge”, in relation to a distribution exemption holder, means a charge which—

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(3) 1986 c. 44. Section 5 was substituted by section 3(1) of the Gas Act 1995 (c. 45). Subsection (1) was subsequently amended by section 108 of, and Schedule 8 to, the Utilities Act 2000 (c. 27). Paragraph (a) of subsection (1) was subsequently amended by section 108 of, and paragraphs 1 and 3 of Part 1 of Schedule 6 to, the Utilities Act 2000 and section 149(1) and (2)(a) of the Energy Act 2004 (c. 20). Other amendments have been made that are not relevant for these purposes.

(4) OJ No L 211, 14.08.2009, p. 102.

- (a) is levied by the distribution exemption holder on a third party supplier identified in an expression of interest that has been served on the distribution exemption holder; and
  - (b) is for use of the exempt distribution system to which the expression of interest relates.
- (2) For the purposes of this Schedule, a person (“A”) is related to another person (“B”) where A is—
- (a) an undertaking in which B has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000<sup>(5)</sup>;
  - (b) a holding company of B;
  - (c) a subsidiary of B; or
  - (d) a subsidiary of a holding company of B.
- (3) For the purposes of sub-paragraph (2) “holding company” and “subsidiary” are to be construed in accordance with section 1159 of the Companies Act 2006<sup>(6)</sup>.

## SCHEDULE 2AB

Section 6C

### Duties of supply exemption holders

#### *Change of supplier*

- 1.—(1) This paragraph applies if a supply exemption holder enters into a contract with a customer to start supplying gas to any premises.
- (2) The supply exemption holder must, within 7 days beginning with the day on which the contract is entered into, give any person who is currently supplying gas to the premises a notice stating—
- (a) that the contract has been entered into, and
  - (b) when the supply exemption holder will start supplying gas to the premises.
- (3) Subject to sub-paragraphs (4) and (7), the supply exemption holder must start supplying gas to the premises within 21 days of the relevant date.
- (4) The supply exemption holder need not comply with sub-paragraph (3) if—
- (a) the customer requests that the supply start on a later date;
  - (b) the customer terminates, or gives notice to terminate, the contract; or
  - (c) one or more of the reasons in sub-paragraph (5) applies.
- (5) The reasons in this sub-paragraph are—
- (a) that the supply exemption holder—
    - (i) does not have all of the information it requires in order to start supplying gas to the premises, despite having taken all reasonable steps to obtain the missing information from the customer; and
    - (ii) cannot readily obtain that information from another source;
  - (b) that the customer is taking a supply of gas through an exempt distribution system and the supply exemption holder is unable to start supplying gas to the premises because—

<sup>(5)</sup> 2000 c. 8. Section 421A was inserted by articles 3(1)(b) and 6 of, and paragraph 212(3) of Part 2 of Schedule 1 to, S.I. 2008/948.

<sup>(6)</sup> 2006 c. 46. Amendments have been made that are not relevant for these purposes.

- (i) a connection which the customer or supply exemption holder requires to be made in pursuance of paragraph 7(2) of Schedule 2AA has not yet been made; or
  - (ii) the distribution exemption holder has specified, in a notice under paragraph 1(6)(a) (i) of Schedule 2AA, a metering arrangement which it considers would be required for access to be given to a third party supplier (within the meaning of that Schedule) and that metering arrangement is not yet in place;
  - (c) that any other circumstance which is outside the control of the supply exemption holder and which it has taken all reasonably practicable steps to resolve prevents it from starting to supply gas to the premises.
- (6) If, because of a reason in sub-paragraph (5), a supply exemption holder is not required to start supplying gas to the premises within 21 days of the relevant date, it must start supplying gas to the premises as soon as is reasonably practicable after the reason ceases to apply, and in any event within 21 days of the date on which the reason ceases to apply (but if there is more than one reason, references in this sub-paragraph to a reason's ceasing to apply are to all the reasons' having ceased to apply).
- (7) If another supply exemption holder is currently supplying gas to the premises and has objected to the change of supplier under paragraph 2, then the supply exemption holder mentioned in sub-paragraph (1) above—
- (a) must not start supplying gas to the premises before that objection is resolved; but
  - (b) must start supplying gas to the premises as soon as is reasonably practicable after the objection is resolved, and in any event within 21 days of the date on which the objection is resolved.
- (8) For the purposes of sub-paragraph (7) an objection made under paragraph 2 is taken to be resolved—
- (a) in the case of an objection based on the reason in paragraph 2(5)(a) alone—
    - (i) when the customer, or the supply exemption holder who made the objection, informs the supply exemption holder mentioned in sub-paragraph (1) above that the debt has been paid off in full; or
    - (ii) when an arrangement such as is mentioned in paragraph 2(5)(a)(iii) is made with respect to the debt;
  - (b) in the case of an objection based on the reason in paragraph 2(5)(b) alone, when the period mentioned in that paragraph expires;
  - (c) in the case of an objection based on both those reasons, when the objection has been resolved in relation to each reason in accordance with paragraphs (a) and (b) above; or
  - (d) in any case, when the objection is withdrawn.
- (9) In this paragraph “the relevant date” means—
- (a) the day after the day on which the supply exemption holder enters into the contract mentioned in sub-paragraph (1); or
  - (b) if, after the contract is entered into, there is a period within which the customer may decide not to proceed with it, the earlier of—
    - (i) the day after the day on which that period ends; or
    - (ii) the 14th day after the day on which the contract was entered into.
- 2.—(1)** This paragraph applies if—
- (a) a person (“the new supplier”) has entered into a contract with a customer to start supplying electricity to any premises; and



- (b) a supply exemption holder is currently supplying electricity to the premises under a contract with that customer.
- (2) If one or more of the reasons in sub-paragraph (5) applies, the supply exemption holder may object to the change of supplier by sending notice of the objection and the reason (or reasons) for it to—
  - (a) the new supplier; and
  - (b) the customer.
- (3) A notice under sub-paragraph (2) must be sent—
  - (a) as soon as reasonably practicable; and
  - (b) if the supply exemption holder is notified under paragraph 1(2), or in accordance with a condition in a licence, that the contract has been entered into, not later than the end of the 14th day after the day on which it receives that notification.
- (4) If the supply exemption holder objects to a change of supplier because of the reason in sub-paragraph (5)(b), the notice of this objection must also state when the period mentioned in that sub-paragraph will expire.
- (5) The reasons in this sub-paragraph are that—
  - (a) the customer owes money (“the debt”) to the supply exemption holder in respect of gas supplied to the customer and—
    - (i) the supply exemption holder has demanded payment of the debt;
    - (ii) at least 28 days have passed since the date on which the demand was sent to the customer and any date for payment stated in the demand has also passed; and
    - (iii) the new supplier and the supply exemption holder have not agreed to an arrangement under which some or all of the debt will be assigned to the new supplier; or
  - (b) a contract between the supply exemption holder and the customer includes a term which prevents the customer from terminating that contract within a specified period which has not expired.
- (6) The supply exemption holder must comply with any reasonable request from the new supplier to provide any information, or take any other steps, required to enable the new supplier to start supplying gas to the customer’s premises.

**3.—(1)** A supply exemption holder must not require a household customer to pay any sum in respect of a change of supplier by that household customer.

(2) Sub-paragraph (1) does not prevent a supply exemption holder from requiring payment of any termination fee payable under any contract between it and the household customer.

(3) A supply exemption holder must take all reasonable steps to ensure that a final bill in respect of any unpaid charges for gas supplied to a household customer’s premises is sent to that customer within 6 weeks of the date on which the supply exemption holder stops supplying gas to the premises.

#### *Customer contracts*

**4.—(1)** Where a supply exemption holder enters into a contract with a household customer for the supply of gas it must provide the customer with a copy of the contract.

- (2) The contract must specify—
  - (a) the identity and address of the supply exemption holder;
  - (b) the services provided, including any maintenance services provided;
  - (c) any service quality levels that are to be met;

- (d) if a connection is required, when that connection will take place;
- (e) the means by which up-to-date information may be obtained about—
  - (i) any applicable tariffs and maintenance charges; and
  - (ii) the supply exemption holder’s standard terms and conditions;
- (f) the duration of the contract;
- (g) any conditions for renewal of the contract;
- (h) any conditions for termination of the contract or of any services provided under it, and whether the customer can terminate the contract if the supply exemption holder increases the applicable tariffs or charges, or changes one or more of the main contractual conditions;
- (i) any charges for early termination of the contract;
- (j) any compensation and refund arrangements which apply if any service quality levels specified in the contract are not met, including any arrangements which apply in the event of inaccurate or delayed billing;
- (k) the methods of dispute resolution available to the customer in the event of a dispute with the supply exemption holder, including how such dispute resolution procedures can be initiated; and
- (l) where further information on the customer’s rights as a consumer of gas can be found.

(3) If a supply exemption holder intends to increase the applicable tariffs or charges payable under a contract with a household customer it must inform that customer of the change and of any applicable termination rights as soon as practicable and no later than the date on which the customer is first charged for electricity at the increased rate.

(4) If a supply exemption holder intends to change any of the main contractual conditions of a contract with a household customer it must inform that customer of the change and of any applicable termination rights at least one month before the change is to come into effect.

(5) Any charge made under the contract for offering a particular payment method, including any charge for use of a pre-payment meter, must reflect the cost to the supply exemption holder of making that payment method available.

(6) A supply exemption holder must not treat a household customer or groups of household customers differently without good reason when offering different payment methods to customers.

(7) In this paragraph, “main contractual conditions” means any conditions of the contract which relate to a matter mentioned in any of paragraphs (b), (c) and (f) to (j) of sub-paragraph (2).

#### *Customer information*

5.—(1) No later than 12 months after entering into a contract with a customer to start supplying gas to any premises, and at intervals of not less than 12 months thereafter, a supply exemption holder must send the customer the information specified in sub-paragraph (3), (4) or (5) (whichever is applicable).

(2) But the supply exemption holder is required to specify the matters mentioned in sub-paragraphs (3)(b) and (4)(b) only so far as it is reasonably practicable to do so.

(3) If the customer is charged for its supply wholly or partly by reference to the quantity of gas supplied and a meter records the quantity supplied to that customer separately from the quantity supplied to other customers, the information in question is—

- (a) the number of that meter if it has one;
- (b) the amount of gas recorded by that meter as having been consumed by that customer in the 12 months immediately preceding the date on which the information is sent (or in the

part of that period during which the supply exemption holder supplied electricity to those premises under the contract with the customer); and

(c) the total cost that the customer has been charged for that gas.

(4) If the customer is charged for its supply wholly or partly by reference to the quantity of gas supplied and that quantity is not recorded using a separate meter, the information in question is—

(a) the number of any meter that recorded the total gas consumed by that customer and other customers in the 12 months immediately preceding the date on which the information is sent (or in any part of that period during which the supply exemption holder supplied gas to those premises under the contract with the customer);

(b) the amount of gas recorded by that meter; and

(c) an explanation as to how the proportion of gas charged to the customer was determined.

(5) If the customer is not charged for its supply by reference to the quantity of gas supplied, the information in question is the total cost that the customer has been charged for that gas in the 12 months immediately preceding the date on which the information is sent.

(6) A supply exemption holder who is supplying electricity to any premises under a contract with a customer must comply with any written request by the customer to send relevant information—

(a) to the customer, or

(b) to a person who is not currently supplying electricity to the premises under a contract with the customer but has expressed an interest in doing so.

(7) In sub-paragraph (6) “relevant information” means—

(a) if information has been sent to a customer in accordance with sub-paragraph (1) in the previous 12 months, a copy of that information;

(b) in any other case, so much of the information referred to in sub-paragraph (1) as can be readily provided by the supply exemption holder.

(8) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer, or to any other person at the customer’s request, in accordance with this paragraph.

**6.—(1)** A supply exemption holder must—

(a) with each bill inform each customer what methods of dispute resolution are available to the customer in the event of a dispute with the supply exemption holder; and

(b) with each bill inform each household customer—

(i) where the energy consumer guidance and the concise guidance can be found; and

(ii) that the household customer has a right to request a copy of the concise guidance from the supply exemption holder.

(2) At the end of any period of 12 months during which a supply exemption holder has supplied a customer with gas but has not sent a bill (nor provided the customer with information under this sub-paragraph) the supply exemption holder must inform the customer of—

(a) the matters mentioned in sub-paragraph (1)(a), and

(b) if the customer is a household customer, the matters mentioned in sub-paragraph (1)(b).

(3) A supply exemption holder must send a household customer a copy of the concise guidance within one month of receiving a request for it from or on behalf of that customer.

(4) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer in accordance with this paragraph.

(5) In this paragraph—

- (a) “the energy consumer guidance” means any guidance such as is mentioned in section 19A(1)(a) of the Consumers, Estate Agents and Redress Act 2007(7) which is published under that section; and
- (b) “the concise guidance” means any summary such as is mentioned in section 19A(1)(b) of that Act which is so published.

#### *Determination of disputes*

7.—(1) Sections 27C and 27D(8) apply in relation to an exempt supply dispute as they apply in relation to an Article 41 dispute such as is mentioned in section 27B(1), but as if in section 27C(8) the words “against whom a complaint is made as mentioned in section 27B(1)(a), and” were omitted.

(2) A dispute is an “exempt supply dispute” if—

- (a) it is wholly or mainly a dispute—
  - (i) regarding an obligation of a supply exemption holder under this Schedule; or
  - (ii) as to whether a supply exemption holder who has objected to a change of supplier because of a reason in paragraph 2(5) of this Schedule was entitled to object on that basis;
- (b) it arises from a written complaint made against the supply exemption holder; and
- (c) it is a dispute between the complainant and that supply exemption holder.

#### *Interpretation*

8. In this Schedule, unless the context otherwise requires—

“customer” means a person who purchases gas for the person’s own consumption;

“household customer” means a customer who purchases gas for consumption by the customer’s own household.”

## SCHEDULE 2

Regulation 21(2)

### Duties of electricity distribution exemption holders and supply exemption holders

#### “SCHEDULE 2ZA

Section 5A

### Duties of distribution exemption holders

#### *Third party access*

1.—(1) This paragraph applies where—

- (a) a customer owns or occupies premises which are connected to an exempt distribution system;
- (b) the customer is taking a supply of electricity through that system from—
  - (i) the distribution exemption holder that operates or has control of the system, or
  - (ii) a person related to the distribution exemption holder; and

(7) 2007 c.17. Section 19A is inserted by regulation 3(2) of these Regulations.

(8) Sections 27B to 27D were inserted by S.I. 2009/1349 and are amended by regulation 28 of these Regulations.

- (c) the customer—
    - (i) has served on the distribution exemption holder a notice expressing the customer’s interest in taking a supply of electricity from a third party supplier through that system; and
    - (ii) has provided with the notice evidence that at least one third party supplier would be willing to supply the customer with electricity through that system, and has identified any such third party supplier in the notice.
  - (2) In this Schedule “expression of interest” means a notice served under sub-paragraph (1).
  - (3) Within 5 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must provide any person related to it that is currently supplying the customer with electricity with a copy of the expression of interest.
  - (4) Within 10 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must serve on the customer—
    - (a) a notice informing the customer that it will take the steps in sub-paragraph (6) with a view to giving a third party supplier access to its distribution system; or
    - (b) a notice informing the customer that the distribution exemption holder considers—
      - (i) that it would need to increase the capacity of its distribution system in order to give a third party supplier access to that distribution system; and
      - (ii) that one of the conditions in sub-paragraph (5) is met.
  - (5) Those conditions are—
    - (a) that it is not technically feasible to provide the increase in capacity in question;
    - (b) that providing that increase in capacity would have a significant and adverse economic impact on the distribution exemption holder or any other person.
  - (6) Where the distribution exemption holder has served on the customer a notice under sub-paragraph (4)(a), the distribution exemption holder must—
    - (a) serve on any third party supplier identified in the expression of interest a notice specifying—
      - (i) any metering arrangements that the distribution exemption holder considers would be required to enable access to be given; and
      - (ii) whether it would be willing to give access through contractual arrangements which would not require a connection to be made or modified; and
    - (b) provide each such third party supplier with any other documents or information that it may reasonably request.
  - (7) The distribution exemption holder must serve the notice required by sub-paragraph (6)(a) within 20 working days beginning with the day on which it receives the expression of interest.
  - (8) The distribution exemption holder must provide any documents or information requested by a third party supplier under sub-paragraph (6)(b)—
    - (a) within 20 working days beginning with the day of the distribution exemption holder’s receipt of the expression of interest; or
    - (b) if the request is made at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in paragraph (a) above, within 10 working days beginning with the day of the distribution exemption holder’s receipt of the request.
- 2.—(1) This paragraph and paragraph 3 apply where a customer who has served an expression of interest relating to an exempt distribution system serves on the distribution exemption holder a notice—

- (a) confirming that the customer has entered into a contract with a third party supplier identified in the expression of interest for the supply of electricity to premises which are connected to the exempt distribution system; and
  - (b) identifying that third party supplier.
- (2) Within 5 working days beginning with the day on which it receives the notice served under sub-paragraph (1), the distribution exemption holder must provide any person related to it that is currently giving a supply of electricity to the customer with a copy of that notice.
- (3) If the distribution exemption holder has not, by the end of the 10 working day period mentioned in paragraph 1(4), served on the customer a notice under paragraph 1(4)(b), the distribution exemption holder must give the third party supplier such access to the distribution system to which the expression of interest relates as is necessary to enable the third party supplier to give a supply of electricity to the customer.
- (4) Access under sub-paragraph (2) must be given either—
- (a) as soon as is reasonably practicable after the distribution exemption holder receives the notice served under sub-paragraph (1); or
  - (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.
- (5) Sub-paragraphs (6) to (11) apply if the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b) (whether before or after the service of the notice under sub-paragraph (1)).
- (6) Subject to sub-paragraph (7), the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of electricity to the customer, and must give that access—
- (a) as soon as is reasonably practicable after the end of the period of 28 working days beginning with the day on which the customer serves the notice under sub-paragraph (1); or
  - (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.
- (7) If, before the end of the period mentioned in sub-paragraph (6)(a), the distribution exemption holder takes the steps mentioned in sub-paragraph (8)—
- (a) the distribution exemption holder is not required to give access in accordance with sub-paragraph (6), and
  - (b) sub-paragraph (9) applies.
- (8) The steps mentioned in sub-paragraph (7) are—
- (a) providing the third party supplier with evidence to show—
    - (i) that the distribution exemption holder would need to increase the capacity of its distribution system in order to give the third party supplier access to that distribution system; and
    - (ii) that one of the conditions in paragraph 1(5) is met; and
  - (b) sending a copy of the evidence to the customer.
- (9) If, within the period mentioned in sub-paragraph (10), the distribution exemption holder and the third party supplier enter into a contract for the provision to the third party supplier of such access as is necessary to enable it to give a supply of electricity to the customer through the distribution system, the distribution exemption holder must give access to the third party supplier in accordance with the terms of the contract.
- (10) That period is—
- (a) the 14 days immediately following the period mentioned in sub-paragraph (6)(a); or

(b) any longer period that the distribution exemption holder, the third party supplier and the customer may agree in writing.

(11) If, before the end of the 28 day period mentioned in sub-paragraph (6)(a), the distribution exemption holder, the third party supplier and the customer agree in writing to the extension of that period, sub-paragraphs (6) to (10) have effect as if sub-paragraph (6)(a) referred to the extended period instead of to the period of 28 working days there mentioned.

**3.—(1)** The third party supplier mentioned in paragraph 2(1) may make an application to the Authority under this paragraph if—

- (a) the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b); and
- (b) at the end of the period mentioned in paragraph 2(10), the distribution exemption holder is not under a duty (whether by virtue of sub-paragraph (6) or (9) of paragraph 2) to give access to the third party supplier.

(2) The third party supplier may not make an application under this paragraph unless it has, no later than the 10th working day before the day on which the application is made, served on the distribution exemption holder a notice—

- (a) informing the distribution exemption holder that it intends to make an application under this paragraph; and
- (b) inviting the distribution exemption holder to provide it with any further evidence it may wish to provide for the purpose mentioned in paragraph 2(8)(a).

(3) The application must include—

- (a) any evidence provided by the distribution exemption holder under paragraph 2(8)(a) or sub-paragraph (2)(b) above;
- (b) a description of the nature of the access required by the third party supplier (including any alternative forms of access that would be acceptable to it); and
- (c) any evidence the third party supplier may wish to include—
  - (i) to show that the capacity of the distribution system would not need to be increased in order to give a third party supplier access to it;
  - (ii) to show that a condition in paragraph 1(5) is not met; or
  - (iii) as to the benefits that would be brought by any increase in capacity that may be necessary.

(4) The third party supplier must send a copy of the application to the distribution exemption holder and the customer.

(5) Where an application has been made under this paragraph the Authority may, at the request of the customer or the third party supplier (the “requesting party”), ask the distribution exemption holder to provide the Authority and the requesting party with information in respect of the measures that would be required to reinforce the distribution system in order to provide the necessary capacity.

(6) Except to the extent that sub-paragraph (7) applies, the distribution exemption holder must comply with any request made by the Authority under sub-paragraph (5).

(7) If the distribution exemption holder represents to the Authority that particular information should not be disclosed under sub-paragraph (6) because it is commercially sensitive, the Authority may determine that the information in question should be excepted from the duty to disclose information under that sub-paragraph, having regard to the need to preserve the confidentiality of commercially sensitive information.

(8) The distribution exemption holder may recover from the requesting party any costs reasonably incurred in providing any information requested under sub-paragraph (5).

- (9) Where an application has been made under this paragraph the Authority—
- (a) must, if satisfied that the conditions in sub-paragraph (10) are met, determine that the distribution exemption holder is entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity;
  - (b) must, if not satisfied that those conditions are met, determine that the distribution exemption holder is not entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity.
- (10) Those conditions are—
- (a) that the distribution exemption holder would need to increase the capacity of its distribution system in order to give the third party supplier access to it; and
  - (b) that either it is not technically feasible to provide that increase in capacity, or the benefits of the increase in capacity would be outweighed by the economic impact that the provision of the increase in capacity would have on the distribution exemption holder or any other person.
- (11) The Authority must, as soon as is reasonably practicable after making its determination—
- (a) notify the distribution exemption holder of its determination; and
  - (b) provide the customer and the third party supplier with a copy of that notice.
- (12) If the Authority determines that the distribution exemption holder is not entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity—
- (a) the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of electricity to the customer;
  - (b) paragraph 1(6) to (8) applies as if the distribution exemption holder had served a notice under paragraph 1(4)(a) on the customer, and as if the references in paragraph 1(7) and (8)(a) to the “expression of interest” were to the notification under sub-paragraph (11) above; and
  - (c) paragraph 5 has effect as if the reference in paragraph 5(3) to the “expression of interest” were to the notification under sub-paragraph (11) above.
- (13) Access under sub-paragraph (12)(a) must be given either—
- (a) as soon as is reasonably practicable after the distribution exemption holder receives the notification under sub-paragraph (11); or
  - (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.
- 4.—**(1) This paragraph applies where a distribution exemption holder is required under paragraph 2(3), (6) or (9) or 3(12)(a) to give a third party supplier access to its distribution system.
- (2) The duty must be performed for so long as the access is required.
- (3) In meeting the duty the distribution exemption holder must not—
- (a) treat the third party supplier less favourably than any other supplier in respect of the terms and conditions for access to its distribution system, including those relating to any connection under paragraph 7(2);
  - (b) refuse to give access on the basis that the Authority has not yet approved its charging methodology; or
  - (c) act in a manner which unreasonably prevents, restricts or delays access to its distribution system by the third party supplier.



(4) The distribution exemption holder must grant the third party supplier such ancillary or incidental rights over its distribution system as are necessary to enable the third party supplier to meet its licence or statutory obligations, including any obligations of the third party supplier relating to metering functions.

(5) Where access has been given before a methodology for calculating a use of system charge has been given an approval that is required by virtue of paragraph 5(1), the distribution exemption holder may, within a reasonable period after receiving notification of the approval of the methodology, require the third party supplier to pay for that access an amount that is—

- (a) equivalent to the charge that would have been payable for that access had the methodology been approved before the access was given; and
- (b) payable within such period as the parties agree or, in the absence of such agreement, within such reasonable period after the distribution exemption holder demands the payment as may be specified by the distribution exemption holder.

#### *Charges for use of system*

5.—(1) Subject to paragraph 13(1), a distribution exemption holder on whom a customer has served an expression of interest must not impose a use of system charge unless the Authority has approved the methodology for calculating that charge under sub-paragraph (5) or paragraph 14(7).

(2) If such a distribution exemption holder proposes to impose a use of system charge in circumstances where, by virtue of sub-paragraph (1), the Authority's approval of the methodology for that charge is required the distribution exemption holder must—

- (a) prepare a record of the assets and liabilities associated with its distribution activities at the time of the receipt of the expression of interest;
- (b) prepare a statement (a “charging statement”) containing details of the proposed methodology for calculating the use of system charge;
- (c) provide the Authority with—
  - (i) the charging statement,
  - (ii) any evidence that the distribution exemption holder may wish to provide in support of the methodology proposed for calculating the use of system charge,
  - (iii) a copy of the expression of interest, and
  - (iv) such other information or documents as the Authority may request;
- (d) provide the relevant third party supplier with a copy of the charging statement.

(3) Subject to sub-paragraph (4), all of the steps required by sub-paragraph (2) must be carried out within 20 working days beginning with the day of the distribution exemption holder's receipt of the expression of interest.

(4) Where the Authority has requested further information or documents in accordance with sub-paragraph (2)(c)(iv) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in sub-paragraph (3), the further information or documents must be provided within 10 working days beginning with the day of the distribution exemption holder's receipt of the request.

(5) Where a distribution exemption holder has complied with sub-paragraph (2)(c) the Authority must, as soon as is reasonably practicable—

- (a) decide whether to approve the methodology proposed by that distribution exemption holder; and
- (b) notify the distribution exemption holder of that decision.

(6) Where a distribution exemption holder receives a notice under sub-paragraph (5)(b), it must, as soon as is reasonably practicable after that receipt, provide the relevant third party supplier with a copy of that notice.

(7) Where the Authority does not approve the methodology proposed by the distribution exemption holder, the Authority must give reasons for that decision.

(8) Where the Authority does not approve the methodology proposed by the distribution exemption holder and the distribution exemption holder still wishes to impose a use of system charge the distribution exemption holder must—

- (a) submit to the Authority a charging statement containing details of a revised methodology;
- (b) provide the Authority with a copy of such other information as the Authority may request in respect of that revised methodology; and
- (c) provide the relevant third party supplier with a copy of the charging statement.

(9) Where at any time a distribution exemption holder wishes to modify a methodology that has previously been approved under this Schedule and is used by it for calculating a use of system charge levied for the use of a distribution system other than a closed distribution system, the distribution exemption holder must—

- (a) submit to the Authority a charging statement containing details of the proposed revised methodology;
- (b) provide the Authority with a copy of such other information as the Authority may request; and
- (c) provide the relevant third party supplier, and any other third party supplier who would be affected by the modification proposed, with a copy of the charging statement.

(10) If a distribution exemption holder takes the steps required by sub-paragraph (8) or (9), sub-paragraphs (5) to (7) apply as if it had complied with sub-paragraph (2)(c).

(11) For the purposes of sub-paragraphs (2)(d), (6), (8)(c) and (9)(c), a duty to provide anything to “the relevant third party supplier” is a duty to provide it—

- (a) if at the time when the duty is discharged the distribution exemption holder has received a notice from the customer under paragraph 2(1), to the third party supplier identified in that notice; or
- (b) if at the time when the duty is discharged the distribution exemption holder has not received such a notice from the customer, to any third party supplier identified in the expression of interest.

**6.—(1)** Sub-paragraph (2) applies where a distribution exemption holder is under a duty to give access to its distribution system under paragraph 2(3), (6) or (9) or 3(12)(a).

(2) Where and for so long as the distribution exemption holder is imposing a use of system charge, it must—

- (a) prepare and maintain distribution accounts in respect of the distribution system for each regulatory year;
- (b) keep copies of those accounts for 6 years from the date of the transactions to which they relate; and
- (c) notify the Authority of the address where those accounts are held.

(3) In sub-paragraph (2)—

“distribution accounts” means accounting records in relation to the business (the “distribution business”) constituted by the distribution activities of the distribution exemption holder’s business that—

- (a) are sufficient to show and explain the transactions of the distribution business, separate from any other transactions of the distribution exemption holder's business;
  - (b) are sufficient to disclose with reasonable accuracy, at any time, the financial position of the distribution business at that time;
  - (c) contain entries from day to day of all sums of money received and expended in the course of the distribution business and the matters in respect of which the receipt and expenditure takes place; and
  - (d) contain a record of the assets and liabilities attributable to the distribution business;
- “regulatory year”, in relation to a distribution business, means—
- (a) a period of 12 months beginning on 1 April in any calendar year and ending on 31 March of the next calendar year; or
  - (b) where the distribution exemption holder wishes to align the accounting period for the distribution business with the accounting period for any other business it carries on or the business of any a person related to it, the period of 12 months used as the accounting period for that other business or the business of that related person.

#### *Connection*

7.—(1) This paragraph applies where a distribution exemption holder is under a duty to give access to a third party supplier under paragraph 2(3), (6) or (9) or 3(12)(a).

(2) The distribution exemption holder must, if required to do so by the third party supplier or the customer who served the notice under paragraph 2(1), make a connection between its distribution system and—

- (a) the premises mentioned in paragraph 1(1)(a); or
- (b) the distribution system of another authorised distributor.

(3) The duty under sub-paragraph (2) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.

(4) The duty under sub-paragraph (2) must be performed in accordance with such terms as are agreed under paragraphs 8 and 9, or paragraph 10, for so long as the connection is required.

(5) In this paragraph and paragraphs 8 to 10—

- (a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);
- (b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines or electrical plant); and
- (c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.

8.—(1) Where a distribution exemption holder makes a connection under paragraph 7(2) any expenses reasonably incurred in making the connection or in providing any electric line or electrical plant that the distribution exemption holder is under a duty to provide must, if and to the extent that the distribution exemption holder requires, be met by the person requiring the connection.

(2) The reference in sub-paragraph (1) to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it.

(3) Where a distribution exemption holder is under a duty to make a connection under paragraph 7(2)—

- (a) it may require the person requiring the connection to provide it with reasonable security for the payment to it under sub-paragraph (1) of amounts in respect of the provision of any electric lines or electrical plant that it is under a duty to provide; and
- (b) if the person requiring the connection fails to provide any security required under paragraph (a), or any security given by the person requiring the connection becomes invalid or insufficient and that person fails to provide alternative or additional security, the distribution exemption holder may if it thinks fit—
  - (i) where the connection has not been made, refuse to provide the line or plant for so long as the failure continues, or
  - (ii) where the connection is being maintained, disconnect the premises or distribution system in question.

(4) Where any sum has been deposited with a distribution exemption holder by way of security under sub-paragraph (3) the distribution exemption holder must, on repaying the amount, also pay interest on that amount, calculated on a daily basis at the rate of 1 per cent above LIBOR, for the period beginning with the day following that on which the amount was deposited and ending on the day on which the amount is repaid.

(5) In sub-paragraph (4) “LIBOR”, in relation to any day, means the sterling three-month London inter-bank offered rate in force for that day rounded if necessary to two decimal places.

(6) Nothing in paragraph 7 is to be taken as requiring the distribution exemption holder to make a connection between its distribution system and any premises or other distribution system if and to the extent that—

- (a) the distribution exemption holder is prevented from doing so by circumstances outside its control;
- (b) circumstances exist by reason of which the connection would or might involve danger to the public, and the distribution exemption holder has taken all reasonable steps to prevent the circumstances from occurring and to prevent them from having that effect; or
- (c) it is not reasonable in all the circumstances for the distribution exemption holder to be required to do so.

(7) Without prejudice to the generality of sub-paragraph (6), nothing in paragraph 7 is to be taken as requiring the distribution exemption holder to make a connection if any consent that is necessary for the connection to be made has not been given.

(8) A distribution exemption holder who is required to make a connection under paragraph 7(2) may require the person requiring the connection to accept, in respect of the making of the connection, any terms restricting any liability of the distribution exemption holder for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.

(9) Sub-paragraphs (3)(b)(ii) and (6)(c), do not permit a distribution exemption holder to disconnect any premises or distribution system unless the distribution exemption holder has given the owner and the occupier of the premises or (as the case may be) the person who operates or has control of the distribution system not less than 7 working days’ notice of its intention to disconnect.

**9.—(1)** This paragraph applies where a distribution exemption holder has a duty to make a connection under paragraph 7(2).

(2) Except where an agreement under paragraph 10(1) is in place, the distribution exemption holder must comply with the requirements of sub-paragraph (3) as soon as is reasonably practicable after the person requiring the connection has—

- (a) served on the distribution exemption holder a notice requesting that the distribution exemption holder offer terms for making the connection; and
- (b) provided the distribution exemption holder with the following information—
  - (i) details of the premises or distribution system from which the connection to the distribution exemption holder's distribution system is required, including the location of the premises or distribution system,
  - (ii) the date on or by which the person requiring the connection proposes that the work necessary for the connection to be made should be carried out,
  - (iii) the maximum power at which electricity may be required to be conveyed through the connection,
  - (iv) details of any other requirements that the person requiring the connection has, including any metering requirements, and
  - (v) any other information in relation to the required connection reasonably requested by the distribution exemption holder.
- (3) The distribution exemption holder must serve on the person requiring the connection a notice—
  - (a) raising any concerns that it has with the information provided in accordance with sub-paragraph (2)(b);
  - (b) proposing arrangements for any security that the person requiring the connection will be required to pay to it under paragraph 8(3);
  - (c) proposing arrangements for any payment that the person requiring the connection will be required to make under paragraph 8(1);
  - (d) stating any terms that the person requiring a connection will be required to accept under paragraph 8(8), restricting the distribution exemption holder's liability; and
  - (e) proposing any other terms on which it will make the connection.
- (4) The distribution exemption holder must negotiate in good faith with the person requiring the connection and endeavour to reach an agreement on the terms and conditions for that connection.

**10.—**(1) The distribution exemption holder may enter into an agreement with a person requiring a connection in pursuance of paragraph 7(2) for the making of a connection on such terms as may be agreed by the parties.

(2) So long as the agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided for under paragraphs 7 to 9.

**11.—**(1) Section 23 (determination of disputes)(9) applies in relation to a dispute arising under paragraphs 7 to 9 of this Schedule as it applies to a dispute arising under sections 16 to 21, but as if—

- (a) the references to an electricity distributor were to a distribution exemption holder;
- (b) the references to a person requiring a connection were to a person requiring a connection in pursuance of paragraph 7(2); and
- (c) the reference in subsection (3) to section 20(1)(10) were to paragraph 8(3)(a).

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(9) 1989 c. 29. Section 56(6) of, and paragraph 11 of Schedule 1 to, the Competition and Service (Utilities) Act 1992 (c. 43) inserted a section (1A) (which was nearly identical to what is now subsection 4A, see below). Subsequently, section 108 of, and paragraphs 24 and 26(1) and (2) of Part II of Schedule 6 to, the Utilities Act 2000 (c. 27) made an amendment which had the effect of substituting subsections (1), (1A), (1B), (1C) and (2) for subsections (1) to (2). Subsection (3) was amended by section 3(2) of the Utilities Act 2000. Subsection 4A was inserted by section 108 of, and paragraphs 24 and 26(1) and (3) of Part II of Schedule 6 to, the Utilities Act 2000. Subsection (7) was inserted by section 108 of, and paragraphs 24 and 26(1) and (4) of Part II of Schedule 6 to, the Utilities Act 2000.

(10) Amendments have been made to section 20 that are not relevant for these purposes.

(2) The reference in sub-paragraph (1)(b) to requiring a connection is to be construed in accordance with paragraph 7(5).

*Closed distribution systems*

**12.—**(1) A distribution exemption holder may apply to the Authority for an exempt distribution system operated or controlled by it to be classified as a closed distribution system.

(2) Where the Authority has received an application from a distribution exemption holder under sub-paragraph (1) (a “closed distribution system application”), it must classify the distribution system as a closed distribution system if the Authority considers that all of the following criteria are met—

- (a) the distribution system is not used for the purpose of supplying electricity to household customers, or is used to supply fewer than 50 household customers who—
  - (i) are employees of, or work for or otherwise render services to, the distribution exemption holder or a person related to the distribution exemption holder; and
  - (ii) take a supply of electricity that is wholly or mainly from a generating station embedded in the distribution system;
- (b) the distribution system is wholly or mainly used for distributing electricity within a geographically self-contained industrial, commercial or shared services site and is not integrated with any distribution system operated or controlled by an electricity distributor, or any transmission system operated or controlled by the holder of a transmission licence; and
- (c) the distribution system is wholly or mainly used either—
  - (i) by system users whose businesses, for technical or safety-related reasons, have operational or production processes that are integrated with those of other system users of that distribution system; or
  - (ii) for the purpose of supplying electricity to premises owned or occupied by the distribution exemption holder or by a person related to the distribution exemption holder.

(3) A closed distribution system application must—

- (a) identify the distribution system to which the application relates;
- (b) include any evidence available to the applicant to support that application; and
- (c) provide any further information or documents that the Authority may request in respect of that application.

(4) The Authority must decide whether to classify a distribution system as a closed distribution system as soon as is reasonably practicable after the Authority has received—

- (a) the closed distribution system application; and
- (b) any further information or documents requested by it in under sub-paragraph (3)(c).

(5) The Authority must notify the distribution exemption holder of its decision as soon as is reasonably practicable after that decision has been made.

**13.—**(1) Paragraph 5(1) to (8) does not apply in relation to any use of system charge (or proposed use of system charge) that relates to a closed distribution system.

(2) Where a distribution exemption holder that operates or has control of a closed distribution system receives an expression of interest from a customer who owns or occupies premises that are connected to that system, it must—

- (a) include in any notice served under paragraph 1(4) a statement that its distribution system is a closed distribution system; and
- (b) within 7 working days beginning with the day on which it receives the expression of interest, by notice inform any third party supplier identified in the expression of interest that its distribution system is a closed distribution system.

**14.**—(1) Sub-paragraphs (2) and (3) apply if a customer has served an expression of interest with respect to a closed distribution system and—

- (a) the customer, or a third party supplier identified in the expression of interest, serves a notice on the distribution exemption holder requesting that the methodology for a proposed use of system charge be submitted to the Authority for approval; and
- (b) at the time of receiving the request the distribution exemption holder has not received any confirmation under paragraph 2(1) that the customer has entered into a contract with a third party supplier.

(2) From the time when the distribution exemption holder receives that request, paragraph 5(1) to (8) has effect in relation to the closed distribution system as if paragraph 13(1) did not have effect.

(3) For the purposes of the application of paragraph 5(2) in relation to the proposed use of system charge mentioned in sub-paragraph (1)(a), the reference in paragraph 5(3) to the “expression of interest” is to be read as a reference to the request mentioned in sub-paragraph (1)(a) above.

(4) Sub-paragraphs (5) to (11) apply where a customer who owns or occupies premises that are connected to a closed distribution system has served a notice under paragraph 2(1) confirming that it has entered into a contract with a third party supplier (“the confirmed third party supplier”) and—

- (a) the customer or the confirmed third party supplier serves on the distribution exemption holder that operates or has control of the closed distribution system a notice requesting that the methodology for a use of system charge that is being applied by the distribution exemption holder be submitted to the Authority for approval;
- (b) the methodology for calculating the charge has not previously been approved under this Schedule; and
- (c) at the time of receiving the notice under paragraph (a), the distribution exemption holder has received the notice served under paragraph 2(1).

(5) The distribution exemption holder must, within 20 working days beginning with the day on which it receives the request under sub-paragraph (4)(a)—

- (a) provide the Authority with—
  - (i) a charging statement in respect of the methodology for any use of system charge applied at the time of the request being made; and
  - (ii) such other information or documents as the Authority may specify; and
- (b) provide the customer and the confirmed third party supplier with a copy of that charging statement.

(6) Where the Authority has requested further documents or information in accordance with sub-paragraph (5)(a)(ii) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in sub-paragraph (5), those further documents or information must be provided within 10 working days beginning with the day of the distribution exemption holder’s receipt of that request for further documents or information.

(7) Where the distribution exemption holder has complied with sub-paragraph (5)(a), the Authority must, as soon as is reasonably practicable—

- (a) decide whether to approve the methodology set out in the charging statement; and

- (b) notify the distribution exemption holder and the confirmed third party supplier of its decision.
- (8) Where the Authority does not approve the methodology, the Authority must give reasons for that decision.
- (9) Where the Authority has notified the distribution exemption holder of a decision that it does not approve the methodology, the distribution exemption holder must not continue to impose a use of system charge, except where the Authority has considered the methodology for such a charge by virtue of sub-paragraph (11) and has approved it.
- (10) Where the Authority does not approve the methodology submitted under sub-paragraph (5)
  - (a) the distribution exemption holder may—
    - (a) submit to the Authority a charging statement containing details of a revised methodology;
    - (b) provide the Authority with such other information or documents as the Authority may specify; and
    - (c) send a copy of the charging statement to the customer and the confirmed third party supplier.
  - (11) If the distribution exemption holder takes the steps mentioned in sub-paragraph (10)(a) to (c), sub-paragraphs (7) and (8) apply as if it had complied with sub-paragraph (5)(a).
  - (12) Where at any time a distribution exemption holder wishes to modify a methodology that has previously been approved under this Schedule and is used by it for calculating a use of system charge levied for the use of a closed distribution system, the distribution exemption holder must—
    - (a) submit to the Authority a charging statement containing details of the proposed revised methodology;
    - (b) provide the Authority with a copy of such other information or documents as the Authority may request; and
    - (c) send a copy of the charging statement to the customer, the confirmed third party supplier and any other third party supplier who would be affected by the modification proposed.
  - (13) If the distribution exemption holder takes the steps mentioned in sub-paragraph (12)(a) to (c), sub-paragraphs (7) and (8) apply as if it had complied with sub-paragraph (5)(a).

*Change of circumstance in respect of a closed distribution system*

- 15.**—(1) If, after a system has been classified as a closed distribution system, there is a change of circumstance which affects, or might affect, whether the system continues to meet the criteria set out in paragraph 12(2), the distribution exemption holder that operates or has control of the distribution system must notify the Authority of the change as soon as is reasonably practicable after it occurs.
- (2) If the distribution exemption holder that operates or has control of the distribution system wishes the system to continue to be classified as a closed distribution system, it must include in the notice an application to the Authority asking the Authority to confirm the classification.
  - (3) Any application under sub-paragraph (2) must—
    - (a) identify the distribution system to which the application relates;
    - (b) include any evidence available to the applicant to support that application; and
    - (c) provide any further information or documents that the Authority may request in respect of that application.
  - (4) Where the Authority has received a notice under sub-paragraph (1), it must, as soon as is reasonably practicable, either—
    - (a) revoke the classification; or



- (b) confirm the classification if—
  - (i) the notice includes an application made under sub-paragraph (2);
  - (ii) the Authority has received any further information or documents requested by it; and
  - (iii) the Authority considers that the criteria set out in paragraph 12(2) continue to be met.
- (5) The Authority must notify the applicant of its decision under sub-paragraph (4) as soon as is reasonably practicable after the decision has been made.

### *Interpretation*

**16.—(1)** In this Schedule—

“charging statement” (in relation to a distribution exemption holder who proposes to impose a use of system charge) is to be construed in accordance with paragraph 5(2)(b);

“closed distribution system” means a system classified as a closed distribution system by the Authority under paragraph 12(2);

“customer” means a person who purchases electricity for the person’s own consumption;

“expression of interest” has the meaning given by paragraph 1(2);

“household customer” means a customer who purchases electricity for consumption by the customer’s own household;

“system user”, in relation to a distribution system, means—

- (a) a person supplying electricity that is being conveyed by means of that distribution system;

or

- (b) a customer who owns or occupies premises that are connected to that distribution system;

“third party supplier”, in relation to a distribution exemption holder, means any authorised supplier that is not related to the distribution exemption holder;

“use of system charge”, in relation to a distribution exemption holder, means a charge which—

- (a) is levied by the distribution exemption holder on a third party supplier identified in an expression of interest that has been served on the distribution exemption holder; and

- (b) is for use of the exempt distribution system to which the expression of interest relates.

(2) For the purposes of this Schedule, a person (“A”) is related to another person (“B”) where A is—

- (a) an undertaking in which B has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000<sup>(11)</sup>;

- (b) a holding company of B;

- (c) a subsidiary of B; or

- (d) a subsidiary of a holding company of B.

(3) For the purposes of sub-paragraph (2) “holding company” and “subsidiary” are to be construed in accordance with section 1159 of the Companies Act 2006<sup>(12)</sup>.

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<sup>(11)</sup> 2000 c. 8. Section 421A was inserted by articles 3(1)(b) and 6 of, and paragraph 212(3) of Part 2 of Schedule 1 to, S.I. 2008/948.

<sup>(12)</sup> 2006 c. 46. Amendments have been made that are not relevant for these purposes.

## SCHEDULE 2ZB

Section 5B

## Duties of supply exemption holders

*Change of supplier*

1.—(1) This paragraph applies if a supply exemption holder enters into a contract with a customer to start supplying electricity to any premises.

(2) The supply exemption holder must, within 7 days beginning with the day on which the contract is entered into, give any person who is currently supplying electricity to the premises a notice stating—

- (a) that the contract has been entered into, and
- (b) when the supply exemption holder will start supplying electricity to the premises.

(3) Subject to sub-paragraphs (4) and (7), the supply exemption holder must start supplying electricity to the premises within 21 days of the relevant date.

(4) The supply exemption holder need not comply with sub-paragraph (3) if—

- (a) the customer requests that the supply start on a later date;
- (b) the customer terminates, or gives notice to terminate, the contract; or
- (c) one or more of the reasons in sub-paragraph (5) applies.

(5) The reasons in this sub-paragraph are—

- (a) that the supply exemption holder—
  - (i) does not have all of the information it requires in order to start supplying electricity to the premises, despite having taken all reasonable steps to obtain the missing information from the customer; and
  - (ii) cannot readily obtain that information from another source;
- (b) that the customer is taking a supply of electricity through an exempt distribution system and the supply exemption holder is unable to start supplying electricity to the premises because—
  - (i) a connection which the customer or supply exemption holder requires to be made in pursuance of paragraph 7(2) of Schedule 2ZA has not yet been made; or
  - (ii) the distribution exemption holder has specified, in a notice under paragraph 1(6)(a) (i) of Schedule 2ZA, a metering arrangement which it considers would be required for access to be given to a third party supplier (within the meaning of that Schedule) and that metering arrangement is not yet in place;
- (c) that any other circumstance which is outside the control of the supply exemption holder and which it has taken all reasonably practicable steps to resolve prevents it from starting to supply electricity to the premises.

(6) If, because of a reason in sub-paragraph (5), a supply exemption holder is not required to start supplying electricity to the premises within 21 days of the relevant date, it must start supplying electricity to the premises as soon as is reasonably practicable after the reason ceases to apply, and in any event within 21 days of the date on which the reason ceases to apply (but if there is more than one reason, references in this sub-paragraph to a reason's ceasing to apply are to all the reasons' having ceased to apply).

(7) If another supply exemption holder is currently supplying electricity to the premises and has objected to the change of supplier under paragraph 2, then the supply exemption holder mentioned in sub-paragraph (1) above—

- (a) must not start supplying electricity to the premises before that objection is resolved; but
  - (b) must start supplying electricity to the premises as soon as is reasonably practicable after the objection is resolved, and in any event within 21 days of the date on which the objection is resolved.
- (8) For the purposes of sub-paragraph (7) an objection made under paragraph 2 is taken to be resolved—
- (a) in the case of an objection based on the reason in paragraph 2(5)(a) alone—
    - (i) when the customer, or the supply exemption holder who made the objection, informs the supply exemption holder mentioned in sub-paragraph (1) above that the debt has been paid off in full, or
    - (ii) when an arrangement such as is mentioned in paragraph 2(5)(a)(iii) is made with respect to the debt;
  - (b) in the case of an objection based on the reason in paragraph 2(5)(b) alone, when the period mentioned in that paragraph expires;
  - (c) in the case of an objection based on both those reasons, when the objection has been resolved in relation to each reason in accordance with paragraphs (a) and (b) above; or
  - (d) in any case, when the objection is withdrawn.
- (9) In this paragraph “the relevant date” means—
- (a) the day after the day on which the supply exemption holder enters into the contract mentioned in sub-paragraph (1); or
  - (b) if, after the contract is entered into, there is a period within which the customer may decide not to proceed with it, the earlier of—
    - (i) the day after the day on which that period ends; or
    - (ii) the 14th day after the day on which the contract was entered into.
- 2.—(1) This paragraph applies if—
- (a) a person (“the new supplier”) has entered into a contract with a customer to start supplying electricity to any premises; and
  - (b) a supply exemption holder is currently supplying electricity to the premises under a contract with that customer.
- (2) If one or more of the reasons in sub-paragraph (5) applies, the supply exemption holder may object to the change of supplier by sending notice of the objection and the reason (or reasons) for it to—
- (a) the new supplier; and
  - (b) the customer.
- (3) A notice under sub-paragraph (2) must be sent—
- (a) as soon as reasonably practicable; and
  - (b) if the supply exemption holder is notified under paragraph 1(2), or in accordance with a condition in a licence, that the contract has been entered into, not later than the end of the 14th day after the day on which it receives that notification.
- (4) If the supply exemption holder objects to a change of supplier because of the reason in sub-paragraph (5)(b), the notice of this objection must also state when the period mentioned in that sub-paragraph will expire.
- (5) The reasons in this sub-paragraph are that—

- (a) the customer owes money (“the debt”) to the supply exemption holder in respect of electricity supplied to the customer and—
    - (i) the supply exemption holder has demanded payment of the debt;
    - (ii) at least 28 days have passed since the date on which the demand was sent to the customer and any date for payment stated in the demand has also passed; and
    - (iii) the new supplier and the supply exemption holder have not agreed to an arrangement under which some or all of the debt will be assigned to the new supplier; or
  - (b) a contract between the supply exemption holder and the customer includes a term which prevents the customer from terminating that contract within a specified period which has not expired.
- (6) The supply exemption holder must comply with any reasonable request from the new supplier to provide any information, or take any other steps, required to enable the new supplier to start supplying electricity to the customer’s premises.

**3.—(1)** A supply exemption holder must not require a household customer to pay any sum in respect of a change of supplier by that household customer.

(2) Sub-paragraph (1) does not prevent a supply exemption holder from requiring payment of any termination fee payable under any contract between it and the household customer.

(3) A supply exemption holder must take all reasonable steps to ensure that a final bill in respect of any unpaid charges for electricity supplied to a household customer’s premises is sent to that customer within 6 weeks of the date on which the supply exemption holder stops supplying electricity to the premises.

#### *Customer contracts*

**4.—(1)** Where a supply exemption holder enters into a contract with a household customer for the supply of electricity it must provide the customer with a copy of the contract.

- (2) The contract must specify—
  - (a) the identity and address of the supply exemption holder;
  - (b) the services provided, including any maintenance services provided;
  - (c) any service quality levels that are to be met;
  - (d) if a connection is required, when that connection will take place;
  - (e) the means by which up-to-date information may be obtained about—
    - (i) any applicable tariffs and maintenance charges; and
    - (ii) the supply exemption holder’s standard terms and conditions;
  - (f) the duration of the contract;
  - (g) any conditions for renewal of the contract;
  - (h) any conditions for termination of the contract or of any services provided under it and whether the customer can terminate the contract if the supply exemption holder increases the applicable tariffs or charges, or changes one or more of the main contractual conditions;
  - (i) any charges for early termination of the contract;
  - (j) any compensation and refund arrangements which apply if any service quality levels specified in the contract are not met, including any arrangements which apply in the event of inaccurate or delayed billing;

- (k) the methods of dispute resolution available to the customer in the event of a dispute with the supply exemption holder, including how such dispute resolution procedures can be initiated; and
  - (l) where further information on the customer's rights as a consumer of electricity can be found.
- (3) If a supply exemption holder intends to increase the applicable tariffs or charges payable under a contract with a household customer it must inform that customer of the change and of any applicable termination rights as soon as practicable and no later than the date on which the customer is first charged for electricity at the increased rate.
- (4) If a supply exemption holder intends to change any of the main contractual conditions of a contract with a household customer it must inform that customer of the change and of any applicable termination rights at least one month before the change is to come into effect.
- (5) Any charge made under the contract for offering a particular payment method, including any charge for use of a pre-payment meter, must reflect the cost to the supply exemption holder of making that payment method available.
- (6) A supply exemption holder must not treat a household customer or group of household customers differently without good reason when offering different payment methods to customers.
- (7) In this paragraph, "main contractual conditions" means any conditions of the contract which relate to a matter mentioned in any of paragraphs (b), (c) and (f) to (j) of sub-paragraph (2).

#### *Customer information*

5.—(1) No later than 12 months after entering into a contract with a customer to start supplying electricity to any premises, and at intervals of not less than 12 months thereafter, a supply exemption holder must send the customer the information specified in sub-paragraph (3), (4) or (5) (whichever is applicable).

(2) But the supply exemption holder is required to specify the matters mentioned in sub-paragraphs (3)(b) and (4)(b) only so far as it is reasonably practicable to do so.

(3) If the customer is charged for its supply wholly or partly by reference to the quantity of electricity supplied and a meter records the quantity supplied to that customer separately from the quantity supplied to other customers, the information in question is—

- (a) the number of that meter if it has one;
- (b) the amount of electricity recorded by that meter as having been consumed by that customer in the 12 months immediately preceding the date on which the information is sent (or in the part of the period during which the supply exemption holder supplied electricity to those premises under the contract with the customer); and
- (c) the total cost that the customer has been charged for that electricity.

(4) If the customer is charged for its supply wholly or partly by reference to the quantity of electricity supplied and that quantity is not recorded using a separate meter, the information in question is—

- (a) the number of any meter that recorded the total electricity consumed by that customer and other customers in the 12 months immediately preceding the date on which the information is sent (or in any part of that period during which the supply exemption holder supplied electricity to those premises under the contract with the customer);
- (b) the amount of electricity recorded by that meter; and
- (c) an explanation as to how the proportion of electricity charged to the customer was determined.

(5) If the customer is not charged for its supply by reference to the quantity of electricity supplied, the information in question is the total cost that the customer has been charged for that electricity in the 12 months immediately preceding the date on which the information is sent.

(6) A supply exemption holder who is supplying electricity to any premises under a contract with a customer must comply with any written request by the customer to send relevant information—

- (a) to the customer, or
- (b) to a person who is not currently supplying electricity to the premises under a contract with the customer but has expressed an interest in doing so.

(7) In sub-paragraph (6) “relevant information” means—

- (a) if information has been sent to a customer in accordance with sub-paragraph (1) in the previous 12 months, a copy of that information;
- (b) in any other case, so much of the information referred to in sub-paragraph (1) as can be readily provided by the supply exemption holder.

(8) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer, or to any other person at the customer’s request, in accordance with this paragraph.

**6.—(1)** A supply exemption holder must, so far as is reasonably practicable to do so, inform each customer with each bill of the following matters—

- (a) what sources of energy were used to generate the electricity supplied in the period covered by that bill;
- (b) the proportions in which the sources of energy were used; and
- (c) where further information can be found about the environmental impact of generating electricity using those sources of energy.

(2) A supply exemption holder must, at the end of any period of 12 months during which it has supplied a customer with electricity but has neither sent a bill nor provided the customer with information under this sub-paragraph, provide the customer with the information required by sub-paragraph (1) (but for this purpose sub-paragraph (1)(a) is to be read as if the reference to the period covered by the bill were to the period of 12 months mentioned in this sub-paragraph).

(3) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer in accordance with this paragraph.

**7.—(1)** A supply exemption holder must—

- (a) with each bill inform each customer what methods of dispute resolution are available to the customer in the event of a dispute with the supply exemption holder; and
- (b) with each bill inform each household customer—
  - (i) where the energy consumer guidance and the concise consumer guidance can be found; and
  - (ii) that the household customer has a right to request a copy of the concise guidance from the supply exemption holder.

(2) At the end of any period of 12 months during which a supply exemption holder has supplied a customer with electricity but has not sent a bill (nor provided the customer with information under this sub-paragraph) the supply exemption holder must inform the customer of—

- (a) the matters mentioned in sub-paragraph (1)(a), and
- (b) if the customer is a household customer, the matters mentioned in sub-paragraph (1)(b).

(3) A supply exemption holder must send a household customer a copy of the concise guidance within one month of receiving a request for it from or on behalf of that customer.

(4) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer in accordance with this paragraph.

(5) In this paragraph—

(a) “the energy consumer guidance” means any guidance such as is mentioned in section 19A(1)(a) of the Consumers, Estate Agents and Redress Act 2007<sup>(13)</sup> which is published under that section; and

(b) “the concise guidance” means any summary such as is mentioned in section 19A(1)(b) of that Act which is so published.

#### *Determination of disputes*

**8.—**(1) Sections 44C and 44D<sup>(14)</sup> apply in relation to an exempt supply dispute as they apply in relation to an Article 37 dispute such as is mentioned in section 44C(1), but as if in section 44C(8) the words “against whom a complaint is made as mentioned in section 44B(1)(a), and” were omitted.

(2) A dispute is an “exempt supply dispute” if—

(a) it is wholly or mainly a dispute—

(i) regarding an obligation of a supply exemption holder under this Schedule; or

(ii) as to whether a supply exemption holder who has objected to a change of supplier because of a reason in paragraph 2(5) of this Schedule was entitled to object on that basis;

(b) it arises from a written complaint made against the supply exemption holder; and

(c) it is a dispute between the complainant and that supply exemption holder.

#### *Interpretation*

**9.** In this Schedule—

“customer” means a person who purchases electricity for the person’s own consumption;

“household customer” means a customer who purchases electricity for consumption by the customer’s own household.”

### SCHEDULE 3

Regulation 37(6)

Obligations enforceable as relevant requirements under the Gas Act 1986

### “SCHEDULE 4B

Section 28(8)

Provisions imposing obligations enforceable as relevant requirements

#### **All licence holders**

**1.** The following are relevant provisions in relation to all licence holders—

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<sup>(13)</sup> 2007 c. 17. Section 19A is inserted by regulation 3(2) of these Regulations. Other amendments have been made to this Act that are not relevant for these purposes.

<sup>(14)</sup> 1989 c. 29. Sections 44B to 44D were inserted by S.I. 2009/1349 and are amended by regulation 29 of these Regulations.

- (a) section 33DB(15);
- (b) section 33F(16);
- (c) in the Consumers, Estate Agents and Redress Act 2007(17)—
  - (i) section 25(5) (directions to comply with requirements under section 24 of that Act),
  - (ii) sections 43, 46 and 47 (complaints);
- (d) Article 18(6) of the Gas Regulation (duties to make available information about gas demand and supply)(18).

### Gas transporters

2. The following are relevant provisions in relation to all holders of a licence under section 7(19)—

- (a) section 9(1), (1A) and (2)(20);
- (b) section 10(2), (3) and (14)(21);
- (c) section 10A(1)(22);
- (d) section 11(2)(23);
- (e) section 12(1) and (6)(24);
- (f) section 16(10)(25);
- (g) section 18(11)(26);
- (h) section 22A(1)(27);
- (i) section 27A(5)(28);
- (j) section 33BA(29);

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- (15) 1986 c. 44. Section 33DB was inserted by section 45(4) of, and paragraph 1(1) and (3) of Schedule 5 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17).
  - (16) Section 33F was inserted by section 97 of the Utilities Act 2000 (c. 27) and subsequently amended by article 2(1) of, and paragraph 70(1) and (2) of Schedule 1 to, S.I. 2009/1941.
  - (17) 2007 c. 17.
  - (18) OJ No L 211, 14.08.2009, p. 36. The Gas Regulation is defined in section 48 of the Gas Act 1986 as amended by regulation 47 of these Regulations.
  - (19) Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2), 76 and 108 of, and paragraphs 1 and 4 of Part 1 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c. 27) and by sections 149(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).
  - (20) Section 9 was substituted by section 10(1) of, and paragraph 3 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 79 and 108 of, and paragraphs 1 and 2(1) of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27).
  - (21) Section 10 was substituted by section 10(1) of, and paragraph 4 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by section 108 of, and paragraphs 1 and 2(1) of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27). Other amendments have been made that are not relevant for these purposes.
  - (22) Section 10A was inserted by section 77(1) of the Utilities Act 2000 (c. 27).
  - (23) Section 11 was substituted by section 10(1) of, and paragraph 5 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2) and 108 of, and paragraphs 1 and 2(1) of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27).
  - (24) Section 12 was substituted by section 10(1) of, and paragraph 6 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2) and 108 of, and paragraphs 1 and 2(1) of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27).
  - (25) Section 16 was inserted by section 101 of the Utilities Act 2000 (c. 27).
  - (26) Section 18 was amended by section 10(1) of, and paragraph 14(4) of Schedule 3 to, the Gas Act 1995 (c. 45) and by paragraphs 1 and 2(1) of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27). Other amendments have been made that are not relevant for these purposes.
  - (27) Section 22A was inserted by section 10(1) of, and paragraph 20 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 78(1) and (2) and 108 of, and Schedule 8 to, the Utilities Act 2000 (c. 27). Other amendments have been made that are not relevant for these purposes.
  - (28) Section 27A was inserted by section 10(1) of, and paragraph 26 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2) and 108 of, and paragraphs 1 and 2(1) of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27). Other amendments have been made that are not relevant for these purposes.
  - (29) Section 33BA was inserted by section 91 of the Utilities Act 2000 (c. 27).



- (k) section 33C**(30)**;
- (l) section 33D**(31)**;
- (m) paragraphs 3, 6, 15, 16 and 28(2) of Schedule 2B**(32)**;
- (n) sections 26 to 29 of the Energy Act 2010 (adjustment of charges to help disadvantaged groups of customers)**(33)**.

### Persons required to be certified as to independence

3. The following are relevant provisions in relation to a person who holds a licence under section 7 or 7ZA**(34)** and is required to be certified under section 8F**(35)**—

- (a) section 8C**(36)**;
- (b) section 8D(4) and (6)**(37)**;
- (c) section 8L(2) and (4)**(38)**;
- (d) in the Gas Regulation—
  - (i) Article 3(3) (duty to supply information relating to certification of transmission system operators),
  - (ii) Article 4 (duty to cooperate through the ENTSO for Gas),
  - (iii) Article 11 (duty to pay costs of the ENTSO for Gas),
  - (iv) Article 12(1) and (2) (duties relating to regional cooperation),
  - (v) Article 13 (duties relating to tariffs for access to networks),
  - (vi) Article 14 (duties relating to third-party access services),
  - (vii) Article 16 (duties relating to capacity allocation and congestion management),
  - (viii) Article 18(1), (2), (3) and (5) (transparency requirements concerning transmission system operators),
  - (ix) Article 19(4) (publication requirements concerning storage facilities and LNG facilities),
  - (x) Article 20 (duty to keep records),
  - (xi) Article 21 (duties relating to balancing rules and imbalance charges),
  - (xii) Article 22 (duties relating to trading of capacity rights);
- (e) in Annex 1 to the Gas Regulation (guidelines)—
  - (i) points 1 to 10 under heading 1 (duties relating to third-party access services),
  - (ii) points 1 to 6 under sub-heading 2.1 (duties relating to capacity allocation and congestion management),

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**(30)** Section 33C was inserted by section 12 of the Competition and Service (Utilities) Act 1992 (c. 43) and subsequently amended by section 10(1) of, and paragraph 37 of Schedule 3 to, the Gas Act 1995 (c. 45) and by sections 3(2), 20(7), 93 and 108 of, and paragraphs 1 and 14 of Part 1 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c. 27).

**(31)** Section 33D was substituted by section 94 of the Utilities Act 2000 (c. 27).

**(32)** Schedule 2B was inserted by section 9(2) of, and Schedule 2 to, the Gas Act 1995 (c. 45) and subsequently amended by section 108 of, and paragraphs 1 and 2(1) of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27). Other amendments have been made that are not relevant for these purposes.

**(33)** 2010 c. 27.

**(34)** Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004 (c. 20).

**(35)** Section 8F is inserted by regulation 4 of these Regulations.

**(36)** Section 8C is inserted by regulation 4 of these Regulations.

**(37)** Section 8D is inserted by regulation 4 of these Regulations.

**(38)** Section 8L is inserted by regulation 4 of these Regulations.

- (iii) points 1, 2 and 4 under sub-heading 2.2 (duties relating to congestion management procedures in event of contractual congestion),
- (iv) points 3.1.1 and 3.1.2 under sub-heading 3.1 (duties concerning publication of technical information necessary for access to the system),
- (v) points 2 and 3 under sub-heading 3.2 (duties concerning publication of information for certain relevant points of the network),
- (vi) points 1 to 5 under sub-heading 3.3 (duties concerning publication of information at all relevant points of the network),
- (vii) points 1 to 7 under sub-heading 3.4 (duties concerning publication of information about the transmission system).

### **Gas suppliers and gas shippers**

4. The following are relevant provisions in relation to the holder of a licence under section 7A(39)—

- (a) section 27A(6)(40);
- (b) sections 33B(41) and 33C;
- (c) paragraph 3(4) of Schedule 2AA(42);
- (d) paragraphs 3, 6 and 28(2) of Schedule 2B;
- (e) in the Energy Act 2010—
  - (i) sections 9 and 11 (schemes for reducing fuel poverty),
  - (ii) sections 26 to 29 (adjustment of charges to help disadvantaged groups of customers).

### **Distribution exemption holders**

5. The following paragraphs of Schedule 2AA are relevant provisions in relation to a distribution exemption holder—

- (a) paragraph 1(3), (4) and (6) to (8);
- (b) paragraph 2(2) to (4), (6) and (9);
- (c) paragraph 3(6), (12)(a) and (13);
- (d) paragraph 5(1) to (4), (6), (8) and (9);
- (e) paragraph 6(2);
- (f) paragraph 7(3) and (4);
- (g) paragraph 8(3) and (8);
- (h) paragraph 9;
- (i) paragraph 13(2);
- (j) paragraph 14(5), (6), (9) and (12);
- (k) paragraph 15(1).

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(39) Section 7A was inserted by section 6(1) of the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2) and 108 of, and paragraphs 1 and 2(1) of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c. 27) and by section 149(1) and (7) of the Energy Act 2004 (c. 20).

(40) Section 27A(6) was inserted by section 10(1) of, and paragraph 26 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by section 3(2) of the Utilities Act 2000 (c. 27).

(41) Section 33B was inserted by section 11 of the Competition and Service (Utilities) Act 1992 (c. 43) and subsequently amended by section 10(1) of, and paragraph 35 of Schedule 3 to, the Gas Act 1995 (c. 45) and by sections 3(2) and 108 of, and Schedule 8 to, the Utilities Act 2000 (c. 27).

(42) Schedule 2AA is inserted by regulation 20(3) of, and Schedule 1 to, these Regulations.

### Supply exemption holders

6. The following are relevant provisions in relation to a supply exemption holder—
- (a) paragraph 3(4) of Schedule 2AA;
  - (b) the following paragraphs of Schedule 2AB**(43)**—
    - (i) paragraph 1(2), (3), (6) and (7),
    - (ii) paragraph 2(6),
    - (iii) paragraph 3(1) and (3),
    - (iv) paragraph 4,
    - (v) paragraph 5(1), (6) and (8),
    - (vi) paragraph 6.

### Owners of storage facilities

7. The following are relevant provisions in relation to an owner of a storage facility—
- (a) section 8R(2), (3), (4), (6) and (7)**(44)**;
  - (b) section 11A(2)**(45)**;
  - (c) section 11C**(46)**;
  - (d) section 19B(1), (3), (3A), (3B), (7) and (11)**(47)**;
  - (e) section 19E(2) and (3)**(48)**;
  - (f) in the Gas Regulation—
    - (i) Article 15 (duties relating to third-party access services),
    - (ii) Article 17 (duties relating to capacity allocation and congestion management),
    - (iii) Article 19 (transparency requirements concerning storage facilities),
    - (iv) Article 20 (duty to keep records),
    - (v) Article 22 (duties relating to trading of capacity rights).

### Owners of LNG import or export facilities

8. The following are relevant provisions in relation to an owner of an LNG import or export facility—
- (a) section 11A(2);
  - (b) section 11B**(49)**;
  - (c) section 11C;
  - (d) section 19D(1), (2A), (2B), (3), (7) and (11)**(50)**;

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**(43)** Schedule 2AB is inserted by regulation 20(3) of, and Schedule 1 to, these Regulations.

**(44)** Section 8R is inserted by regulation 6 of these Regulations.

**(45)** Section 11A is inserted by regulation 7(2) of these Regulations.

**(46)** Section 11C is inserted by regulation 7(2) of these Regulations.

**(47)** Section 19B was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#) and subsequently amended by section 3(2) of the Utilities Act 2000 ([c. 27](#)) and by regulation 2(2) of, and paragraph 2 of Schedule 2 to, [S.I. 2004/2043](#). Subsections (3A) and (3B) are inserted by regulation 10 of these Regulations.

**(48)** Section 19E was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#) and subsequently amended by section 3(2) of the Utilities Act 2000 ([c. 27](#)). Other amendments have been made that are not relevant for these purposes.

**(49)** Section 11B is inserted by regulation 7(2) of these Regulations.

**(50)** Section 19D was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#) and subsequently amended by section 3(2) of the Utilities Act 2000 ([c. 27](#)) and by regulation 2(2) of, and paragraph 4(a), (b), (d), (e), (h) and (n) of Schedule 2 to, [S.I. 2004/2043](#). Other amendments have been made that are not relevant for these purposes.

- (e) section 19E(2) and (3);
- (f) in the Gas Regulation—
  - (i) Article 15(1) and (3) to (5) (duties relating to third-party access services),
  - (ii) Article 17 (duties relating to capacity allocation and congestion management),
  - (iii) Article 19 (transparency requirements concerning LNG facilities),
  - (iv) Article 20 (duty to keep records),
  - (v) Article 22 (duties relating to trading of capacity rights).

### **Gas undertakings which are relevant producers or suppliers**

**9.** The following are relevant provisions in relation to a gas undertaking which is a relevant producer or supplier—

- (a) section 8D(5) and (6);
- (b) section 8L(3) and (4);
- (c) section 10B(5) and (6) of the Electricity Act 1989 (duties concerning supply of information for application for certification as to independence)**(51)**;
- (d) section 10J(3) and (4) of that Act (duties concerning supply of information for review of certification as to independence)**(52)**;
- (e) Article 3(3) of the Gas Regulation (duty to supply information relating to certification of gas transmission system operators);
- (f) Article 3(3) of the Electricity Regulation (duty to supply information relating to certification of electricity transmission system operators).

### **Interpretation**

**10.** References in this Schedule to provisions of Annex 1 to the Gas Regulation are references to those provisions as amended from time to time.”

## SCHEDULE 4

Regulation 39(5)

Obligations enforceable as relevant requirements under the Electricity Act 1989

### “SCHEDULE 6A

Section 25(8)

Provisions imposing obligations enforceable as relevant requirements

### **All licence holders**

- 1.** The following are relevant provisions in relation to all licence holders—
- (a) sections 32 to 32M**(53)**;
  - (b) section 42C**(54)**;

**(51)** 1989 c. 29. Section 10B is inserted by regulation 5 of these Regulations.

**(52)** Section 10J is inserted by regulation 5 of these Regulations.

**(53)** Sections 32 to 32M were substituted by section 37 of the Energy Act 2008 (c. 32). Sections 32F, 32I and 32K were subsequently amended by article 2 of [S.I. 2009/556](#).

**(54)** Section 42C was inserted by section 61 of the Utilities Act 2000 (c. 27) and subsequently amended by article 2(1) of, and paragraph 102(1) and (2) of Schedule 1 to, [S.I. 2009/1941](#).

- (c) section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (directions to comply with requirements under section 24 of that Act)**(55)**;
- (d) in the Electricity Regulation**(56)**—
  - (i) Article 15(5) (provision of information relating to the transmission system etc),
  - (ii) Article 16(4) (duties relating to intended use of capacity);
- (e) in Annex 1 to the Electricity Regulation (guidelines concerning capacity of interconnections between national systems)—
  - (i) points 2.11 and 2.13 (duties relating to nomination of, and compensation regarding, capacity),
  - (ii) point 5.5 (duties in respect of publication of data concerning cross-border trade).

### **Generation licence holders**

- 2. Article 15(6) of the Electricity Regulation (duty to keep specified information at the disposal of the Authority) is a relevant provision in relation to the holder of a generation licence.

### **Transmission licence holders**

- 3. The following are relevant provisions in relation to all holders of a transmission licence—
  - (a) section 9**(57)**;
  - (b) sections 26 to 29 of the Energy Act 2010 (adjustment of charges to help disadvantaged groups of customers)**(58)**.

### **Persons required to be certified as to independence**

- 4. The following are relevant provisions in relation to a person who holds a transmission licence or an interconnector licence and is required to be certified under section 10D**(59)**—
  - (a) section 10A**(60)**;
  - (b) section 10B(4) and (6)**(61)**;
  - (c) section 10J(2) and (4)**(62)**;
  - (d) in the Electricity Regulation—
    - (i) Article 3(3) (duty to supply information relating to certification of transmission system operators),
    - (ii) Article 4 (duty to cooperate through the ENTSO for Electricity),
    - (iii) Article 11 (duty to pay costs of the ENTSO for Electricity),
    - (iv) Article 12(1) and (2) (duties relating to regional cooperation),
    - (v) Article 13(2) and (3) (duties relating to the inter-transmission system operator compensation mechanism),
    - (vi) Article 14(1) to (3) and (5) (duties relating to charges for access to networks),

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**(55)** [2007 c. 17.](#)

**(56)** [OJ No L 211, 14.08.2009, p. 15.](#)

**(57)** Section 9 was amended by sections 50, 71 and 108 of, and Schedule 8 to, the Utilities Act 2000 ([c. 27](#)) and by section 143(1) of, and paragraphs 3 and 8 of Schedule 19 to, the Energy Act 2004 ([c. 20](#)).

**(58)** [2010 c. 27.](#)

**(59)** Section 10D is inserted by regulation 5 of these Regulations.

**(60)** Section 10A is inserted by regulation 5 of these Regulations.

**(61)** Section 10B is inserted by regulation 5 of these Regulations.

**(62)** Section 10J is inserted by regulation 5 of these Regulations.

- (vii) Article 15(1) to (4) (duties relating to publication of specified information),
- (viii) Article 16(1), (2), (3), (5) and (6) (duties concerning congestion management);
- (e) in Annex 1 to the Electricity Regulation (guidelines concerning capacity of interconnections between national systems)—
  - (i) points 1.1 to 1.9 (general provisions),
  - (ii) points 2.1 to 2.7, 2.9, 2.10 and 2.12 (congestion management methods),
  - (iii) points 3.1, 3.2 and 3.4 to 3.6 (coordination of allocation and congestion-management procedures),
  - (iv) points 4.1 to 4.4 (timetable for market operations),
  - (v) points 5.1 to 5.10 (duties relating to transparency),
  - (vi) points 6.1, 6.3, 6.4 and 6.6 (duties relating to the use of congestion income);
- (f) Article 2 of the ITC Regulation (duty to apply access charges in accordance with guidelines)**(63)**;
- (g) in Part A of the Annex to the ITC Regulation—
  - (i) point 1.3 (duties concerning the ITC fund),
  - (ii) point 1.4 (duty to supply information regarding implementation of ITC mechanism),
  - (iii) point 6.1 (duty to make contributions to the ITC fund),
  - (iv) point 7.2 (duty to impose use fee on third country electricity imports and exports).

#### **Distribution licence holders**

5. The following are relevant provisions in relation to the holder of a distribution licence—
  - (a) section 9;
  - (b) sections 16 to 23**(64)**;
  - (c) section 40A**(65)**;
  - (d) sections 42 and 42A**(66)**;
  - (e) section 42AB**(67)**;
  - (f) sections 43, 46 and 47 of the Consumers, Estate Agents and Redress Act 2007 (complaints);
  - (g) sections 26 to 29 of the Energy Act 2010 (adjustment of charges to help disadvantaged groups of consumers).

#### **Supply licence holders**

6. The following are relevant provisions in relation to the holder of a supply licence—

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**(63)** OJ No L 250, 24.09.2010, p. 5.

**(64)** Sections 16, 16A and 17 were substituted by section 44 of the Utilities Act 2000 (c. 27). Section 16A was subsequently amended by section 98 of the Energy Act 2008 (c. 32). Section 19 was amended by section 46 of the Utilities Act 2000. Section 20 was amended by sections 3(2), 47 and 108 of, and Schedule 8 to, the Utilities Act 2000. Section 21 was substituted by section 48 of the Utilities Act 2000. Section 22 was substituted by section 49 of the Utilities Act 2000. Section 23 was amended by sections 3(2) and 108 of, and paragraphs 24 and 26 of Part 2 of Schedule 6 to, the Utilities Act 2000.

**(65)** Section 40A was inserted by section 55 of the Utilities Act 2000 (c. 27).

**(66)** Section 42 was amended by sections 3(2), 20(7), 57 and 108 of, and paragraphs 24 and 34 of Part 2 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c. 27). Section 42A was substituted by section 58 of the Utilities Act 2000 (c. 27).

**(67)** Section 42AB was inserted by section 45(4) of, and paragraph 2(1) and (3) of Schedule 5 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17).

- (a) section 40(**68**);
- (b) sections 42 and 42A;
- (c) section 42AB;
- (d) sections 43, 46 and 47 of the Consumers, Estate Agents and Redress Act 2007 (complaints);
- (e) paragraph 3(4) of Schedule 2ZA(**69**);
- (f) in the Energy Act 2010—
  - (i) section 9 (schemes for reducing fuel poverty),
  - (ii) section 11 (reconciliation mechanism),
  - (iii) sections 26 to 29 (adjustment of charges to help disadvantaged groups of consumers).

#### **Distribution exemption holders**

7. The following paragraphs of Schedule 2ZA are relevant provisions in relation to a distribution exemption holder—

- (a) paragraph 1(3), (4) and (6) to (8);
- (b) paragraph 2(2) to (4), (6) and (9);
- (c) paragraph 3(6), (12)(a) and (13);
- (d) paragraph 5(1) to (4), (6), (8) and (9);
- (e) paragraph 6(2);
- (f) paragraph 7(2) and (4);
- (g) paragraph 8(4) and (9);
- (h) paragraph 9;
- (i) paragraph 13(2);
- (j) paragraph 14(5), (6), (9) and (12);
- (h) paragraph 15(1).

#### **Supply exemption holders**

8. The following are relevant provisions in relation to a supply exemption holder—

- (a) paragraph 3(4) of Schedule 2ZA;
- (b) the following paragraphs of Schedule 2ZB(**70**)—
  - (i) paragraph 1(2), (3), (6) and (7),
  - (ii) paragraph 2(6),
  - (iii) paragraph 3(1) and (3),
  - (iv) paragraph 4,
  - (v) paragraph 5(1), (6) and (8),
  - (vi) paragraph 6,
  - (vii) paragraph 7.

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**(68)** Section 40 was amended by sections 20(2), 24 and 56(7) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and sections 3(2) and 108 of, and paragraphs 24 and 33 of Part 2 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c. 27).

**(69)** Schedule 2ZA is inserted by regulation 21(3) of, and Schedule 2 to, these Regulations.

**(70)** Schedule 2ZB is inserted by regulation 21(3) of, and Schedule 2 to, these Regulations.

### Electricity undertakings which are relevant producers or suppliers

9. The following are relevant provisions in relation to an electricity undertaking which is a relevant producer or supplier—

- (a) section 10B(5) and (6);
- (b) section 10J(3) and (4);
- (c) section 8D(5) and (6) of the Gas Act 1986 (duties concerning supply of information for application for certification as to independence)(71);
- (d) section 8L(3) and (4) of that Act (duties concerning supply of information for review of certification as to independence)(72);
- (e) Article 3(3) of the Electricity Regulation (duty to supply information relating to certification of electricity transmission system operators);
- (f) Article 3(3) of the Gas Regulation (duty to supply information relating to certification of gas transmission system operators).

### Interpretation

10. In this Schedule “ITC Regulation” means Commission Regulation 2010/838/EU of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

11. References in this Schedule to provisions of—

- (a) Annex 1 to the Electricity Regulation; or
- (b) the Annex to the ITC Regulation,

are references to those provisions as amended from time to time.”

## SCHEDULE 5

Regulation 41(7)

Procedure for appeals under section 23B of the Gas Act 1986

### “SCHEDULE 4A

Section 23C

Procedure for appeals under section 23B

#### *Application for permission to bring appeal*

1.—(1) An application for permission to bring an appeal may be made only by sending a notice to the Commission requesting the permission.

(2) Only a person entitled under section 23B(73) to bring the appeal if permission is granted may apply for permission.

(3) Where the Authority publishes a decision to modify the conditions of any licence under section 23(7)(74), any application for permission to appeal is not to be made after the end of 20 working days beginning with the first working day after the day on which the decision is published.

(71) 1986 c. 44. Section 8D is inserted by regulation 4 of these Regulations.

(72) Section is inserted by regulation 4 of these Regulations.

(73) Section 23B is inserted by regulation 41(7) of these Regulations.

(74) Section 23(7) is inserted by regulation 41(5) of these Regulations.



(4) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.

(5) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.

(6) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.

(7) The appellant must send the Authority—

- (a) a copy of the application for permission to appeal at the same time as it is sent to the Commission; and
- (b) such other information as may be required by appeal rules.

(8) The Commission's decision whether to grant permission to appeal is to be taken by an authorised member of the Commission.

(9) Before deciding whether to grant permission under this paragraph, the Commission must give the Authority an opportunity of making representations or observations, in accordance with paragraph 3(2).

(10) The Commission's decision on an application for permission must be made—

- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
- (b) in any other case, before the end of 14 working days beginning with the first working day after the day on which the application for permission is received.

(11) The grant of permission may be made subject to conditions, which may include—

- (a) conditions which limit the matters that are to be considered on the appeal in question;
- (b) conditions for the purpose of expediting the determination of the appeal; and
- (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).

(12) Where a decision is made to grant or to refuse an application for permission, the Commission must notify the decision, giving reasons—

- (a) to the appellant; and
- (b) to the Authority.

(13) A decision of the Commission under this paragraph must be published, in such manner as the Commission considers appropriate, as soon as reasonably practicable after it is made.

(14) Section 23G(2) applies to the publication of a decision under sub-paragraph (13) as it does to the publication of a decision under section 23G(75).

#### *Suspension of decision*

2.—(1) The Commission may direct that, pending the determination of an appeal against a decision of the Authority—

- (a) the decision is not to have effect; or
- (b) the decision is not to have effect to such extent as may be specified in the direction.

(2) The power to give a direction under this paragraph is exercisable only where—

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(75) Section 23G is inserted by regulation 41(7) of these Regulations.

- (a) an application for its exercise has been made by the appellant at the same time that the appellant made an application in accordance with paragraph 1(3) for permission to bring an appeal against a decision of the Authority;
  - (b) the Commission has given the Authority an opportunity of making representations or observations, in accordance with paragraph 3(2);
  - (c) the relevant licence holder, the licence holder or consumers whose interests are materially affected mentioned in section 23B(2) (as the case may be) would incur significant costs if the decision were to have effect before the determination of the appeal; and
  - (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.
- (3) The Commission's decision on an application for a direction under this paragraph must be made—
- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application under sub-paragraph (2)(a) is received.
- (4) The appellant must send the Authority a copy of the application for a direction under this paragraph at the same time as it is sent to the Commission.
- (5) The Commission's decision whether to give a direction is to be taken by an authorised member of the Commission.
- (6) A direction under this paragraph must be—
- (a) given by an authorised member of the Commission; and
  - (b) published, in such manner as the Commission considers appropriate, as soon as reasonably practicable after it is given.
- (7) Section 23G(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication of a decision under section 23G.

*Time limit for representations and observations by the Authority*

- 3.—**(1) Sub-paragraph (2) applies where the Authority wishes to make representations or observations to the Commission in relation to—
- (a) an application for permission to bring an appeal under paragraph 1;
  - (b) an application for a direction under paragraph 2.
- (2) The Authority must make the representations or observations in writing before the end of 10 working days beginning with the first working day after the day on which it received a copy of the application under paragraph 1(7) or 2(4) as the case may be.
- (3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Authority wishes to make representations or observations to the Commission in relation to—
- (a) the Authority's reasons for the decision in relation to which the appeal is being brought;
  - (b) any grounds on which that appeal is being brought against that decision.
- (4) The Authority must make the representations or observations in writing before the end of 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted.

(5) The Authority must send a copy of the representations and observations it makes under this paragraph to the appellant.

#### *Consideration and determination of appeal by group*

4.—(1) The following functions of the Commission must be carried out, in accordance with appeal rules, by a group selected for the purpose by the Chairman—

- (a) considering an appeal;
- (b) determining an appeal; and
- (c) considering applications in relation to the giving of directions and taking other steps to give effect to the Commission’s determination on an appeal.

(2) A group must consist of three members of the Commission.

(3) The Chairman must appoint one of the members of a group to be its chair.

(4) The Chairman may select a member of the Commission to replace another as a member of a group if—

- (a) the person being replaced has ceased to be a member of the Commission;
- (b) the Chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform the person’s duties as a member of the group; or
- (c) it appears to the Chairman that it is inappropriate, because of a particular interest of the person being replaced, for that person to remain a member of the group.

(5) The replacement of a member of a group does not prevent—

- (a) the group from continuing after the replacement of that member with anything begun before it;
- (b) any decision made or direction given by that member from having effect after that member has been replaced.

(6) Section 104(2) of the Utilities Act 2000 (specialist members)<sup>(76)</sup> applies in selecting members of a group by way of replacement as it applies in selecting the members of the group initially.

(7) The persons who may be selected by the Chairman to be (or to replace) a member of a group, or who may be appointed to be the chair of a group, may include the Chairman.

(8) A decision of a group is effective if, and only if—

- (a) all the members of the group are present when it is made; and
- (b) at least two members of the group are in favour of the decision.

#### *Matters to be considered on appeal*

5.—(1) The group with the function of determining an appeal, if it thinks it necessary to do so for the purpose of securing the determination of the appeal within the period provided for by section 23F<sup>(77)</sup>, may disregard—

- (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application; and
- (b) any or all matters raised by the Authority that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.

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<sup>(76)</sup> 2000 c. 27. Section 104 was amended by sections 53(1)(a), (b) and 101(2) of, and Part 2 of Schedule 9 to, the Water Act 2003 (c. 37); and by article 11 of, and paragraph 4(a) and (b) of the Schedule to, S.I. 2005/3172.

<sup>(77)</sup> Section 23F is inserted by regulation 41(7) of these Regulations.

- (2) In this paragraph “relevant application” means an application under paragraph 1 or 2.

*Production of documents etc.*

- 6.—(1) For the purposes of this Schedule, the Commission may, by notice, require—
- (a) a person to produce to the Commission the documents specified or otherwise identified in the notice;
  - (b) any person who carries on a business to supply to the Commission such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.
- (2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—
- (a) at the time and place specified in the notice; and
  - (b) in a legible form.
- (3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court or Court of Session.
- (4) The Commission may take copies of a document produced or an estimate, forecast, return or other information supplied to it under this paragraph.
- (5) A notice for the purposes of this paragraph—
- (a) may be issued on the Commission’s behalf by any member of the Commission or by its secretary;
  - (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

*Oral hearings*

- 7.—(1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—
- (a) by a person considering an application for permission to bring an appeal under paragraph 1;
  - (b) by a person considering an application for a direction under paragraph 2; or
  - (c) by a group with the function of determining an appeal;
- and, for that purpose, such a person or group may administer oaths.
- (2) The Commission may, by notice, require a person—
- (a) to attend at a time and place specified in the notice; and
  - (b) at that time and place, to give evidence to a person or group mentioned in subparagraph (1).
- (3) At any oral hearing the person or group conducting the hearing may require—
- (a) the appellant, or the Authority, if present at the hearing to give evidence or to make representations or observations; or
  - (b) a person attending the hearing as a representative of the appellant or of the Authority to make representations or observations.
- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.

(5) If the appellant, the Authority, or the appellant's or Authority's representative is not present at a hearing—

- (a) the Commission is not required to give notice to that person under sub-paragraph (2); and
- (b) the person or group conducting the hearing may determine the application or appeal without hearing that person's evidence, representations or observations.

(6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court or Court of Session.

(7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person's place of residence, the Commission must pay that person the necessary expenses of attendance.

(8) A notice for the purposes of this paragraph may be issued on the Commission's behalf by any member of the Commission or by its secretary.

#### *Written statements*

**8.—**(1) The Commission may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—

- (a) a person who is considering, or is to consider, an application for a direction under paragraph 2; or
- (b) a group with the function of determining an appeal.

(2) The power to require the production of a written statement includes power—

- (a) to specify the time and place at which it is to be produced; and
- (b) to require it to be verified by a statement of truth;

and a statement required to be so verified must be disregarded unless it is so verified.

(3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.

(4) A notice for the purposes of this paragraph may be issued on the Commission's behalf by any member of the Commission or by its secretary.

#### *Expert advice*

**9.** Where permission to bring an appeal is granted under paragraph 1 the Commission may commission expert advice with respect to any matter raised by a party to that appeal.

#### *Defaults in relation to evidence*

**10.—**(1) If a person ("the defaulter")—

- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8;
- (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular; or
- (c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,

a member of the Commission may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court or the Court of Session.

(2) The High Court or Court of Session may inquire into a matter certified to it under this paragraph; and if, after having heard—

- (a) any witness against or on behalf of the defaulter; and
- (b) any statement in that defaulter’s defence,

it is satisfied that the defaulter did, without reasonable excuse, fail to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.

(3) Where the High Court or Court of Session has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).

(4) A person who wilfully alters, suppresses or destroys a document that that person has been required to produce under paragraph 6 is guilty of an offence and shall be liable—

- (a) on summary conviction, to—
  - (i) in England and Wales, a fine not exceeding the statutory maximum, and
  - (ii) in Scotland, a fine not exceeding £5,000;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

#### *Appeal rules*

**11.**—(1) The Commission may make rules of procedure regulating the conduct and disposal of appeals under section 23B.

(2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—

- (a) the taking of evidence at an oral hearing; or
- (b) the making of representations or observations at such a hearing.

(3) The Commission must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

(4) Before making rules under this paragraph, the Commission must consult such persons as it considers appropriate.

(5) Rules under this paragraph may make different provision for different cases.

#### *Costs*

**12.**—(1) A group that determines an appeal must make an order requiring the payment to the Commission of the costs incurred by the Commission in connection with the appeal.

(2) An order under sub-paragraph (1) must require those costs to be paid—

- (a) where the appeal is allowed in full, by the Authority;
- (b) where the appeal is dismissed in full, by the appellant;
- (c) where the appeal is partially allowed, by one or more parties in such proportions as the Commission considers appropriate in all the circumstances.

(3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.

(4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.

(5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

(6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

### *Interpretation of Schedule*

**13.**—(1) In this Schedule—

“appeal” means an appeal under section 23B;

“appeal rules” means rules of procedure under paragraph 11;

“authorised member of the Commission”, in relation to a power exercisable in connection with an appeal, means—

- (a) the Chairman;
- (b) a member of the Commission authorised by the Chairman to exercise that power; or
- (c) the chair of the group which has, or (if permission is granted) will have, the function of determining the appeal;

“the Chairman” means the Chairman of the Commission;

“the Commission” means the Competition Commission;

a “group” means a group selected in accordance with paragraph 4;

“statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;

“working day” means any day other than—

- (a) Saturday or Sunday;
- (b) Christmas Day or Good Friday;
- (c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971(78).

(2) References in this Schedule to a party to an appeal are references to—

- (a) the appellant; or
- (b) the Authority.”

SCHEDULE 6

Regulation 43(8)

Procedure for appeals under section 11C of the Electricity Act 1989

“SCHEDULE 5A

Section 11D

Procedure for appeals under section 11C

*Application for permission to bring appeal*

1.—(1) An application for permission to bring an appeal may be made only by sending a notice to the Commission requesting the permission.

(2) Only a person entitled under section 11C(79) to bring the appeal if permission is granted may apply for permission.

(3) Where the Authority publishes a decision to modify the conditions of any licence under section 11A(7)(80), any application for permission to appeal is not to be made after the end of 20 working days beginning with the first working day after the day on which the decision is published.

(4) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.

(5) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.

(6) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.

(7) The appellant must send the Authority—

- (a) a copy of the application for permission to appeal at the same time as it is sent to the Commission; and
- (b) such other information as may be required by appeal rules.

(8) The Commission’s decision whether to grant permission to appeal is to be taken by an authorised member of the Commission.

(9) Before deciding whether to grant permission under this paragraph, the Commission must give the Authority an opportunity of making representations or observations, in accordance with paragraph 3(2).

(10) The Commission’s decision on an application for permission must be made—

- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
- (b) in any other case, before the end of 14 working days beginning with the first working after the day on which the application for permission was received.

(11) The grant of permission may be made subject to conditions, which may include—

- (a) conditions which limit the matters that are to be considered on the appeal in question;
- (b) conditions for the purpose of expediting the determination of the appeal; and
- (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).

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(79) Section 11C is inserted by regulation 43(8) of these Regulations.

(80) Section 11A(7) is inserted by regulation 43(6) of these Regulations.



(12) Where a decision is made to grant or to refuse an application for permission, the Commission must notify the decision, giving reasons—

- (a) to the appellant; and
- (b) to the Authority.

(13) A decision of the Commission under this paragraph must be published, in such manner as the Commission considers appropriate, as soon as reasonably practicable after it is made.

(14) Section 11H(2) applies to the publication of a decision under sub-paragraph (13) as it does to the publication of a decision under section 11H(81).

### *Suspension of decision*

2.—(1) The Commission may direct that, pending the determination of an appeal against a decision of the Authority—

- (a) the decision is not to have effect; or
- (b) the decision is not to have effect to such extent as may be specified in the direction.

(2) The power to give a direction under this paragraph is exercisable only where—

- (a) an application for its exercise has been made by the appellant at the same time the appellant made an application in accordance with paragraph 1(3) for permission to bring an appeal against a decision of the Authority;
- (b) the Commission has given the Authority an opportunity of making representations or observations, in accordance with paragraph 3(2);
- (c) the relevant licence holder, the licence holder or consumers whose interests are materially affected mentioned in section 11C(2) (as the case may be) would incur significant costs if the decision were to have effect before the determination of the appeal; and
- (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.

(3) The Commission's decision on an application for a direction under this paragraph must be made—

- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
- (b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application under sub-paragraph (2)(a) is received.

(4) The appellant must send the Authority a copy of the application for a direction under this paragraph at the same time as it is sent to the Commission.

(5) The Commission's decision whether to give a direction is to be taken by an authorised member of the Commission.

(6) A direction under this paragraph must be—

- (a) given by an authorised member of the Commission; and
- (b) published, in such manner as the Commission considers appropriate, as soon as reasonably practicable after it is given.

(7) Section 11H(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication of a decision under section 11H.

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(81) Section 11H is inserted by regulation 43(8) of these Regulations.

*Time limit for representations and observations by the Authority*

3.—(1) Sub-paragraph (2) applies where the Authority wishes to make representations or observations to the Commission in relation to—

- (a) an application for permission to bring an appeal under paragraph 1;
- (b) an application for a direction under paragraph 2.

(2) The Authority must make the representations or observations in writing before the end of 10 working days beginning with the first working day after the day on which it received a copy of the application under paragraph 1(7) or 2(4) as the case may be.

(3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Authority wishes to make representations or observations to the Commission in relation to—

- (a) the Authority's reasons for the decision in relation to which the appeal is being brought;
- (b) any grounds on which that appeal is being brought against that decision.

(4) The Authority must make the representations or observations in writing before the end of 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted.

(5) The Authority must send a copy of the representations and observations it makes under this paragraph to the appellant.

*Consideration and determination of appeal by group*

4.—(1) The following functions of the Commission must be carried out, in accordance with appeal rules, by a group selected for the purpose by the Chairman—

- (a) considering an appeal;
- (b) determining an appeal; and
- (c) considering applications in relation to the giving of directions and taking other steps to give effect to the Commission's determination on an appeal.

(2) A group must consist of three members of the Commission.

(3) The Chairman must appoint one of the members of a group to be its chair.

(4) The Chairman may select a member of the Commission to replace another as a member of a group if—

- (a) the person being replaced has ceased to be a member of the Commission;
- (b) the Chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform the person's duties as a member of the group; or
- (c) it appears to the Chairman that it is inappropriate, because of a particular interest of the person being replaced, for that person to remain a member of the group.

(5) The replacement of a member of a group does not prevent—

- (a) the group from continuing after the replacement of that member with anything begun before it;
- (b) any decision made or direction given by that member from having effect after that member has been replaced.

(6) Section 104(2) of the Utilities Act 2000 (specialist members)<sup>(82)</sup> applies in selecting members of a group by way of replacement as it applies in selecting the members of the group initially.

(7) The persons who may be selected by the Chairman to be (or to replace) a member of a group, or who may be appointed to be the chair of a group, may include the Chairman.

(8) A decision of a group is effective if, and only if—

- (a) all the members of the group are present when it is made; and
- (b) at least two members of the group are in favour of the decision.

#### *Matters to be considered on appeal*

5.—(1) The group with the function of determining an appeal, if it thinks it necessary to do so for the purpose of securing the determination of the appeal within the period provided for by section 11G<sup>(83)</sup>, may disregard—

- (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application; and
- (b) any or all matters raised by the Authority that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.

(2) In this paragraph “relevant application” means an application under paragraph 1 or 2.

#### *Production of documents etc.*

6.—(1) For the purposes of this Schedule, the Commission may, by notice, require—

- (a) a person to produce to the Commission the documents specified or otherwise identified in the notice;
- (b) any person who carries on a business to supply to the Commission such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.

(2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—

- (a) at the time and place specified in the notice; and
- (b) in a legible form.

(3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court or Court of Session.

(4) The Commission may take copies of a document produced or an estimate, forecast, return or other information supplied to it under this paragraph.

(5) A notice for the purposes of this paragraph—

- (a) may be issued on the Commission’s behalf by any member of the Commission or by its secretary;
- (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

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<sup>(82)</sup> 2000 c. 27. Section 104 was amended by sections 53(1)(a), (b) and 101(2) of, and Part 2 of Schedule 9 to, the Water Act 2003 (c. 37); and by article 11 of, and paragraph 4(a) and (b) of the Schedule to, S.I. 2005/3172.

<sup>(83)</sup> Section 11G is inserted by regulation 43(8) of these Regulations.

### *Oral hearings*

7.—(1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—

- (a) by a person considering an application for permission to bring an appeal under paragraph 1;
- (b) by a person considering an application for a direction under paragraph 2; or
- (c) by a group with the function of determining an appeal;

and, for that purpose, such a person or group may administer oaths.

(2) The Commission may, by notice, require a person—

- (a) to attend at a time and place specified in the notice; and
- (b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1).

(3) At any oral hearing the person or group conducting the hearing may require—

- (a) the appellant, or the Authority, if present at the hearing to give evidence or to make representations or observations; or
- (b) a person attending the hearing as a representative of the appellant or of the Authority to make representations or observations.

(4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.

(5) If the appellant, the Authority, or the appellant's or Authority's representative is not present at a hearing—

- (a) the Commission is not required to give notice to that person under sub-paragraph (2); and
- (b) the person or group conducting the hearing may determine the application or appeal without hearing that person's evidence, representations or observations.

(6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court or Court of Session.

(7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person's place of residence, the Commission must pay that person the necessary expenses of attendance.

(8) A notice for the purposes of this paragraph may be issued on the Commission's behalf by any member of the Commission or by its secretary.

### *Written statements*

8.—(1) The Commission may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—

- (a) a person who is considering, or is to consider, an application for a direction under paragraph 2; or
- (b) a group with the function of determining an appeal.

(2) The power to require the production of a written statement includes power—

- (a) to specify the time and place at which it is to be produced; and
- (b) to require it to be verified by a statement of truth;

and a statement required to be so verified must be disregarded unless it is so verified.

(3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.

(4) A notice for the purposes of this paragraph may be issued on the Commission's behalf by any member of the Commission or by its secretary.

#### *Expert advice*

9. Where permission to bring an appeal is granted under paragraph 1 the Commission may commission expert advice with respect to any matter raised by a party to that appeal.

#### *Defaults in relation to evidence*

10.—(1) If a person (“the defaulter”)—

- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8;
- (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular; or
- (c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,

a member of the Commission may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court or the Court of Session.

(2) The High Court or Court of Session may inquire into a matter certified to it under this paragraph; and if, after having heard—

- (a) any witness against or on behalf of the defaulter; and
- (b) any statement in the defaulter's defence,

it is satisfied that the defaulter did, without reasonable excuse, fail to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.

(3) Where the High Court or Court of Session has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).

(4) A person who wilfully alters, suppresses or destroys a document that that person has been required to produce under paragraph 6 is guilty of an offence and shall be liable—

- (a) on summary conviction, to—
  - (i) in England and Wales, a fine not exceeding the statutory maximum, and
  - (ii) in Scotland, a fine not exceeding £5,000;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

#### *Appeal rules*

11.—(1) The Commission may make rules of procedure regulating the conduct and disposal of appeals under section 11C.

(2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—

- (a) the taking of evidence at an oral hearing; or
- (b) the making of representations or observations at such a hearing.

(3) The Commission must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

(4) Before making rules under this paragraph, the Commission must consult such persons as it considers appropriate.

(5) Rules under this paragraph may make different provision for different cases.

### *Costs*

**12.—**(1) A group that determines an appeal must make an order requiring the payment to the Commission of the costs incurred by the Commission in connection with the appeal.

(2) An order under sub-paragraph (1) must require those costs to be paid—

- (a) where the appeal is allowed in full, by the Authority;
- (b) where the appeal is dismissed in full, by the appellant; or
- (c) where the appeal is partially allowed, by one or more parties in such proportions as the Commission considers appropriate in all the circumstances.

(3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.

(4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.

(5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

(6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

### *Interpretation of Schedule*

**13.—**(1) In this Schedule—

“appeal” means an appeal under section 11C;

“appeal rules” means rules of procedure under paragraph 11;

“authorised member of the Commission”, in relation to a power exercisable in connection with an appeal, means—

- (a) the Chairman;
- (b) a member of the Commission authorised by the Chairman to exercise that power; or
- (c) the chair of the group which has, or (if permission is granted) will have, the function of determining the appeal;

“the Chairman” means the Chairman of the Commission;

“the Commission” means the Competition Commission;

- a “group” means a group selected in accordance with paragraph 4;
- “statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;
- “working day” means any day other than—
- (a) Saturday or Sunday;
  - (b) Christmas Day or Good Friday;
  - (c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971<sup>(84)</sup>.
- (2) References in this Schedule to a party to an appeal are references to—
- (a) the appellant; or
  - (b) the Authority.”

## SCHEDULE 7

Regulation 49(1)

Modification of standard conditions of licences granted under the Gas Act 1986

### PART 1

#### Interpretation

1. In this Schedule—
- “the Authority” means the Gas and Electricity Markets Authority;
- “gas transporter licence” means a licence granted under section 7 of the Gas Act 1986 (licensing of gas transporters)<sup>(85)</sup>;
- “gas interconnector licence” means a licence granted under section 7ZA of the Gas Act 1986 (licences for operation of gas interconnectors)<sup>(86)</sup>;
- “gas supply licence” means a licence granted under section 7A(1) of the Gas Act 1986 (licensing of gas suppliers)<sup>(87)</sup>.

### PART 2

#### Standard conditions of gas transporter licences

- 2.—(1) The standard conditions of a gas transporter licence are amended as follows.
- (2) In condition 1 (definitions and interpretation)—
- (a) after the definition of “Designated Registrar of Pipes”, insert—

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<sup>(84)</sup> 1971 c. 80.

<sup>(85)</sup> 1986 c. 44. Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45). Relevant amendments were made by sections 3(2), 76(1) and (3) and 108 of, and paragraphs 1 and 4 of Part 1 of Schedule 6 to, the Utilities Act 2000 (c. 27).

<sup>(86)</sup> Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004 (c. 20).

<sup>(87)</sup> Section 7A(1) was inserted by section 6(1) of the Gas Act 1995 (c. 45) and a relevant amendment made by section 3(2) of the Utilities Act 2000 (c. 27).

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““Directive” means Directive [2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC](#)(**88**);”;

(b) after the definitions of “quantity” and “volume”, insert—

““Regulation” means Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the national gas transmission networks and repealing Regulation 2005/1775/EC(**89**), as 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(**90**);”.

(3) In condition 4A (obligations as regards charging methodology), in paragraph 5—

(a) in sub-paragraph (b), at the end omit “and”;

(b) in sub-paragraph (c), for the full stop at the end substitute “; and”;

(c) after sub-paragraph (c), insert—

“(d) compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.”.

(4) In condition 4B (connection charging methodology), in paragraph 5—

(a) in sub-paragraph (d), at the end omit “and”;

(b) in sub-paragraph (e), for the full stop at the end substitute “; and”;

(c) after sub-paragraph (e), insert—

“(f) the connection charging methodology is compliant with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.”.

(5) After condition 4E (requirement to enter into transportation arrangements in conformity with Network Code), insert—

**“Condition 4F. Access to the system**

**1.** The licensee must offer access to its system in line with the Act and the Directive. Where access to the system is refused duly substantiated reasons shall be given.”.

(6) In condition 9 (Network code and Uniform Network Code)—

(a) in paragraph 1—

(i) in sub-paragraph (e), at the end omit “and”;

(ii) in sub-paragraph (f), at the end insert “and”;

(iii) after sub-paragraph (f), insert—

“(g) compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators;”;

(b) after paragraph 5, insert—

**“5A.** The licensee shall use reasonable endeavours to facilitate any improvements to the process by which responsibility for gas supply is transferred between gas suppliers.”;

(**88**) OJ No L 211, 14.08.2009, p. 94.

(**89**) OJ No L 211, 14.08.2009, p. 36.

(**90**) OJ No L 293, 11.11.2010, p. 67.



- (c) in paragraph 7—
- (i) for sub-paragraph (g), substitute—
    - “(g) a proposed implementation date to be either:
      - (i) in accordance with any direction(s) issued by the Authority under paragraph 7(k)(iii); or
      - (ii) where no direction has been issued by the Authority under paragraph 7(k)(iii), such as to enable any modification proposal to be made as soon as practicable after receipt of a direction under paragraph 12(b);”;
    - (ii) in sub-paragraph (h), at the end omit “and”;
    - (iii) in sub-paragraph (i), for the full stop at the end substitute a semicolon;
    - (iv) after sub-paragraph (i), insert—
      - “(j) modification proposals made by the Authority or the licensee in accordance with paragraphs 8(a)(i) and 9(a)(i):
        - (i) to be accepted into the network code modification procedures by the panel;
        - (ii) where they are raised by the licensee, not to be withdrawn without the Authority’s prior consent;
        - (iii) to proceed in accordance with any timetable(s) directed by the Authority in accordance with paragraph 7(k);
      - (k) compliance by the licensee and (where applicable) the panel with any direction(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a modification which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators) for the:
        - (i) licensee to raise a modification proposal; and/or
        - (ii) completion of each of the procedural steps outlined in this paragraph 7, to the extent that they are relevant; and/or
        - (iii) implementation of a modification; and
      - (l) each of the procedural steps outlined in this paragraph 7, to the extent that they are relevant, to be in accordance with any timetable(s) directed by the Authority under paragraph 7(k).”;
- (d) in paragraph 8—
- (i) in sub-paragraph (a)(iii) omit “and/or”;
  - (ii) in sub-paragraph (a)(iv), for “and” insert “and/or”;
  - (iii) after sub-paragraph (a)(iv), insert—
    - “(v) the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators); and”;
- (e) in paragraph 9—
- (i) in sub-paragraph (a)(ii) omit “or”;
  - (ii) in sub-paragraph (a)(iii), for “and” insert “or”;

(iii) after sub-paragraph (a)(iii), insert—

“(iv) the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators); and”.

(7) In condition 24 (provision of information to the Authority), in paragraph 1(a) after “under the Act”, insert “or in pursuance of any requirement of the Directive or the Regulation”.

(8) In condition 30 (regulatory accounts)—

(a) in paragraph 2(c), after “to which the statements relate”, insert “. The audit shall verify that the licensee has complied with the obligation to avoid discrimination and cross-subsidies that is specified in Article 31 of the Directive and is imposed on the licensee by Condition 41 of this licence”;

(b) after paragraph 2, insert—

**2A.** The licensee shall, in its internal accounting, keep separate accounts for each of the licensee’s transmission, distribution, LNG and storage activities (so far as relevant) as though the activities were carried out by separate undertakings.

**2B.** The licensee shall keep internal accounts which may be consolidated for other gas activities not relating to transmission, distribution, LNG and storage.

**2C.** Where appropriate, the licensee shall keep internal consolidated accounts for other, non-gas activities. The accounts shall include a balance sheet and a profit and loss account for each activity.

**2D.** The annual accounts shall indicate in notes any transaction above such size directed by the Authority conducted with related undertakings.”;

(c) after paragraph 4, insert—

**4A.** The licensee shall specify in its internal accounting the rules for the allocation of assets and liabilities, expenditure and income, as well as for depreciation, without prejudice to nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in paragraph 1. Those internal rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated.”.

(9) After condition 40 (appointment of compliance officer), insert—

**“Condition 40A. Notification of Vertical Integration**

**40A.1.** The licensee shall notify the Authority in the event that it becomes part of a Vertically Integrated Undertaking.

**40A.2.** For the purposes of this condition:

**Vertically Integrated Undertaking** means a natural gas undertaking or a group of natural gas undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform in the European Economic Area at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas. Terms within paragraph 2 of this Condition 40A shall have the meaning given to them in the Directive.”.

## PART 3

### Standard conditions of gas supply licences

- 3.—(1) The standard conditions of a gas supply licence are amended as follows.
- (2) In condition 1 (definitions for standard conditions)—
- (a) after the definition of “Deemed Contract” insert—
- “**Directive** means Directive [2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC](#)(**91**);”;
- (b) after the definition of “Public Electronic Communications Network” insert—
- “**Regulation** means Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation 2005/1775/EC, as 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;”.
- (3) In condition 5 (provision of information to Authority)—
- (a) in the heading, at the end insert “**and data retention**”;
- (b) in paragraph 5.1, after “under any legislation” insert “, including any functions conferred on the Authority by or under the Regulation”;
- (c) after paragraph 5.4, insert—

#### “Data retention

**5.5.** The licensee shall keep, for at least five years, the Relevant Data relating to any transactions in gas supply contracts and gas derivatives with wholesale customers, transmission system operators, storage facility and LNG import or export facility owners, or any person who sells gas to the licensee, which have been entered into by the licensee on or after the day after the day on which the Electricity and Gas (Internal Markets) Regulations 2011 are made.

**5.6.** With respect to transactions in gas derivatives, the obligation to keep the Relevant Data shall only apply once the European Commission has adopted guidelines pursuant to paragraph 4 of Article 44 of the Directive.

**5.7.** After receiving a request from the Authority for the Relevant Data, the licensee must give the Relevant Data to the Authority when and in the form requested.

**5.8.** Paragraphs 5.5 and 5.7 do not require the licensee to keep Relevant Data in respect of any feed-in tariff arrangements entered into by the licensee in accordance with Condition 33 or 34.

#### Definitions for condition

**5.9.** For the purposes of this condition:

“**LNG import or export facility**” has the meaning given in and is to be interpreted in accordance with section 48 of the Act;

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“owner” has the meaning given in and is to be interpreted in accordance with section 48 of the Act;

“**Relevant Data**” means details on the characteristics of all transactions in gas supply contracts and gas derivatives with wholesale customers, transmission system operators, storage facility and LNG import or export facility owners, or any person who sells gas to the licensee, including but not limited to the duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives;

“**storage facility**” has the meaning given in and is to be interpreted in accordance with section 48 of the Act.”.

(4) After condition 14 (customer transfer blocking), insert—

**“Condition 14A Customer transfer**

**Obligation to complete a Supplier Transfer within three weeks**

**14A.1.** The licensee must include a term in each Contract that has been entered into with a Customer on or after the day after the day on which the Electricity and Gas (Internal Markets) Regulations 2011 are made, providing that the licensee will complete any Supplier Transfer in accordance with that Contract within 21 days of the Relevant Date unless:

- (a) the Customer requests that the Supplier Transfer be completed at a later date; or
- (b) the Customer notifies the licensee that he does not wish the Supplier Transfer to take place; or
- (c) one or more of the conditions in paragraph 14A.2 applies.

**14A.2.** The conditions in this paragraph are that, on or after the Relevant Date:

- (a) a Relevant Gas Supplier has prevented the Proposed Supplier Transfer in accordance with paragraph 14.2 or 14.4 of standard condition 14 (Customer transfer blocking); or
- (b) a Supply Exemption Holder is currently supplying gas to the premises and has objected to the Proposed Supplier Transfer under paragraph 2 of Schedule 2AB to the Act; or
- (c) the licensee does not have all of the information it requires in order to complete the Supplier Transfer, despite having taken all reasonable steps to obtain the missing information from the Customer, and cannot readily obtain that information from another source; or
- (d) the Customer is currently taking a supply of gas through an Exempt Distribution System and the licensee is unable to start supplying gas to the premises because:
  - (i) a connection which the licensee or the Customer requires to be made in pursuance of paragraph 7(2) of Schedule 2AA to the Act has not yet been made; or
  - (ii) the distribution exemption holder has specified, in a notice under paragraph 1(6)(a)(i) of Schedule 2AA to the Act, a metering arrangement which it considers would be required for access to be given to a third party supplier (within the meaning of that Schedule) and that metering arrangement is not yet in place; or

- (e) the licensee is prevented from completing the Supplier Transfer due to any other circumstance which is outside the control of the licensee and which it has taken all reasonably practicable steps to resolve.

**14A.3.** Where a condition in paragraph 14A.2 applies the Supplier Transfer must be completed as soon as reasonably practicable and, in any event, within 21 days of the date on which the condition ceases to apply (or, if more than one condition applies, when all relevant conditions cease to apply).

**14A.4.** Where the condition in 14A.2(b) applies, the licensee must not complete the Supplier Transfer before the objection by the Supply Exemption Holder under paragraph 2 of Schedule 2AB to the Act is resolved in accordance with paragraph 1(8) of that Schedule.

**14A.5.** The licensee must not charge a Customer for any costs associated with carrying out a Supply Transfer. The obligation in this paragraph is without prejudice to contractual conditions relating to the termination of a Non-Domestic Supply Contract and to any obligation in the Contract to pay a termination fee.

#### **Obligation to improve switching systems**

**14A.6.** In order to achieve the objective of completing all Supplier Transfers within 21 days of the Relevant Date, the licensee must take all reasonable steps to improve the systems and processes governing the Supplier Transfer process.

#### **Obligation to cooperate in respect of a Supplier Transfer**

**14A.7.** The licensee must comply with any reasonable request from another Gas Supplier or supply exemption holder to provide information or to take any other steps which are reasonably necessary in order to enable that Gas Supplier or supply exemption holder to complete a Supplier Transfer within 21 days of the Relevant Date.

#### **Information for Authority**

**14A.8.** The licensee must give the Authority any Information that the Authority reasonably requests for the purpose of establishing:

- (a) what steps the licensee has taken in accordance with its obligations under paragraph 14A.5 and/or
- (b) the number of Supplier Transfers that have been completed by that licensee within 21 days of the Relevant Date.

#### **Definitions for condition**

**14A.9.** For the purposes of this condition:

“**Relevant Date**” means:

- (a) the day after the day on which a Customer enters into a Contract with a new Gas Supplier; or
- (b) if after entering into the Contract there is a period of time within which the Customer may decide not to proceed with the Contract, the earlier of:
  - (i) the day after the day on which that period ends; and
  - (ii) 14 days after the day on which the Customer entered into the Contract.

“**Supplier Transfer**” in relation to any premises at which a Gas Supplier is supplying gas, means the transfer of responsibility for that supply from that Gas Supplier to another Gas

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Electricity and Gas (Internal Markets) Regulations 2011 No. 2704*

Supplier, “Exempt Distribution System”, “Distribution Exemption Holder” and “Supply Exemption Holder” have the meanings given in Part 1 of the Act.”.

(5) After condition 19A (financial information reporting), insert—

**“Condition 19B. Prohibition of cross-subsidies**

The licensee shall ensure that its business carrying out supply activities shall not give any cross-subsidy to, or receive any cross-subsidy from any business of the licensee which carries out one or more of the following gas activities, operation of an interconnector, transmission, distribution, storage or LNG.”.

(6) In condition 20 (safety of gas supplies and meter point reference number)—

(a) for the heading substitute “Safety of gas supplies, Meter Point Reference Number and dispute settlement”;

(b) after paragraph 20.5, insert—

**“Dispute settlement**

**20.6.** The licensee must provide to each of its Customers information concerning his rights as regards the means of dispute settlement available to him in the event of a dispute with the licensee.”.

(7) After condition 21A (provision of the annual statement of supply to participants of the carbon reduction commitment (CRC) energy efficiency scheme), insert—

**“Condition 21B. Billing based on meter readings**

**21B.1.** If a Customer provides a meter reading to the licensee that the licensee considers reasonably accurate, or if the Gas Meter is read by the licensee, the licensee must take all reasonable steps to reflect the meter reading in the next Bill or statement of account sent to the Customer.

**21B.2.** If the licensee considers that a meter reading provided by a Customer is not reasonably accurate, the licensee must take all reasonable steps to contact the Customer to obtain a new meter reading from him.”.

(8) In condition 22 (duty to offer and supply under domestic supply contract)—

(a) re-number paragraph 22.7 as 22.8;

(b) re-number paragraph 22.6 as 22.7;

(c) re-number paragraph 22.5 as 22.6;

(d) after paragraph 22.4, insert—

**“Domestic terms**

**22.5.** A Domestic Supply Contract or a Deemed Contract with a Domestic Customer entered into or negotiated on or after the day after the day on which the Electricity and Gas (Internal Markets) Regulations 2011 are made must include:

(a) the identity and address of the licensee;

(b) the services provided, including any maintenance services provided, and any service quality levels that are to be met;

(c) if a connection is required, when that connection will take place;

- (d) the means by which up to date information on all applicable tariffs and any maintenance charges may be obtained;
  - (e) any conditions for renewal of the Domestic Supply Contract;
  - (f) any compensation and refund arrangements which apply if contracted quality service levels are not met, including inaccurate and delayed billing; and
  - (g) information concerning the Domestic Customer’s rights as regards the means of dispute settlement available to them in the event of a dispute with the licensee including how dispute resolution procedures can be initiated.”;
- (e) after paragraph 22.8, insert—

**“Provision of Customer Information**

**22.9.** Where a Domestic Customer requests the licensee to pass on his Historic Consumption Data and/or Meter Point Reference Number either to the Domestic Customer or to another Gas Supplier or to any other person, the licensee shall comply with that request free of charge as soon as reasonably practicable.

**22.10.** For the purposes of this condition:

**“Historic Consumption Data”** means:

- (a) except where a Domestic Customer has held his Domestic Supply Contract for less than 12 months, the quantity of gas supplied to the Domestic Customer’s Domestic Premises during the previous 12 months; or
- (b) where the Domestic Customer has held his Domestic Contract for less than 12 months, the quantity of gas supplied to the Domestic Customer’s Domestic Premises during the duration of the Domestic Contract.”.

(9) In condition 27 (payments, security deposits and disconnections)—

- (a) for the heading substitute “Payments, Security Deposits, Disconnections and final Bills”;
- (b) after paragraph 27.16, insert—

**“Provision of final Bill**

**27.17.** Where the responsibility for the supply of gas to a Domestic Customer transfers from the licensee to another Gas Supplier or otherwise terminates, the licensee must take all reasonable steps to send a final Bill or statement of account of the Domestic Customer’s account within 6 weeks of the supplier transfer or termination of the Domestic Supply Contract.

**27.18.** Where subsequent information becomes available to correct an error in the final Bill or statement of account issued pursuant to paragraph 27.17, the licensee shall send a corrected Bill or statement of account as soon as reasonably practicable after the subsequent information becomes available.”.

(10) In condition 31 (general information for domestic customers), after paragraph 31.4, insert—

**“Energy Consumer Guidance**

**31.5.** Paragraphs 31.6 to 31.9 apply from the date on which the National Consumer Council publishes the first version of the Energy Consumer Guidance and the Concise Guidance.

**31.6.** The licensee must publish the latest version of the Energy Consumer Guidance and the Concise Guidance on its website within 28 days of the date on which that version is published by the National Consumer Council.

**31.7.** The licensee must inform each of its Domestic Customers how the Energy Consumer Guidance and the Concise Guidance can be accessed by:

- (a) providing each new Domestic Customer whose premises it supplies with gas under a Contract or a Deemed Contract with this information when the licensee first begins to supply gas to the Domestic Customer’s premises or, in the case of a Deemed Contract, becomes aware that it is doing so;
- (b) including this information in or with each Bill or statement of account sent to a Domestic Customer in relation to Charges for the Supply of Gas or annually if the licensee has not sent such a Bill or statement of account to him; and
- (c) providing this information to a Domestic Customer as soon as reasonably practicable after he requests it.

**31.8.** The licensee must provide a copy of the Concise Guidance to a Domestic Customer annually.

**31.9.** For the purposes of this condition:

“**Concise Guidance**” means the concise guidance published by the National Consumer Council under section 19A of the Consumers, Estate Agents and Redress Act 2007.

“**Energy Consumer Guidance**” means the energy consumer guidance published by the National Consumer Council under section 19A of the Consumers, Estate Agents and Redress Act 2007.”.

## PART 4

### Standard conditions of gas interconnector licences

**4.—(1)** The standard conditions of a gas interconnector licence are amended as follows.

**(2)** In condition 1 (definitions and interpretation)—

(a) before the definition of the “Act” insert—

““Access Rules” means methodologies used to establish terms and conditions for access to (including use of) the licensee’s interconnector but not including those related to charges;”;

(b) after the definition of the “Act” insert—

“the “Agency” means the Agency for the Cooperation of Energy Regulators established by Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009;

“ancillary service” means a service necessary for the operation of the licensee’s interconnector or an interconnected system;”;

(c) after the definition of the “Authority” insert—

“the “Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC(92);”;

(d) after the definition of “integrated transmission system” insert—

““interconnected system” means a system of a relevant system operator with which the licensee’s interconnector is connected or with which the licensee interfaces;

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(92) OJ No L 211, 14.08.2009, p. 94.



- “interconnector capacity” means all interconnector capacity, including new interconnector capacity, which is available over the licensee’s interconnector;”;
- (e) after the definition of “licensee’s interconnector” insert—
- ““new interconnector capacity” means physical capacity, or a new capacity product (including virtual capacity for a counter flow of gas on the interconnector) which is made available over the licensee’s interconnector on or after 3 March 2011;
- the “Regulation” means Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation 2005/1775/EC, as 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(93);”;
- (f) after the definition of “regulatory authority” insert—
- ““related undertaking” has the meaning given to it in Article 2 of the Directive;”;
- (g) for the definition of “relevant system operator”, substitute—
- ““relevant system operator” means a transmission system operator, distribution system operator, storage system operator or LNG system operator (where such phrases shall have the meaning given to them in Article 2 of the Directive);”;
- (h) in paragraph 11, for “A, B, C or D” (in each place) substitute “A, B, C, D or E”.
- (3) In condition 3 (compliance with bilateral agreements), after paragraph 2, insert—
- “**3.** The licensee shall take all steps within its power to make such changes to agreements which fall within the scope of paragraph 1 as may be necessary from time to time to comply with the Regulation and to give full and timely effect to any relevant legally binding decision of the Agency or the European Commission.”.
- (4) In condition 4 (provision of information to the Authority), in paragraph 1—
- (a) in sub-paragraph (b), at the end, omit “and”;
- (b) in sub-paragraph (c), for the full stop at the end substitute “; and”;
- (c) after sub-paragraph (c), insert—
- “(d) any functions conferred on the Authority by or under the Regulation.”.
- (5) In condition 5 (provision of information to a relevant gas transporter)—
- (a) for the heading, substitute “Information regarding technical rules and operation”;
- (b) re-number paragraph 4 as paragraph 5;
- (c) re-number paragraph 3 as paragraph 4;
- (d) re-number paragraph 2 as paragraph 3;
- (e) re-number paragraph 1 as paragraph 2;
- (f) before paragraph 2, insert—
- “**1.** In order to promote effective competition and the efficient functioning of the internal market, if so directed by the Authority, the licensee shall:
- (a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and

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(93) OJ No L 293, 11.11.2010, p. 67.

- (b) publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.”;
- (g) in paragraph 2—
  - (i) for “The licensee shall furnish to any relevant gas transporter” substitute “To the extent not already published pursuant to paragraph 1 above, the licensee shall furnish to any relevant gas transporter or any operator of an interconnected system,”;
  - (ii) in sub-paragraph (a), for “for that” substitute “by a”;
  - (iii) in sub-paragraph (b), after “in such directions”, for the full stop at the end substitute “; or”;
  - (iv) after sub-paragraph (b), insert—
    - “(c) be required by the operator of an interconnected system for the purposes of ensuring the secure and efficient operation of the interconnected system.”;
- (h) in paragraph 3—
  - (i) for “refuse to provide an item of information” substitute “refuse to disclose an item of information under paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c) above”;
  - (ii) for “sub-paragraph 1(a)” substitute “paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c).”;
- (i) in paragraph 5—
  - (i) for “Sub-paragraph 1(a)” substitute “Sub-paragraphs 2(a) and 2(c)”;
  - (ii) after “relevant gas transporter” insert “or operator of an interconnected system”.
- (6) In condition 6 (separation of accounts), in paragraph 1, for “cross-subsidisation” substitute “discrimination, cross-subsidisation and the distortion of competition”.
- (7) In condition 10 (charging methodology to apply to third party access to the licensee’s interconnector)—
  - (a) in paragraph 1, omit “either before the licensee enters into the agreement or before the tariffs under the agreement fall due”;
  - (b) after paragraph 1, in the sub-heading omit “and review”;
  - (c) for paragraph 2, substitute—
    - “2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority, a charging methodology for access to (including use of) the licensee’s interconnector. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Access Rules and the charging methodology.”;
- (d) re-number paragraph 21 as paragraph 25;
- (e) re-number paragraph 20 as paragraph 24;
- (f) re-number paragraph 19 as paragraph 23;
- (g) re-number paragraph 18 as paragraph 22;
- (h) re-number paragraph 17 as paragraph 21;
- (i) re-number paragraph 16 as paragraph 20;
- (j) re-number paragraph 15 as paragraph 19;
- (k) re-number paragraph 14 as paragraph 18;

- (l) re-number paragraph 13 as paragraph 17;
- (m) re-number paragraph 12 as paragraph 16;
- (n) re-number paragraph 11 as paragraph 15;
- (o) omit paragraph 10;
- (p) re-number paragraph 9 as paragraph 12;
- (q) re-number paragraph 8 as paragraph 11;
- (r) omit paragraph 7;
- (s) re-number paragraph 6 as paragraph 10;
- (t) re-number paragraph 5 as paragraph 9;
- (u) re-number paragraph 4 as paragraph 5;
- (v) re-number paragraph 3 as paragraph 4;
- (w) after paragraph 2, insert—

“3. The charging methodology shall set out the methodologies for the calculation of any charges imposed upon users for access to (including use of) the interconnector and/or the provision of ancillary services, and any payments made to users for access to (including use of), the interconnector, including:

- (a) charges levied by the licensee for the allocation of interconnector capacity, including but not limited to:
  - (i) any charges for congestion management purposes, such as the non-use of nominated interconnector capacity; and
  - (ii) any charges for the provision (including the provision to any relevant system operator), of ancillary services, including but not limited to balancing services;
- (b) payments made by the licensee for the provision of ancillary services provided by users or relevant system operators; and
- (c) payments made by the licensee to users for the loss of capacity in the event of being unable to make available interconnector capacity.”;
- (x) in paragraph 4—
  - (i) after “transparent”, for “and” substitute “,”;
  - (ii) after “non-discriminatory”, insert “and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency”;
- (y) in paragraph 5, in sub-paragraph (a) after “that all persons”, insert “, including those in other Member States.”;
- (z) after paragraph 5, insert—

“6. The licensee shall comply with any direction from the Authority to amend its charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology submitted by the licensee. Where the Authority directs changes to the charging methodology the licensee shall resubmit (by such date as may be determined by the Authority and notified to the licensee) its charging methodology to the Authority for approval and the provisions of paragraph 7 shall apply.

7. The charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the methodology on the basis that it meets the relevant charging methodology objectives, such direction to be

issued without undue delay and in any event within three months of receipt of the charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the charging methodology is not approved. In the absence of any direction within three months of receipt of the charging methodology from the licensee, the charging methodology shall be deemed to be approved.

### **Provisional Charging Methodology**

**8.** If the Authority does not approve the charging methodology submitted by the licensee, or if the licensee does not submit a charging methodology for approval, the licensee shall comply with any provisional charging methodology which the Authority may, after giving reasonable notice to the licensee, fix for an interim period and the licensee shall ensure that any compensatory measures set by the Authority are put in place to compensate the licensee and/or users as the case may be if the approved charging methodology deviates from the provisional charging methodology.”;

- (aa) in each of the following paragraphs, for “8, 9 and 10” substitute “11 to 14”—
  - (i) paragraph 9;
  - (ii) paragraph 10;
- (bb) after paragraph 10, omit “Resubmission of charging methodology to the Authority for approval”;
- (cc) in paragraph 11—
  - (i) for “paragraph 10” substitute “paragraphs 13 and 14”;
  - (ii) in sub-paragraph (a), after “that all persons”, insert “, including those in other Member States,”;
  - (iii) in sub-paragraph (b)(v), for “10” substitute “14”;
- (dd) after paragraph 12, insert—

“**13.** The licensee shall comply with any direction from the Authority to amend its proposed modified charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology submitted by the licensee. Where the Authority directs changes to the proposed modified charging methodology the licensee shall resubmit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified charging methodology to the Authority for approval and the provisions of paragraph 14 shall apply.

**14.** The proposed modified charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the proposed modified charging methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the proposed modified charging methodology is not approved (in which case paragraph 8 shall apply). In the absence of any direction within three months of receipt of the proposed modified charging methodology from the licensee, the proposed modified charging methodology shall be deemed to be approved.”;

- (ee) in paragraph 16, for “8” substitute “11”;
- (ff) in each of the following paragraphs, for “13” substitute “17”—
  - (i) paragraph 18;
  - (ii) paragraph 19;

- (iii) paragraph 20;
- (gg) in each of the following paragraphs, for “4 to 11” substitute “5 to 15”—
  - (i) paragraph 20;
  - (ii) paragraph 21 (in both places);
- (hh) in each of the following paragraphs, for “17(b)” substitute “21(b)”—
  - (i) paragraph 22;
  - (ii) paragraph 23;
  - (iii) paragraph 24;
- (ii) in paragraph 21 for “20” substitute “24”.
- (8) In condition 11 (requirement to offer terms for access to the licensee’s interconnector)—
  - (a) omit paragraph 2;
  - (b) re-number paragraph 3 as paragraph 2;
  - (c) re-number paragraph 4 as paragraph 3;
  - (d) re-number paragraph 5 as paragraph 4;
  - (e) re-number paragraph 6 as paragraph 5;
  - (f) in that paragraph, for “4 or 5” substitute “3 or 4”;
  - (g) re-number paragraph 7 as paragraph 6;
  - (h) re-number paragraph 8 as paragraph 7.
- (9) After condition 11 (requirement to offer terms for access to the licensee’s interconnector), insert—

**“Condition 11A. Approval of terms for access to the licensee’s interconnector**

**Existing Exemptions**

1. For the duration of the exemption, the licensee is not required to comply with this licence condition 11A in respect of its capacity which is exempt if, in respect of that particular capacity, prior to 3 March 2011 it was granted an exemption pursuant to licence condition 12 from complying with any requirement of the licence relating to the use by other persons of the gas interconnector to which its licence relates.

**Initial approval of access rules**

2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority a statement, setting out the Access Rules. The licensee may, subject to the approval of the Authority, submit a statement which includes both the charging methodology and the Access Rules.

3. In respect of interconnector capacity which was operational prior to 3 March 2011, and which has not been included in the Access Rules submitted pursuant to paragraph 1, the licensee shall, by such date as the Authority may direct in writing, prepare and submit for approval by the Authority the Access Rules.

4. The Access Rules shall comply with the Regulation and must include, in particular but not be limited to:

- (a) arrangements for maximising the available interconnector capacity, including: the methodology for the calculation of interconnector capacity, the provision of virtual

capacity for a counter-flow of gas on the interconnector, the volume of capacity offered on a firm basis and any additional capacity offered on an interruptible basis to maximise cross-border trade;

- (b) arrangements for users to obtain interconnector capacity at appropriate timescales, including, where relevant, the auction rules and procedures for nominating gas flows against the capacity;
- (c) arrangements for the management of congestion, including procedures for licensees to resell or make available to other users unused interconnector capacity and for users to transfer or resell interconnector capacity;
- (d) arrangements in the event that the licensee curtails, withdraws or is unable to provide available capacity;
- (e) arrangements for any ancillary services, such as balancing arrangements, including where these are offered by third parties, including agents; and
- (f) any general terms and conditions that a user must accept in order to obtain interconnector capacity.

5. The Access Rules shall be transparent, objective, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency (collectively ‘the relevant access rules objectives’).

6. Prior to submitting the Access Rules to the Authority for approval the licensee shall:

- (a) take all reasonable steps to ensure that all persons, including those in other Member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and
- (b) furnish to the Authority a report setting out:
  - (i) the terms originally proposed in the Access Rules;
  - (ii) the representations, if any, made by interested persons; and
  - (iii) any change in the terms of the Access Rules intended as a consequence of such representations.

7. The licensee shall comply with any direction from the Authority to amend the Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 8 shall apply.

8. The Access Rules shall not be approved unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee, unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

#### **Review of the Access Rules by the licensee**

9. The licensee shall review its Access Rules at least once in each calendar year and, subject to paragraphs 11 to 14, make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.

10. The licensee shall also review its Access Rules where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's Access Rules. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 11 to 14, make such modifications to the Access Rules as may be requisite for the purpose of better achieving the relevant access rules objectives.

### **Modification of Access Rules**

11. Subject to paragraphs 13 and 14, the licensee shall not make a modification to the Access Rules unless the licensee has:

- (a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in other Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
- (b) furnished the Authority with a report setting out:
  - (i) the terms originally proposed for the modification;
  - (ii) the representations, if any, made by interested persons to the licensee;
  - (iii) any change in the terms of the modification intended in consequence of such representations;
  - (iv) how the intended modification better achieves the relevant access rules objectives; and
  - (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 14 expires.

12. The licensee shall not propose a modification to the Access Rules more than once a year unless the Authority consents otherwise.

13. The licensee shall comply with any direction from the Authority to amend its proposed modified Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules submitted by the licensee. Where the Authority directs changes to the proposed modified Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified Access Rules to the Authority for approval and the provisions of paragraph 14 shall apply.

14. The proposed modified Access Rules shall not be approved unless and until the Authority has issued a direction approving the proposed modified Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the proposed modified Access Rules are not approved. In the absence of any direction within three months of receipt of the proposed modified Access Rules from the licensee, the proposed modified Access Rules shall be deemed to be approved.

### **Publication of Access Rules**

15. The licensee shall publish (at least on its website) the Access Rules as soon as practicable after the Access Rules have been approved by the Authority, or, where the Access Rules have been modified, the Access Rules as modified. Unless the Authority directs otherwise, the Access Rules shall be published 28 days prior to coming into effect.

**Provision of Access Rules to any person**

16. The licensee shall send a copy of its Access Rules and/or any proposed modification to the Access Rules proposed under paragraph 11, to any person who requests such Access Rules or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of the Access Rules or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition."

- (10) In condition 12 (application of licence conditions 10 and 11: exemption orders)—
- (a) in paragraph 1, for "10 and 11" substitute "10, 11 and 11A";
  - (b) in the heading, for "10 and 11" substitute "10, 11 and 11A";
  - (c) in paragraph 2—
    - (i) after "paragraph 3, the Authority", for "may" substitute "must";
    - (ii) at the end, for "where the Authority is satisfied that the requirements of paragraph 6 are met." substitute—
      - "where the Authority is satisfied that:
        - (a) the requirements of paragraphs 7 and 10 are met; or
        - (b) it is required to do so by the Agency under Article 36(5) of the Directive.";
  - (d) in paragraph 3—
    - (i) after "set out in paragraph", for "6" substitute "7"; and
    - (ii) at the end, insert—
      - "The request shall include the Access Rules for approval by the Authority in accordance with paragraph 13 below, which Access Rules shall:
        - (a) comply with paragraph 4 of licence condition 11A; and
        - (b) comply with paragraph 5 of licence condition 11A save for the requirement for the Access Rules to comply with the Regulation,
 and prior to submitting the Access Rules for approval, the licensee shall comply with the requirements of licence condition 11A paragraph 6.";
  - (e) in paragraph 4—
    - (i) in sub-paragraph (a), omit "for an indefinite period or";
    - (ii) in sub-paragraph (b), omit "unconditionally or" and after "considers appropriate" insert "including any conditions regarding non-discriminatory access to the interconnector to which the exemption relates";
  - (f) re-number paragraph 8 as paragraph 15;
  - (g) re-number paragraph 7 as paragraph 9;
  - (h) re-number paragraph 6 as paragraph 7;
  - (i) re-number paragraph 5 as paragraph 6;
  - (j) after paragraph 4, insert—
    - "5. When considering the terms on which any exemption is to be given in respect of the interconnector, the Authority must take into account:
      - (a) the size of the interconnector or, if it is being modified, any increase in capacity of the interconnector;
      - (b) the length of time required to recover the investment in the interconnector;



- (c) the implications of the exemption for the operation of the gas market in Great Britain.”;
- (k) in paragraph 6, after “with its provisions”, insert—
  - “and must be revoked if:
    - (a) construction of the interconnector or the increase in, or modification to, its capacity to which the exemption relates has not started within two years of the relevant date; or
    - (b) the interconnector or the increase in, or modification to, its capacity to which the exemption relates is not operational within five years of the relevant date.”;
- (l) after paragraph 7, insert—
  - “8. When deciding whether the requirements of paragraph 7 are met, the following shall be taken into account—
    - (a) when considering the criteria in paragraph 7(a), (b) and (e), the way in which capacity is to be allocated under the Access Rules approved by the Authority in accordance with paragraph 13 below; and
    - (b) any opinion which it has received from the Agency in respect of the application pursuant to Article 36(4) of the Directive.”;
- (m) after paragraph 9, insert—
  - “10. The requirements of this paragraph are that:
    - (a) the Authority has sent notification of the application to:
      - (i) the relevant regulatory authority if part of the interconnector is located in another Member State; and
      - (ii) the designated regulatory authority for Northern Ireland if part of the interconnector is located in Northern Ireland;
    - (b) the Authority has sent to the European Commission:
      - (i) a copy of the application as soon as reasonably practicable following its receipt;
      - (ii) the Authority’s decision to give an exemption including the terms on which that exemption has been given;
      - (iii) any other information it considers relevant to the exemption or the terms on which the exemption was given, including the information mentioned in Article 36(8) of the Directive;
      - (iv) any other information requested by the European Commission;
    - (c) if part of the interconnector is located in another Member State, the Authority has sent a copy of the application and the Authority’s decision as to whether the exemption order should be granted if approved by the European Commission to the Agency;
    - (d) save where the Agency takes a decision pursuant to Article 36(5) of the Directive, the Authority has the agreement of any relevant national regulatory authority to the exemption, which agreement has been reached within 6 months of the date on which the application was received by the last of the relevant national regulatory authorities and they have informed the Agency of their decision;
    - (e) the Authority has not been required to refuse the application for an exemption by the Agency under Article 36(5) of the Directive;

- (f) the European Commission:
  - (i) has approved the Authority's decision;
  - (ii) in accordance with Article 36(9) of the Directive has required the Authority to modify or revoke the exemption decision and the Authority has complied with that request within one month of the date on which it received the request and informed the European Commission of doing so; or
  - (iii) has not required the Authority to withdraw the decision under Article 36(9) of the Directive and 4 months have passed since the Commission was notified of the Authority's decision.

**11.** An exemption order will not be made until the Authority has approved the Access Rules.

**12.** The licensee shall comply with any direction from the Authority to amend the Access Rules submitted pursuant to paragraph 3 above, for the purposes of meeting the relevant access rules objectives (save for the requirement for the Access Rules to comply with the Regulation) and the requirements of paragraph 14 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 13 shall apply.

**13.** The Access Rules shall not be approved for the purposes of paragraph 11, unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives (save for the requirement for the Access Rules to comply with the Regulation) and the requirements of paragraph 14 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

**14.** The requirements of this paragraph are that the Authority considers that the Access Rules:

- (a) will ensure that all potential users of the exempt infrastructure will be invited to register an interest in using that infrastructure before rights to use that infrastructure are allocated to the applicant or any other person;
- (b) will require that any unused capacity in the exempt infrastructure is made available to other users or potential users;
- (c) will not restrict reselling of rights to have gas conveyed through the exempt infrastructure.”;

(n) in paragraph 15, after the definition of “new interconnector” insert—

““relevant date” means:

- (a) the date on which the European Commission confirmed that it is content for the exemption to be given in accordance with the Authority's decision as notified in accordance with paragraph 10(b)(ii), or given subject to specified modifications to the exemption; or

- (b) if the Authority did not receive such approval, the date four months after the Commission was sent a copy of the Authority’s decision in accordance with paragraph 10(b)(ii).”.
- (11) In condition 13 (capacity utilisation)—
- (a) in the heading, for “utilisation” substitute “availability”;
  - (b) re-number paragraph 9 as paragraph 10;
  - (c) re-number paragraph 8 as paragraph 9;
  - (d) re-number paragraph 7 as paragraph 8;
  - (e) re-number paragraph 6 as paragraph 7;
  - (f) re-number paragraph 5 as paragraph 6;
  - (g) re-number paragraph 4 as paragraph 5;
  - (h) re-number paragraph 3 as paragraph 4;
  - (i) re-number paragraph 2 as paragraph 3;
  - (j) re-number paragraph 1 as paragraph 2;
  - (k) before paragraph 2, insert—

**“PART A: Purpose**

1. The purpose of this condition is to ensure that basic capacity availability requirements apply to all gas interconnector licensees, including those exempt from the requirements of the Regulation.

*PART B: Capacity availability”;*

- (l) in paragraph 3, at the end, insert “Such capacity allocation mechanisms shall be developed in accordance with Article 16 and Part 2 of Annex 1 of the Regulation.”;
- (m) after paragraph 6, insert—

*“PART C: Publication of Information”;*

- (n) in paragraph 10—
  - (i) in the definition of “capacity”, after “means the flow” insert “in each direction” and at the end insert “(including virtual capacity for a counter flow of gas on the interconnector)”;
  - (ii) in the definition of “contractual congestion”, for “equals or” substitute “demand” and after “licensee’s interconnector” omit “that is, where all technical capacity of the licensee’s interconnector is contracted as firm”;
  - (iii) after the definition of “firm capacity” insert—

““interruptible capacity” means that portion of technical capacity of the licensee’s interconnector which may be interrupted by the licensee in accordance with a binding contract.”.

(12) In condition 14 (dispute resolution), in paragraph 1, for “non-price terms and conditions of access” substitute “Access Rules”.

- (13) After condition 14 (dispute resolution), insert—

**“Part II**  
**SECTION E**

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**Condition 15. Not Used**

**Condition 16. Not Used**

**Condition 17. Not Used**

**Condition 18. Not Used**

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**PART II**  
**SECTION F: OTHER PROVISIONS**

**Condition 19. Operation and development of the interconnector**

1. The licensee shall at all times act in a manner calculated to secure that it has available to itself such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:

- (a) to properly and efficiently participate in the operation of the interconnector; and
- (b) to comply in all respects with its obligations under this licence, the Act, the Regulation and any other legislation as the Authority may direct from time to time for the purposes of this licence condition.

2. The licensee shall operate, maintain and develop an economic, efficient, secure and reliable interconnector.

3. The licensee shall promote security of supply by taking into account all economically reasonable and technically feasible demands for capacity on the licensee’s interconnector.

4. The licensee shall procure the energy used for participating in the operation of the interconnector according to transparent, non-discriminatory and market based procedures.

**Condition 20. Prohibition of discrimination and cross-subsidies**

1. The licensee shall not discriminate between users or classes of users particularly in favour of a related undertaking of the licensee.

2. The licensee shall not give any cross-subsidy to, or receive any cross-subsidy from, any entity which is a related undertaking of the licensee and which carries out one or more of the following gas activities: supply, distribution, storage and LNG.

### **Condition 21. General provisions on disclosure of information**

1. Save to the extent otherwise provided in this or any other licence condition, or required by any other legal duty to disclose, the licensee shall not disclose commercially sensitive information which it has obtained in the course of carrying out its activities.

2. The licensee shall not disclose information about its own activities, which may be commercially advantageous in respect of supply or generation activities, in a discriminatory manner save where this is necessary for carrying out a business transaction.

3. Paragraph 1 above shall not prohibit disclosure by the licensee to any related undertaking which either holds a transmission licence or is the relevant system operator (being a transmission system operator) for an interconnected system.

4. Without limiting the generality of paragraphs 1 to 3 of this licence condition, the licensee shall not, in the context of sales or purchases of gas by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the licensee's interconnector.

### **Condition 22. Notification of changes that may affect eligibility for certification**

1. Where the licensee has made or makes an application for certification under section 8D of the Act, if at any time prior to the Authority notifying the licensee of its final certification decision under section 8F(7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

3. If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.

4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 8O of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.

5. Where the licensee has been certified, by 31 July of each year following certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:

- (a) whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
- (b) whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Electricity and Gas (Internal Markets) Regulations 2011 No. 2704*

that a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and

- (c) whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 8O of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 8G(3) of the Act and in relation to a period that occurs after the relevant date.

**6. In this condition:**

“certified” has the same meaning as in section 8Q of the Act

“control” has the same meaning as in section 8Q of the Act

“person from a third country” has the same meaning as in section 8Q of the Act

“relevant date” has the same meaning as in section 8O of the Act

“shareholder right” has the same meaning as in section 8Q of the Act.

**Condition 23. Regional Cooperation**

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation pursuant to Article 6 of the Directive and Article 12 of the Regulation.

2. A compliance officer of the licensee shall monitor compliance with a compliance programme which must be established and implemented by the joint undertaking to ensure that discrimination and anti-competitive conduct is excluded.

**3. In this condition:**

“vertically integrated undertaking” shall have the meaning given in Article 2 of the Directive.”.

SCHEDULE 8

Regulation 50(1)

Modification of standard conditions of licences granted under the Electricity Act 1989

**PART 1**

**Interpretation**

**1. In this Schedule—**

“the Authority” means the Gas and Electricity Markets Authority;

“electricity distribution licence” means a licence granted under section 6(1)(c) of the Electricity Act 1989 (distribution licences)<sup>(94)</sup>;

<sup>(94)</sup> 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and a relevant amendment was made by section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

“electricity interconnector licence” means a licence granted under section 6(1)(e) of the Electricity Act 1989 (interconnector licences);

“electricity supply licence” means a licence granted under section 6(1)(d) of the Electricity Act 1989 (supply licences);

“electricity transmission licence” means a licence granted under section 6(1)(b) of the Electricity Act 1989 (transmission licences).

## PART 2

### Standard conditions of electricity transmission licences

2.—(1) The standard conditions of an electricity transmission licence are amended as follows.

(2) In condition A1 (definitions and interpretation)—

(a) after the definition of “affiliate” insert—

“the “Agency” means the Agency for the Cooperation of Energy Regulators established under 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators<sup>(95)</sup>.”;

(b) after the definition of “effective time” insert—

““the Electricity Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC<sup>(96)</sup>.”;

(c) after the definition of “electricity licensee” insert—

““the Electricity Regulation” means Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation 2003/1228/EC<sup>(97)</sup>.”;

(d) after the definition of “use of system charging methodology” insert—

““vertically integrated undertaking” means an electricity undertaking or a group of electricity undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform in the European Economic Area at least one of the functions of transmission or distribution and at least one of the functions of generation or supply of electricity. The terms within this definition shall have the meaning given to them by the Electricity Directive.”.

(3) In condition B1 (regulatory accounts)—

(a) in paragraph 3—

(i) in sub-paragraph (b)(viii), at the end insert “; and”;

(ii) after sub-paragraph (b)(viii), insert—

“(dd) where applicable, revenue from the ownership of the transmission network.”;

(b) after paragraph 6, insert—

<sup>(95)</sup> OJ No L 211, 14.08.2009, p. 1.

<sup>(96)</sup> OJ No L 211, 14.08.2009, p. 55.

<sup>(97)</sup> OJ No L 211, 14.08.2009, p. 15.

“6A. The licensee shall, in its internal accounting, keep separate accounts for each of the licensee’s transmission and distribution activities (so far as relevant) as though the activities were carried out by separate undertakings.

6B. The licensee shall keep internal accounts which may be consolidated for other electricity activities not relating to transmission and distribution.

6C. Where appropriate, the licensee shall keep internal consolidated accounts for other electricity activities not related to transmission or distribution.

6D. The accounts shall include a balance sheet and a profit and loss account for each activity.”;

- (c) in paragraph 8, in sub-paragraph (a), for “Article 19 of Directive [2003/54/EC](#) of the European Parliament and of the European Council of 26 June 2003” substitute “Article 31 of the Electricity Directive”.
- (4) In condition B4 (provision of information to the Authority), in paragraph 1, in sub-paragraph (a)—
  - (a) after “the Energy Act 2004,” omit “and”;
  - (b) after “the Energy Act 2008”, insert “, the Energy Act 2010, the Electricity Directive and the Electricity Regulation”.
- (5) After condition B19 (connect and manage implementation), insert—

**“Condition B20: Regional Cooperation**

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation pursuant to Article 6 of the Electricity Directive and Article 12 of the Electricity Regulation.

2. Where the licensee participates in a joint undertaking pursuant to paragraph 1 above, the licensee shall appoint a compliance officer to monitor compliance with any compliance programme established by the joint undertaking, and approved by the Agency pursuant to Article 6 of the Electricity Directive, for the purpose of ensuring that discrimination and anti-competitive conduct is excluded.

**Condition B21: Notification of changes that may affect eligibility for certification**

1. Where the licensee has made or makes an application for certification under section 10B of the Act, if at any time prior to the Authority notifying the licensee of its final certification decision under section 10D(7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

3. If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a



third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.

4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.

5. Where the licensee has been certified, by 31 July of each year following certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:

- (a) whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
- (b) whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or that a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and
- (c) whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

“certified” has the same meaning as in section 10O of the Act;

“control” has the same meaning as in section 10O of the Act;

“person from a third country” has the same meaning as in section 10O of the Act;

“relevant date” has the same meaning as in section 10M of the Act;

“shareholder right” has the same meaning as in section 10O of the Act;”.

(6) In condition C3 (Balancing and Settlement Code (BSC))—

(a) in paragraph 3—

(i) in sub-paragraph (d), at the end, for the full stop at the end substitute “; and”;

(ii) after sub-paragraph (d), insert—

“(e) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.”;

(b) in paragraph 4—

(i) in sub-paragraph (a), after “BSC parties,” insert “the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency),”;

(ii) in sub-paragraph (aa), after “pursuant to paragraphs” insert “4(ae),”;

(iii) after sub-paragraph (ac), insert—

- “(ad) for modification proposals made by the Authority and the licensee in accordance with paragraphs 4(a), 4(aa) and 4(ae)(i) respectively:
  - (i) to be accepted into the BSC modification procedures by the panel;
  - (ii) where they are raised by the licensee, not to be withdrawn without the Authority’s prior consent; and
  - (iii) to proceed in accordance with any timetable(s) directed by the Authority in accordance with paragraph 4(ae);
- (ae) for compliance by the licensee and (where applicable) the panel with any direction(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a modification proposal which the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation and/or any relevant binding decisions of the European Commission and/or the Agency) for the:
  - (i) licensee to raise a modification proposal; and/or
  - (ii) completion of each of the procedural steps outlined in paragraph 4, to the extent that they are relevant; and/or
  - (iii) implementation of a modification.”;
- (iv) in sub-paragraph (c), after “implementation of any modification to be” insert—
  - “either:
    - (i) in accordance with any direction(s) issued by the Authority under paragraph 4(ae)(iii); or
    - (ii) where no direction has been issued by the Authority under paragraph 4(ae)(iii);”;
- (v) after sub-paragraph (e), insert—
  - “(f) for the completion of each of the procedural steps outlined in this paragraph 4, to the extent that they are relevant, to be in accordance with any timetable(s) directed by the Authority under paragraph 4(ae).”;
- (c) in paragraph 4A—
  - (i) in sub-paragraph (b), after “4C”, for the full stop at the end substitute “or 4(ae)(i); or”;
  - (ii) after sub-paragraph (b), insert—
    - “(c) the modification proposal is made by the Authority in accordance with paragraph 4(a).”.
- (7) After condition C5 (use of system charging methodology), insert—

**“Condition C5A: Use of system charging requirements under the Electricity Directive**

1. To the extent not already required under this licence, and for the avoidance of doubt:
  - (a) the licensee shall, as soon as reasonably practicable, publish:
    - (i) the statement of the use of system charging methodology prepared under paragraph 2(a) of condition C4 (Charges for use of system); and
    - (ii) a statement of use of system charges under paragraph 2(b) of condition C4 (Charges for use of system),

(collectively “the UoS charging statements”);

- (b) the licensee shall obtain the Authority’s approval to the UoS charging statements before publication;
  - (c) the licensee shall conform to the published and approved UoS charging statements.
- (8) After condition C6 (connection charging methodology), insert—

**“Condition C6A: Connection charging requirements under the Electricity Directive**

1. To the extent not already required under this licence, and for the avoidance of doubt:
- (a) the licensee shall, as soon as reasonably practicable, publish the most recent statement of the connection charging methodology prepared under paragraph 4 or paragraph 10 of condition C6 (Connection charging methodology) (“the connection charging statement”);
  - (b) the licensee shall obtain the Authority’s approval to the connection charging statement before publication;
  - (c) the licensee shall conform to the published and approved connection charging statement.”.

(9) In condition C7 (prohibition on discriminating between users), in paragraph 2, after “subject to paragraphs 3 and 5, the licensee” insert, “shall apply charges objectively and without discrimination. The licensee”.

(10) In condition C8 (requirement to offer terms), after paragraph 6, insert—

“6A. In any such case the licensee shall give duly substantiated reasons for not offering to enter or not entering into any agreement.”.

(11) In condition C10 (CUSC)—

- (a) in paragraph 1—
  - (i) in sub-paragraph (a), at the end, omit “and”;
  - (ii) in sub-paragraph (b), at the end, for “,” substitute “; and”;
  - (iii) after sub-paragraph (b) insert—
    - “(c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency,”;
- (b) in paragraph 6—
  - (i) in sub-paragraph (a)(i), after “CUSC users,” insert, “the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency),”;
  - (ii) in sub-paragraph (a)(ii), after “CUSC users,” insert “the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency),”;
  - (iii) in sub-paragraph (aa), after “pursuant to paragraphs” insert “6(af),”;
  - (iv) after sub-paragraph (ad), insert—
    - “(ae) for modification proposals made by the Authority or the licensee in accordance with paragraphs 6(a), 6(aa) and 6(af)(i) respectively:
      - (i) to be accepted into the CUSC modification procedures by the panel;

- (ii) where they are raised by the licensee, not to be withdrawn without the Authority’s prior consent; and
- (iii) to proceed in accordance with any timetable(s) directed by the Authority in accordance with paragraph 6(af);
- (af) for compliance by the licensee and (where applicable) the panel with any direction(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a modification proposal which the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency) for the:
  - (i) licensee to raise a modification proposal; and/or
  - (ii) completion of each of the procedural steps outlined in paragraph 6, to the extent that they are relevant; and/or
  - (iii) implementation of a modification.”;
- (v) in sub-paragraph (c), after “implementation of any modification to be” insert—
  - “either:
    - (i) in accordance with any direction(s) issued by the Authority under paragraph 6(af)(iii); or
    - (ii) where no direction is issued by the Authority under paragraph 6(af)(iii).”;
- (vi) in sub-paragraph (c), at the end, omit “and”;
- (vii) in sub-paragraph (d), at the end, for the full stop at the end substitute “; and”;
- (viii) after sub-paragraph (d), insert—
  - “(e) for the completion of each of the procedural steps outlined in this paragraph 6, to the extent that they are relevant, to be in accordance with any timetable(s) directed by the Authority under paragraph 4(af).”;
- (c) in paragraph 6A—
  - (i) in sub-paragraph (b), after “6C”, for the full stop at the end substitute “or 6(af)(i); or”;
  - (ii) after sub-paragraph (b), insert—
    - “(c) the modification proposal is made by the Authority in accordance with paragraph 6(a).”.
- (12) In condition C11 (production of information about the national electricity transmission system)—
  - (a) in paragraph 1—
    - (i) in sub-paragraph (b), at the end, omit “and”;
    - (ii) after sub-paragraph (b), insert—
      - “(ba) such further information as may be necessary for any interconnected system operator to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system; and”;
  - (b) in paragraph 3—
    - (i) for “may” substitute “shall”;
    - (ii) for “year” substitute “three months”;
  - (c) after paragraph 5, insert—
    - “6. In this condition:

“interconnected system operator” means any authorised electricity operator, or any other transmission system operator or distribution system operator (having the meaning given by the Electricity Directive) with whose system the licensee’s transmission system is connected or with whom the licensee interfaces.”.

(13) In condition C14 (Grid Code)—

(a) in paragraph 1—

(i) in sub-paragraph (b)(ii), at the end omit “and”;

(ii) in sub-paragraph (b)(iii), at the end, for the full stop at the end substitute “; and”;

(iii) after sub-paragraph (b)(iii), insert—

“(iv) to efficiently discharge the obligations imposed upon the licensee by this license and to comply with the Electricity Regulation and any relevant legally binding decisions of the European Commission and/or the Agency.”;

(b) in paragraph 2B—

(i) after “The review undertaken under paragraph 2A shall” insert—

“:

(a) where the Authority reasonably considers it necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency, proceed in accordance with any timetable(s) directed by the Authority under this paragraph in relation to the progress of the review and/or implementation of any revisions to the Grid Code; and”;

(ii) re-number the wording from “involve an evaluation” to the end as sub-paragraph (b).

(14) In condition D4A (obligations in relation to offers for connection etc), in paragraph 4, after “pursuant to paragraph 1 or paragraph 3” insert “and shall give duly substantiated reasons to the system operator for not offering to enter or not entering into any agreement”.

(15) In condition E2 (regulatory accounts)—

(a) in paragraph 3—

(i) in sub-paragraph (a), after “other business of the licensee” insert “, including a separate balance sheet and a separate profit and loss account (or, as appropriate, an income statement) for the consolidated transmission business and any other business of the licensee”;

(ii) in sub-paragraph (b)(viii), after “any revenue” insert “(including, where applicable, revenue from the ownership of the transmission network)”;

(b) after paragraph 6, insert—

“**6A.** The accounting records kept or caused to be kept by the licensee under paragraph 3(a) shall include as applicable:

(a) separate accounting records for each business of the licensee related to electricity transmission activities and electricity distribution activities;

(b) accounting records, which may be consolidated, for each business of the licensee related to electricity activities other than electricity transmission activities and electricity distribution activities; and

(c) unless otherwise approved by the Authority having regard to the purposes of this condition, consolidated accounts for each business of the licensee not related to electricity activities.”;

- (c) in paragraph 8, in sub-paragraph (a), for “Article 19 of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003” substitute “Article 31 of the Electricity Directive”.
- (16) In condition E5 (provision of information to the Authority), in paragraph 1—
- (a) in sub-paragraph (a), after “the Energy Act 2004” for “and” substitute “,” and after “the Energy Act 2008” insert “and the Energy Act 2010” and, at the end, omit “and”;
  - (b) in sub-paragraph (b), at the end, for the full stop at the end substitute “; and”;
  - (c) after sub-paragraph (b), insert—
    - “(c) any function conferred on the Authority by or under the Electricity Directive or Electricity Regulation, including any function conferred on the Authority in its capacity as national regulatory authority for Great Britain.”
- (17) In condition E17 (obligations in relation to offers for connection etc.), in paragraph 5, after “in accordance with the STC” insert “, including providing duly substantiated reasons to the system operator for not offering to enter into or not entering into any agreement”.
- (18) After condition E21 (offshore transmission owner of last resort), insert—

**“Condition E22: General provisions on disclosure of information**

1. Except to the extent otherwise provided in this or any other licence condition, or required by any other legal duty to disclose information, the licensee shall not disclose commercially sensitive information which it has obtained in the course of carrying out its activities.
2. The licensee shall not disclose information about its own activities, which may be commercially advantageous in respect of supply or generation activities, in a discriminatory manner except where this is necessary for carrying out a business transaction.
3. Paragraph 1 above shall not prohibit disclosure by the licensee to any undertaking which either holds a transmission licence or is the relevant system operator (being a transmission system operator) for an interconnected system for the purpose of the undertaking carrying out its transmission activities.

**Condition E23: Notification of changes that may affect eligibility for certification**

1. Where the licensee has made or makes an application for certification under section 10B of the Act, if at any time prior to the Authority notifying the licensee of its final certification decision under section 10D(7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.
2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.
3. If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.

4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.

5. Where the licensee has been certified, by 31 July of each year following certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:

- (a) whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
- (b) whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and
- (c) whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

“certified” has the same meaning as in section 10O of the Act

“control” has the same meaning as in section 10O of the Act

“person from a third country” has the same meaning as in section 10O of the Act

“relevant date” has the same meaning as in section 10M of the Act

“shareholder right” has the same meaning as in section 10O of the Act.

#### **Condition E24: Regional Cooperation**

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation pursuant to Article 6 of the Electricity Directive and Article 12 of the Electricity Regulation.

2. Where the licensee participates in a joint undertaking pursuant to paragraph 1 above, the licensee shall appoint a compliance officer to monitor compliance with any compliance programme established by the joint undertaking, and approved by the Agency pursuant to Article 6 of the Electricity Directive, for the purpose of ensuring that discrimination and anti-competitive conduct is excluded.”.

## **PART 3**

### **Standard conditions of electricity distribution licences**

3.—(1) The standard conditions of an electricity distribution licence are amended as follows.

- (2) In condition 1 (definitions for the standard conditions)—
- (a) after the definition of “De Minimis Business” insert—
- “**Directive**” means Directive [2009/72/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive [2003/54/EC](#)(**98**).”;
- (b) after the definition of “Public Electronic Communications Network” insert—
- “**Regulation**” means Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchange in electricity and repealing Regulation 2003/1228/EC(**99**).”.
- (3) In condition 4 (no abuse of the licensee’s special position), in paragraph 4.9, for “If the licensee is a Distribution Services Provider, it” substitute “The licensee”.
- (4) In condition 6 (provision of Information to the Authority), in paragraph 6.1, after “under any legislation”, insert “or in pursuance of any requirements of the Directive or the Regulation”.
- (5) In condition 12 (requirement to offer terms for use of system and connection), after paragraph 12.7, insert—
- “**12.7A.** Where the licensee refuses to offer to enter into an agreement for Use of System for one of the reasons in paragraph 12.7 duly substantiated reasons must be given for such refusal.”.
- (6) In condition 13 (charging methodologies for use of system and connection), in paragraph 13.3—
- (a) in sub-paragraph (c), at the end omit “and”;
- (b) in sub-paragraph (d), at the end, for the full stop at the end substitute “; and”;
- (c) after sub-paragraph (d), insert—
- “(e) compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.”.
- (7) In condition 13A (common distribution charging methodology)—
- (a) after paragraph 13A.6, insert—
- “**13A.6A.** The first Relevant Objective is compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.”;
- (b) in paragraph 13A.7, for “first” substitute “second”;
- (c) in paragraph 13A.8, for “second” substitute “third”;
- (d) in paragraph 13A.9, for “third” substitute “fourth”;
- (e) in paragraph 13A.10—
- (i) for “fourth” substitute “fifth”;
- (ii) for “13A.7” substitute “13A.6A”.
- (8) In condition 13B (EHV distribution charging methodology)—
- (a) after paragraph 13B.7, insert—

(98) OJ No L 211, 14.08.2009, p. 55.

(99) OJ No L 211, 14.08.2009, p. 15.



- “**13B.7A.** The first Relevant Objective is compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.”;
- (b) in paragraph 13B.8, for “first” substitute “second”;
  - (c) in paragraph 13B.9, for “second” substitute “third”;
  - (d) in paragraph 13B.10, for “third” substitute “fourth”;
  - (e) in paragraph 13B.11, for “fourth” substitute “fifth”.
- (9) In condition 21 (the Distribution Code)—
- (a) in paragraph 21.4—
    - (i) in sub-paragraph (b), at the end, for the full stop at the end substitute “; and”;
    - (ii) after sub-paragraph (b), insert—
      - “(c) efficiently discharge the obligations imposed upon distribution licensees by the distribution licences and comply with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency for the Co-operation of Energy Regulators.”;
  - (b) re-number paragraph 218.A as paragraph 21.8A;
  - (c) in that paragraph—
    - (i) after “The review undertaken under paragraph 21.8 must” insert—
      - “.
      - (a) where the Authority reasonably considers it necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators proceed in accordance with any timetable(s) directed by the Authority under this paragraph in relation to the progress of the review and/or implementation of any modifications to the Distribution Code; and”;
    - (ii) re-number the wording from “involve an evaluation” to the end as sub-paragraph (b);
  - (d) in paragraph 21.11, after “as may be specified in the direction”, insert “and the licensee shall forthwith comply with any such directions”.
- (10) In condition 22 (Distribution Connection and Use of System Agreement)—
- (a) in paragraph 22.2—
    - (i) in sub-paragraph (c), at the end omit “and”;
    - (ii) in sub-paragraph (d), at the end, for the full stop at the end substitute a semicolon;
    - (iii) after sub-paragraph (d), insert—
      - “(e) compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators; and
      - (f) in relation to the Common Distribution Charging Methodology or the EHV Distribution Charging Methodology, the Relevant Objectives listed in Part B of Standard Licence Condition 22A.”;
  - (b) in paragraph 22.5—
    - (i) in sub-paragraph (a), after “any other party to the DCUSA,” insert, “the Authority (in relation only to amendments which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions

- of the European Commission and/or the Agency for the Co-operation of Energy Regulators),”;
- (ii) in sub-paragraph (c), at the end omit “and”;
  - (iii) in sub-paragraph (d), at the end, for the full stop at the end substitute a semicolon;
  - (iv) after sub-paragraph (d), insert—
    - “(e) amendment proposals made by the Authority or the licensee in accordance with paragraphs 22.5(a) and 22.5(f)(i) respectively are:
      - (i) to be accepted into the DCUSA amendment procedures by the panel;
      - (ii) where they are raised by the licensee, not to be withdrawn without the Authority’s prior consent; and
      - (iii) to proceed in accordance with any timetable(s) directed by the Authority in accordance with paragraph 22.5(f); and
    - (f) the licensee and (where applicable) the panel are to comply with any direction(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to an amendment proposal which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or Agency for the Co-operation of Energy Regulators) for the:
      - (i) licensee to raise an amendment proposal; and/or
      - (ii) completion of each of the procedural steps outlined in Part C, to the extent that they are relevant; and/or
      - (iii) implementation of an amendment proposal.”;
- (c) in paragraph 22.10, for sub-paragraph (a) substitute—
  - “(a) a proposed implementation date either:
    - (i) in accordance with any direction(s) issued by the Authority under paragraph 22.5(f)(iii); or
    - (ii) where no direction has been issued by the Authority under paragraph 22.5(f)(iii), that would enable any proposed amendment to take effect as soon as practicable after the decision to implement it has been reached, taking into account the complexity, importance, and urgency of that amendment; and”;
- (d) after paragraph 22.13 insert—  
“**22.13A.** They must ensure that completion of each of the procedural steps outlined in this Part C, to the extent that they are relevant, is in accordance with any timetable(s) directed by the Authority under paragraph 22.5(f).”.
- (11) In Appendix 1 (Schedule of DCUSA contents) to condition 22, after paragraph A3, insert—  
“**A3A.** Amendment proposals raised by the Authority or the licensee under paragraphs 22.5(a) and 22.5(f)(i) respectively and/or any amendment proposal in respect of which the Authority has issued a direction(s) under paragraph 22.5(f) require Authority approval.”.
- (12) In condition 22A (governance and change control arrangements for relevant charging methodologies)—
  - (a) re-number paragraph 22A.15 as 22A.16;
  - (b) re-number paragraph 22A.14 as 22A.15;
  - (c) re-number paragraph 22A.13 as 22A.14;

- (d) re-number paragraph 22A.12 as 22A.13;
- (e) re-number paragraph 22A.11 as 22A.12;
- (f) re-number paragraph 22A.10 as 22A.11;
- (g) after paragraph 22A.9, insert—

“**22A.10.** The fifth Relevant Objective is that compliance with the CDCM facilitates compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.”.

- (13) In condition 23 (Master Registration Agreement), after paragraph 23.3, insert—

“**23.4.** The Master Registration Agreement must be compliant with the Regulation and any relevant decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

**23.5.** The arrangements referred to in paragraph 23.3(d) shall provide:

- (a) for proposals for the variation of the Master Registration Agreement to be made by the Authority (in relation only to variations which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators);
- (b) for variation proposals made by the Authority or the licensee in accordance with paragraphs 23.5(a) and 23.5(c)(i) respectively:
  - (i) to be accepted into the Master Registration Agreement variation procedures by the committee;
  - (ii) where they are raised by the licensee, not to be withdrawn without the Authority’s prior consent; and
  - (iii) to proceed in accordance with paragraph 23.5(c);
- (c) for compliance by the licensee and (where applicable) the committee with any direction(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a variation proposal which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators) for the:
  - (i) licensee to raise a variation proposal; and/or
  - (ii) completion of each of the procedural steps outlined in the direction, to the extent that they are relevant; and/or
  - (iii) implementation of a variation.”.

- (14) After condition 31 (undertaking from ultimate controller), insert—

**“Chapter 7A: Standard conditions 31A to 31C: Independent Distribution Network Operators**

**Condition 31A. Accounts**

**Provisions applying to Independent Distribution Network Operators Provisions applying to Independent Distribution Network Operators**

**31A.1.** This condition and standard conditions 31B (Independence of the Distribution Business and restricted use of Confidential Information) and 31C (Appointment of Compliance Officer) apply where the licensee is not a Distribution Services Provider.

### **Keeping accounts at the disposal of the public**

**31A.2.** The licensee shall draw up, submit to audit and publish its annual accounts in accordance with any obligations to which it is subject under national company law.

**31A.3.** To the extent that the licensee is not subject to an obligation to draw up and submit to audit annual accounts under national company law, the licensee shall draw up, submit to audit and publish its annual accounts as if it were a limited liability company within the meaning of sections 1 and 3 of the Companies Act 2006.

**31A.4.** The licensee shall keep a copy of its annual accounts at the disposal of the public at its principal place of business.

### **Internal accounting**

**31A.5.** The licensee, in its internal accounting, shall:

- (a) keep separate accounts for its distribution activities and each if any of its transmission activities as if such activities were carried out by separate undertakings, to avoid discrimination, cross-subsidisation between these activities and distortion of competition;
- (b) keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution.
- (c) ensure that revenue from ownership of the interconnector operation of the distribution system is separately identifiable;
- (d) where appropriate, keep consolidated accounts for other non-electricity activities;
- (e) include a balance sheet and a profit and loss account for each activity in the accounts.

### **Audit**

**31A.6.** The licensee must at its own expense enter into a contract of appointment with an Appropriate Auditor for the completion of Agreed Upon Procedures in relation to the prohibition of cross-subsidy and discrimination generally and in particular under standard condition 31B.

**31A.7.** The contract must require that Agreed Upon Procedures are conducted in relation to each Regulatory Year and that the licensee will arrange for the Appropriate Auditor to address a report to the Authority by 31 July following the end of each Regulatory Year which states that he has, in a manner consistent with the relevant auditing standards, completed the Agreed Upon Procedures issued by the Authority in respect of the Regulatory Year under report and which sets out his findings.

**31A.8.** If the Authority is satisfied that the report referred to in paragraph 6 above demonstrates that the licensee has complied with the obligation to avoid discrimination and cross-subsidies that is specified in Article 31 of Directive [2009/72/EC](#) of the European Parliament and the European Council of 13 July 2009 and is imposed on the licensee by the condition of this licence referred to in paragraph 6 above, the report is deemed to represent the results of an audit of that obligation, as required by the Article.

### **Interpretation**

**31A.9.** In this condition:

**Agreed Upon Procedures** means procedures from time to time agreed between the Authority, the Appropriate Auditor and the licensee for the purpose of enabling the

Appropriate Auditor to review and report to the Authority on matters relating to the licensee's compliance with the obligation mentioned at paragraph 7.

**Appropriate Auditor** means:

- (a) in the case of a licensee that is a company within the meaning of section 1 of the Companies Act 2006<sup>(100)</sup> a person appointed as auditor under Chapter 2 of Part 16 of that Act;
- (b) in the case of any other licensee that is required by the law of a country or territory within the European Economic Area to appoint an auditor under provisions analogous to those of Chapter 2 of Part 16 of that Act, a person so appointed; and
- (c) in any other case a person who is eligible for appointment as a company auditor under Part 42 of that Act.

**National company law** means:

- (a) in the case of a licensee that is a company within the meaning of section 1 of the Companies Act 2006, that Act;
- (b) in the case of any other licensee that is required by the law of a country or territory within the European Economic Area to comply with obligations to draw up, audit and publish annual accounts, that law.

### **Condition 31B. Independence of the Distribution Business and restricted use of Confidential Information**

**31B.1.** This condition applies where the licensee is not a Distribution Services Provider but is part of a Vertically Integrated Undertaking.

#### **Licensee's obligations**

**31B.2.** The licensee must put in place and at all times maintain managerial and operational systems that prevent any Relevant Licence Holder from having access to Confidential Information except and to the extent that such information:

- (a) is made available on an equal basis to any Electricity Supplier, gas supplier, or gas shipper;
- (b) is referable to a Customer who at the time to which the information relates was a Customer of the Relevant Licence Holder; or
- (c) is of a type that has been confirmed by the Authority in Writing as corporate information.

#### **Compliance Statement must always be in place**

**31B.3.** Except with the Authority's consent, the licensee must at all times have in place a Compliance Statement, approved by the Authority, that describes the practices, procedures, and systems which the licensee has adopted (or intends to adopt) to ensure compliance with paragraph 2.

**31B.4.** If the Authority does not direct the licensee to amend the Compliance Statement within 60 days of receiving it, the statement is to be treated as approved by the Authority.

**31B.5.** The licensee must take all reasonable steps to ensure that it complies with the terms of the Compliance Statement in place under this condition.

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<sup>(100)</sup>2006 c. 46. Amendments have been made that are not relevant for these purposes.

### Specific contents of the Compliance Statement

**31B.6.** The Compliance Statement must, in particular, set out how the licensee will:

- (a) maintain the full managerial and operational independence of the Distribution Business from any Relevant Licence Holder;
- (b) maintain the branding of the Distribution Business so that it is fully independent from the branding used by any Relevant Licence Holder; and
- (c) manage the transfer of employees from the Distribution Business to any Relevant Licence Holder.

**31B.7.** The Compliance Statement must also ensure that any arrangements to which the licensee is party that fall within any of the descriptions given in paragraph 8 are such as to prevent any breach of the requirements of paragraph 2.

**31B.8.** The arrangements referred to in paragraph 7 are those that enable any Relevant Undertaking, or any person engaged in or in respect of the activities of such a Relevant Licence Holder, to have any use of or access to:

- (a) premises or parts of premises occupied by persons engaged in, or in respect of, the management or operation of the Distribution Business;
- (b) systems for recording, processing, or storing data to which persons engaged in, or in respect of, the management or operation of the Distribution Business also have access;
- (c) equipment, facilities, or property employed for the management or operation of the Distribution Business; and
- (d) the services of any persons who are (whether or not as their principal occupation) engaged in, or in respect of, the management or operation of the Distribution Business.

### Revision and publication of Compliance Statement

**31B.9.** The licensee may, with the Authority's approval, revise a Compliance Statement prepared in accordance with paragraph 3.

**31B.10.** The licensee must publish a copy of every Compliance Statement prepared in accordance with paragraph 3 (or revised in accordance with paragraph 9) on its Website (if it has one) within 21 days of its approval by the Authority.

### Interpretation

**31B.11.** In this condition:

**Confidential Information** means information relating to, or derived from, the Distribution Business that is not published or otherwise legitimately in the public domain.

**Relevant Licence Holder** means any holder of:

- (a) a Supply Licence; or
- (b) a gas supply licence; or
- (c) a gas shipper licence; or
- (d) an electricity generation licence;

that is also an Affiliate or a Related Undertaking of the licensee.

**Vertically Integrated Undertaking** means an electricity undertaking or a group of electricity undertakings where the same person or the same persons are entitled, directly

or indirectly, to exercise control, and where the undertaking or group of undertakings perform in the European Economic Area at least one of the functions of transmission or distribution, and perform in the European Economic Area at least one of the functions of generation or supply of electricity. Terms within this definition shall have the meaning given to them by the Directive.

### **Condition 31C. Appointment of Compliance Officer**

#### **Application to Vertically Integrated Undertakings**

**31C.1.** This condition applies where the licensee is not a Distribution Services Provider but is part of a Vertically Integrated Undertaking.

#### **Purpose of appointment**

**31C.2.** The licensee must ensure, following consultation with the Authority, that a competent person (who is to be known as the Compliance Officer) is appointed for the purpose of facilitating the licensee's compliance with the Relevant Obligations.

#### **Appropriate tasks for the Compliance Officer**

**31C.3.** The licensee must at all times ensure that the Compliance Officer is engaged for the performance of such duties and tasks as the licensee considers it appropriate to assign to him for the purpose specified at paragraph 2.

**31C.4.** Those duties and tasks for the Compliance Officer must include:

- (a) providing relevant advice and information to the licensee for the purpose of facilitating its compliance with the Relevant Obligations;
- (b) monitoring the effectiveness of the practices, procedures, and systems adopted by the licensee in accordance with the Compliance Statement required under paragraph 3 of standard condition 31B (Independence of the Distribution Business and restricted use of Confidential Information);
- (c) advising whether, to the extent that the implementation of such practices, procedures, and systems requires the co-operation of any other person, they are designed so as reasonably to allow the required co-operation;
- (d) investigating any complaint or representation made available to him in accordance with paragraph 6;
- (e) recommending and advising on the remedial action that any such investigation has demonstrated to be necessary or desirable;
- (f) providing relevant advice and information to the licensee for the purpose of ensuring its effective implementation of the practices, procedures, and systems referred to at sub-paragraph (b), and of any remedial action recommended in accordance with sub-paragraph (e); and
- (g) reporting annually to the licensee's directors about his activities during the period covered by the report, including the fulfilment of any other duties assigned to him by the licensee under this condition.

#### **Licensee's duties to the Compliance Officer**

**31C.5.** The licensee must ensure that the Compliance Officer is sufficiently independent to comply with the requirements of Article 26(2)(d) of the Directive and that he:

- (a) is provided with such staff, premises, equipment, facilities, and other resources; and

(b) has such access to the licensee's premises, systems, information, and documentation, as he might reasonably expect to require for the fulfilment of the duties and tasks assigned to him.

**31C.6.** The licensee must give the Compliance Officer a copy of any complaint or representation that it receives from any person about a matter arising under or because of the Relevant Obligations.

### **Licensee's own Compliance Report**

**31C.7.** The licensee must, as soon as is reasonably practicable after receiving each annual report of the Compliance Officer under paragraph 3(g), produce a report ("the Compliance Report"):

- (a) about its compliance during the relevant year with the Relevant Obligations; and
- (b) about its implementation of the practices, procedures, and systems adopted in accordance with the Compliance Statement required under paragraph 3 of standard condition 31B.

**31C.8.** The Compliance Report produced in accordance with paragraph 6 must, in particular, do the things described in paragraphs 9 to 11.

**31C.9.** It must detail the activities of the Compliance Officer during the relevant year.

**31C.10.** It must refer to such other matters as are or may be appropriate in relation to the licensee's implementation of the practices, procedures, and systems adopted in accordance with the Compliance Statement required under paragraph 3 of standard condition 31B.

**31C.11.** It must set out the details of any investigations conducted by the Compliance Officer, including:

- (a) the number, type, and source of the complaints or representations on which those investigations were based;
- (b) the outcome of the investigations; and
- (c) any remedial action taken by the licensee following them.

### **Publication of Compliance Report**

**31C.12.** The licensee must:

- (a) give the Authority a copy of every Compliance Report; and
- (b) publish each such report on, and in a way that is readily accessible from, its Website (if it has one).

### **Interpretation**

**31C.13.** For the purposes of this condition, Relevant Obligations means:

- (a) the requirements of standard condition 31B (Independence of Distribution Business and restricted use of Confidential Information);

and, so far as they relate to relationships with Relevant Licence Holders within the meaning of standard condition 31B, the requirements of:

- (b) paragraph 9 of standard condition 4 (No abuse of the licensee's special position) (which prohibits cross-subsidy between the licensee's Distribution Business and any other business of the licensee or of an Affiliate or Related Undertaking of the licensee); and



- (c) paragraph 1 of standard condition 19 (Prohibition of discrimination under Chapters 4 and 5) (which prohibits the licensee from discriminating between any person or class or classes of persons when providing Use of System or connections or carrying out works for the purposes of connection).”.

(15) In condition 42 (independence of the distribution business and restricted use of confidential information), in paragraph 42.10—

- (a) in the definition of “Relevant Licence Holder”, in sub-paragraph (c), for “,” substitute “; or”;
- (b) after sub-paragraph (c), insert—
  - “(d) an electricity generation licence.”.

(16) In condition 43 (appointment of compliance officer), in paragraph 43.4 after “The licensee must ensure that the Compliance Officer” insert “is sufficiently independent to comply with the requirements of Article 26(2)(d) of the Directive and that he”.

## PART 4

### Standard conditions of electricity supply licences

4.—(1) The standard conditions of an electricity supply licence are amended as follows.

(2) In condition 1 (definitions for standard conditions)—

- (a) after the definition of “Deemed Contract” insert—

“**Directive** means Directive [2009/72/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive [2003/54/EC\(101\)](#);”;

- (b) after the definition of “Public Electronic Communications Network” insert—

“**Regulation** means Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation 2003/1228/EC([102](#))”.

(3) In condition 5 (provision of information to Authority)—

- (a) in the heading, at the end insert “**and data retention**”;
- (b) in paragraph 5.1, after “under any legislation” insert “, including any functions conferred on the Authority by or under the Regulation”;
- (c) after paragraph 5.4, insert—

#### “Data retention

**5.5.** The licensee shall keep, for at least five years, the Relevant Data relating to any transactions in electricity supply contracts and electricity derivatives with wholesale customers, transmission system operators or any person who sells electricity to the licensee, which have been entered into by the licensee on or after the day after the day on which the Electricity and Gas (Internal Markets) Regulations 2011 are made.

**5.6.** With respect to transactions in electricity derivatives, the obligation to keep the Relevant Data shall only apply once the European Commission has adopted guidelines pursuant to paragraph 4 of Article 40 of the Directive.

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(101) OJ No L 211, 14.08.2009, p. 55.

(102) OJ No L 211, 14.08.2009, p. 15.

5.7. After receiving a request from the Authority for the Relevant Data, the licensee must give the Relevant Data to the Authority when and in the form requested.

5.8. Paragraphs 5.5 and 5.7 do not require the licensee to keep Relevant Data in respect of any feed-in tariff arrangements entered into by the licensee in accordance with Condition 33 or 34.

#### **Definitions for condition**

5.9. For the purposes of this condition:

“**Relevant Data**” means details on the characteristics of all transactions in electricity supply contracts and electricity derivatives with wholesale customers, transmission system operators, or any person who sells electricity to the licensee, including but not limited to the duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled electricity supply contracts and electricity derivatives.”.

(4) After condition 14 (customer transfer blocking), insert—

#### **“Condition 14A. Customer transfer**

##### **Obligation to complete a Supplier Transfer within three weeks**

**14A.1.** The licensee must include a term in each Contract that has been entered into with a Customer on or after the day after the day on which the Electricity and Gas (Internal Markets) Regulations 2011 are made, providing that the licensee will complete any Supplier Transfer in accordance with that Contract within 21 days of the Relevant Date unless:

- (a) the Customer requests that the Supplier be completed at a later date; or
- (b) the Customer notifies the new supplier that he does not wish the Supplier Transfer to take place; or
- (c) one or more of the conditions in paragraph 14A.2 applies.

**14A.2.** The conditions in this paragraph are that, on or after the Relevant Date:

- (a) a Relevant Electricity Supplier has prevented the Proposed Supplier Transfer in accordance with paragraph 14.2(a) to (b) or 14.4(a) to (d) of standard condition 14 (Customer transfer blocking); or
- (b) a Supply Exemption Holder is currently supplying electricity to the premises and has objected to the Proposed Supplier Transfer under paragraph 2 of Schedule 2ZB to the Act; or
- (c) the licensee does not have all of the information it requires in order to complete the Supplier Transfer, despite having taken all reasonable steps to obtain the missing information from the Customer, and cannot readily obtain that information from another source; or
- (d) the Customer is currently taking a supply of electricity through an Exempt Distribution System and the licensee is unable to start supplying gas to the premises because:
  - (i) a connection which the licensee or the Customer requires to be made in accordance with paragraph 7(2) of Schedule 2ZA to the Act and that physical connection has not yet been made; or

- (ii) the distribution exemption holder has specified, in a notice under paragraph 1(6)(a)(i) of Schedule 2ZA to the Act, a metering arrangement which it considers would be required for access to be given to a third party supplier (within the meaning of that Schedule) and that metering arrangement is not yet in place; or
- (e) the licensee is prevented from completing the Supplier Transfer due to any other circumstance which is outside the control of the licensee and which it has taken all reasonably practicable steps to resolve.

**14A.3.** Where a condition in paragraph 14A.2 applies the Supplier Transfer must be completed as soon as reasonably practicable and, in any event, within 21 days of the date on which the condition ceases to apply (or, if more than one condition applies, when all relevant conditions cease to apply).

**14A.4.** Where the condition in 14A.2(b) applies, the licensee must not complete the Supplier Transfer before the objection by the Supply Exemption Holder under paragraph 2 of Schedule 2ZB to the Act is resolved in accordance with paragraph 1(8) of that Schedule

**14A.5.** The licensee must not charge a Customer for any costs associated with carrying out a Supply Transfer. The obligation in this paragraph is without prejudice to contractual conditions relating to the termination of a Non-Domestic Supply Contract and to any obligation in the Contract to pay a termination fee.

#### **Obligation to improve switching systems**

**14A.6.** In order to achieve the objective of completing all Supplier Transfers within 21 days of the Relevant Date, the licensee must take all reasonable steps to improve the systems and processes governing the Supplier Transfer process.

#### **Obligation to cooperate in respect of a Supplier Transfer**

**14A.7.** The licensee must comply with any reasonable request from another Electricity Supplier or supply exemption holder to provide information or to take any other steps which are reasonably necessary in order to enable that Electricity Supplier or supply exemption holder to complete a Supplier Transfer within 21 days of the Relevant Date.

#### **Information for Authority**

**14A.8.** The licensee must give the Authority any Information that the Authority reasonably requests for the purpose of establishing:

- (a) what steps the licensee has taken in accordance with its obligations under paragraph 14A.5 and/or
- (b) the number of Supplier Transfers that have been completed by that licensee within 21 days of the Relevant Date.

#### **Definitions for condition**

**14A.9.** For the purposes of this condition:

“**Relevant Date**” means:

- (a) the day after the day on which a Customer enters into a Contract with a new Electricity Supplier; or
- (b) if after entering into the Contract there is a period of time within which the Customer may decide not to proceed with the Contract, the earlier of:

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Electricity and Gas (Internal Markets) Regulations 2011 No. 2704*

- (i) the day after the day on which that period ends; and
- (ii) 14 days after the day on which the Customer entered into the Contract.

“**Supplier Transfer**” in relation to any premises at which an Electricity Supplier is supplying electricity, means the transfer of responsibility for that supply from that Electricity Supplier to another Electricity Supplier. “Exempt Distribution System”, “Distribution Exemption Holder” and “Supply Exemption Holder” have the meanings given in Part 1 of the Act.”.

- (5) After condition 19A (financial information reporting), insert—

**“Condition 19B. Prohibition of cross-subsidies**

The licensee shall ensure that its business carrying out supply activities shall not give any cross-subsidy to, or receive any cross-subsidy from any interconnection, transmission or distribution business of the licensee.”.

- (6) In condition 20 (enquiry service and supply number)—
- (a) for the heading substitute “Enquiry service, Supply Number and dispute settlement”;
  - (b) after paragraph 20.4, insert—

**“Dispute settlement**

**20.5.** The licensee must provide to each of its Customers information concerning his rights as regards the means of dispute settlement available to him in the event of a dispute with the licensee by providing that information on any relevant Promotional Materials sent to the Customer and on or with each Bill or statement of account sent to each Customer in relation to Charges for the Supply of Electricity or annually if the licensee has not sent such a Bill or statement of account to him.

**20.6.** For the purposes of this condition:

“**Promotional Materials**” means documents, other than newspapers, that are handed out or sent directly to consumers and are intended to promote the sale of electricity.”.

- (7) After condition 21A (provision of the annual statement of supply to participants of the carbon reduction commitment (CRC) energy efficiency scheme), insert—

**“Condition 21B. Billing based on meter readings**

**21B.1.** If a Customer provides a meter reading to the licensee that the licensee considers reasonably accurate, or if the Electricity Meter is read by the licensee, the licensee must take all reasonable steps to reflect the meter reading in the next Bill or statement of account sent to the Customer.

**21B.2.** If the licensee considers that a meter reading provided by a Customer is not reasonably accurate, the licensee must take all reasonable steps to contact the Customer to obtain a new meter reading from him.”.

- (8) In condition 22 (duty to offer and supply under domestic supply contract)—
- (a) re-number paragraph 22.7 as 22.8;
  - (b) re-number paragraph 22.6 as 22.7;
  - (c) re-number paragraph 22.5 as 22.6;
  - (d) after paragraph 22.4, insert—

**“Domestic terms**

**22.5.** A Domestic Supply Contract or a Deemed Contract with a Domestic Customer entered into or negotiated on or after the day after the day on which the Electricity and Gas (Internal Markets) Regulations 2011 are made must include:

- (a) the identity and address of the licensee;
  - (b) the services provided, including any maintenance services provided, and any service quality levels that are to be met;
  - (c) if a connection is required, when that connection will take place;
  - (d) the means by which up to date information on all applicable tariffs and maintenance charges may be obtained;
  - (e) any conditions for renewal of the Domestic Supply Contract;
  - (f) any compensation and refund arrangements which apply if contracted quality service levels are not met, including inaccurate and delayed billing; and
  - (g) information concerning the Domestic Customer’s rights as regards the means of dispute settlement available to them in the event of a dispute with the licensee including how dispute resolution procedures can be initiated.”;
- (e) after paragraph 22.8, insert—

**“Provision of Customer Information**

**22.9.** Where a Domestic Customer requests the licensee to pass on his Historic Consumption Data and/or Supply Number either to the Domestic Customer or to another Electricity Supplier or to any other person, the licensee shall comply with that request free of charge as soon as reasonably practicable.

**22.10.** For the purposes of this condition:

**“Historic Consumption Data”** means:

- (a) except where a Domestic Customer has held his Domestic Supply Contract for less than 12 months, the quantity of electricity supplied to the Domestic Customer’s Domestic Premises during the previous 12 months; or
  - (b) where the Domestic Customer has held his Domestic Contract for less than 12 months, the quantity of electricity supplied to the Domestic Customer’s Domestic Premises during the duration of the Domestic Contract.”.
- (9) In condition 27 (payments, security deposits and disconnections)—
- (a) for the heading substitute “Payments, Security Deposits, Disconnections and final Bills”;
  - (b) after paragraph 27.16, insert—

**“Provision of final bill**

**27.17.** Where the responsibility for the supply of electricity to a Domestic Customer transfers from the licensee to another Electricity Supplier or otherwise terminates, the licensee must take all reasonable steps to send a final Bill or statement of account of the Domestic Customer’s account within 6 weeks of the supplier transfer or termination of the Domestic Supply Contract.

**27.18.** Where subsequent information becomes available to correct an error in the final Bill or statement of account issued pursuant to paragraph 27.17, the licensee shall

send a corrected Bill or statement of account as soon as reasonably practicable after the subsequent information becomes available.”.

(10) In condition 31 (general information for domestic customers), after paragraph 31.3, insert—

**“Energy Consumer Guidance**

**31.4.** Paragraphs 31.5 to 31.8 apply from the date on which the National Consumer Council publishes the first version of the Energy Consumer Guidance and the Concise Guidance.

**31.5.** The licensee must publish the latest version of the Energy Consumer Guidance and the Concise Guidance on its website within 28 days of the date on which that version is published by the National Consumer Council.

**31.6.** The licensee must inform each of its Domestic Customers how the Energy Consumer Guidance and the Concise Guidance can be accessed by:

- (a) providing each new Domestic Customer whose premises it supplies with electricity under a Contract or a Deemed Contract with this information when the licensee first begins to supply electricity to the Domestic Customer’s premises or, in the case of a Deemed Contract, becomes aware that it is doing so;
- (b) including this information in or with each Bill or statement of account sent to a Domestic Customer in relation to Charges for the Supply of Electricity or annually if the licensee has not sent such a Bill or statement of account to him; and
- (c) providing this information to a Domestic Customer as soon as reasonably practicable after he requests it.

**31.7.** The licensee must provide a copy of the Concise Guidance to a Domestic Customer annually.

**31.8.** For the purposes of this condition:

“**Concise Guidance**” means the concise guidance published by the National Consumer Council under section 19A of the Consumers, Estate Agents and Redress Act 2007.

“**Energy Consumer Guidance**” means the energy consumer guidance published by the National Consumer Council under section 19A of the Consumers, Estate Agents and Redress Act 2007.”.

## PART 5

### Standard conditions of electricity interconnector licences

**5.—(1)** The standard conditions of an electricity interconnector licence are amended as follows.

(2) In condition 1 (definitions and interpretation)—

(a) before the definition of the “Act” insert—

““Access Rules” means methodologies used to establish terms and conditions for access to (including use of) the licensee’s interconnector but not including those related to charges;”;

(b) after the definition of the “Act” insert—

- “the “Agency” means the Agency for the Cooperation of Energy Regulators established by Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009<sup>(103)</sup>;
- “ancillary service” means a service necessary for the operation of the licensee’s interconnector or an interconnected system;”;
- (c) after the definition of “CUSC” insert—
- “the “Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC<sup>(104)</sup>;;”;
- (d) after the definition of “integrated transmission system” insert—
- ““interconnected system” means a system of a relevant system operator with which the licensee’s interconnector is connected or with which the licensee interfaces;
- “interconnector capacity” means all interconnector capacity, including new interconnector capacity, which is available over the licensee’s interconnector;”;
- (e) after the definition of “licensee’s interconnector” insert—
- ““new interconnector capacity” means physical capacity, or a new capacity product, which is made available over the licensee’s interconnector on or after 3 March 2011;
- the “Regulation” means Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation 2003/1228/EC<sup>(105)</sup>;;”;
- (f) after the definition of “regulatory authority” insert—
- ““related undertaking” has the meaning given to it in Article 2 of the Directive;”;
- (g) for the definition of “relevant system operator”, substitute—
- ““relevant system operator” means a transmission system operator or distribution system operator where such phrases shall have the meaning given to them in Article 2 of the Directive;”;
- (h) in paragraph 11, for “A, B, C, D or E” (in each place) substitute “A, B, C, D, E or F”.
- (3) In condition 4 (provision of information to the Authority), in paragraph 1—
- (a) in sub-paragraph (b), at the end, omit “and”;
- (b) in sub-paragraph (c), for the full stop at the end substitute “; and”;
- (c) after sub-paragraph (c), insert—
- “(d) any functions conferred on the Authority by or under the Regulation.”.
- (4) In condition 5 (provision of information to a relevant transmission licensee or relevant distribution licensee)—
- (a) for the heading, substitute “Information regarding technical rules, operation and co-ordinated development”;
- (b) re-number paragraph 5 as paragraph 6;
- (c) re-number paragraph 4 as paragraph 5;
- (d) re-number paragraph 3 as paragraph 4;
- (e) re-number paragraph 2 as paragraph 3;

<sup>(103)</sup>OJ No L 211, 14.08.2009, p. 1.

<sup>(104)</sup>OJ No L 211, 14.08.2009, p. 55.

<sup>(105)</sup>OJ No L 211, 14.08.2009, p. 15.

- (f) re-number paragraph 1 as paragraph 2;
  - (g) before paragraph 2, insert—
    - “1. In order to promote effective competition and the efficient functioning of the internal market, if so directed by the Authority the licensee shall:
      - (a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and
      - (b) publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.”;
  - (h) in paragraph 2—
    - (i) for “The licensee shall furnish to any relevant transmission licensee or any relevant distribution licensee” substitute “To the extent not already published pursuant to paragraph 1 above, the licensee shall furnish to any relevant transmission licensee, any relevant distribution licensee or any operator of an interconnected system”;
    - (ii) in sub-paragraph (a), for “for that” substitute “by a” and after “applicable industry codes;” omit “or”;
    - (iii) in sub-paragraph (b) after “in such directions”, for the full stop at the end substitute “; or”;
    - (iv) after sub-paragraph (b), insert—
      - “(c) be required by the operator of an interconnected system for the purposes of ensuring the secure and efficient operation of the interconnected system and its coordinated development and interoperability with the licensee’s interconnector.”;
  - (i) in paragraph 3—
    - (i) for “refuse to provide an item of information” substitute “refuse to disclose an item of information under paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c)”;
    - (ii) for “sub-paragraph 1(a)” substitute “paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c).”;
  - (j) in paragraph 5—
    - (i) for “Sub-paragraph 1(a)” substitute “Sub-paragraphs 2(a) and 2(c)”;
    - (ii) after “relevant transmission licensee”, for “or” substitute “;”;
    - (iii) after “relevant distribution licensee” insert “, or any operator of an interconnected system”;
  - (k) in paragraph 6, in the definition of “relevant transmission licensee” after “the licensee interfaces” omit “with”.
- (5) In condition 6 (separation of accounts), in paragraph 1, for “cross-subsidisation” substitute “discrimination, cross-subsidisation and the distortion of competition”.
- (6) In condition 9 (use of revenues)—
- (a) re-number paragraph 3 as paragraph 4;
  - (b) re-number paragraph 2 as paragraph 3;
  - (c) re-number paragraph 1 as paragraph 2;
  - (d) before paragraph 2, insert—



#### **“Part A: Purpose**

1. The purpose of this licence condition is to ensure appropriate use of revenues and to secure collection of specific accounting information to an appropriate degree of accuracy by the licensee so as to enable the Authority to review and approve the use of revenue resulting from the allocation of interconnector capacity.

#### *Part B: Use of Revenues”;*

- (e) in paragraph 2, for “only for one or more of the purposes listed in sub-paragraphs 2(a) to 2(c) below” substitute “in accordance with Article 16(6) of the Regulation”;
- (f) after paragraph 2, insert—

#### *“Part C: Use of Revenues Statement”;*

- (g) in paragraph 3—
  - (i) for “an annual revenue statement (‘use of revenues statement’)” substitute “a use of revenues statement”;
  - (ii) omit the wording from “This use of revenues statement” to the end;
- (h) in paragraph 4, for “to the Authority within 12 months” to the end substitute “no later than 15 July 2011 and thereafter annually by 15 July.”;
- (i) after paragraph 4, insert—

“5. The use of revenues statement must set out, in respect of the year ending on 30 June:

  - (a) the total amount of revenues the licensee has received from the allocation of interconnector capacity during that period;
  - (b) the use made of those revenues during that period;
  - (c) a statement verifying that, in the licensee’s view, the actual use of revenues is in accordance with Article 16(6) of the Regulation, and giving reasons for that view; and
  - (d) any changes in approach or categorisation since the last submitted use of revenues statement.

#### **Part D: Approval of Use of Revenues Statement**

6. The use of revenues statement shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the use of revenues statement, such direction to be issued without undue delay and in any event within 3 months of receipt of the use of revenues statement from the licensee, unless, prior to the expiry of that period, the Authority directs that the use of revenues statement is not approved. In the absence of any direction within 3 months of receipt of the use of revenues statement from the licensee, the use of revenues shall be deemed to be approved.”.

- (7) In condition 10 (charging methodology to apply to third party access to the licensee’s interconnector)—
  - (a) in paragraph 1, omit “either before the licensee enters into the agreement or before the tariffs under the agreement fall due”;
  - (b) after paragraph 1, in the sub-heading omit “and review”;
  - (c) for paragraph 2, substitute—

“2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority, a charging methodology for access to (including use of) the licensee’s interconnector. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Access Rules and the charging methodology.”;

- (d) re-number paragraph 21 as paragraph 25;
- (e) re-number paragraph 20 as paragraph 24;
- (f) re-number paragraph 19 as paragraph 23;
- (g) re-number paragraph 18 as paragraph 22;
- (h) re-number paragraph 17 as paragraph 21;
- (i) re-number paragraph 16 as paragraph 20;
- (j) re-number paragraph 15 as paragraph 19;
- (k) re-number paragraph 14 as paragraph 18;
- (l) re-number paragraph 13 as paragraph 17;
- (m) re-number paragraph 12 as paragraph 16;
- (n) re-number paragraph 11 as paragraph 15;
- (o) omit paragraph 10;
- (p) re-number paragraph 9 as paragraph 12;
- (q) re-number paragraph 8 as paragraph 11;
- (r) omit paragraph 7;
- (s) re-number paragraph 6 as paragraph 10;
- (t) re-number paragraph 5 as paragraph 9;
- (u) re-number paragraph 4 as paragraph 5;
- (v) re-number paragraph 3 as paragraph 4;
- (w) after paragraph 2, insert—

“3. The charging methodology shall set out the methodologies for the calculation of any charges imposed for access to (including use of) the interconnector and/or the provision of ancillary services, and any payments made for access to (including use of), the interconnector, including:

- (a) charges levied by the licensee for the allocation of interconnector capacity, including but not limited to:
  - (i) any charges for congestion management purposes, such as the non-use of nominated interconnector capacity; and
  - (ii) any charges for the provision (including the provision to any relevant system operator), of ancillary services, including but not limited to balancing services;
- (b) payments made by the licensee for the provision of ancillary services provided by users or relevant system operators; and
- (c) payments made by the licensee to users for the loss of capacity in the event of being unable to make available interconnector capacity.”;
- (x) in paragraph 4—
  - (i) after “transparent”, for “and” substitute “, ”;

- (ii) after “non-discriminatory”, insert “and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency”;
- (y) in paragraph 5, in sub-paragraph (a) after “that all persons”, insert “, including those in other Member States,”;
- (z) after paragraph 5, insert—

“6. The licensee shall comply with any direction from the Authority to amend its charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology submitted by the licensee. Where the Authority directs changes to the charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its charging methodology to the Authority for approval, and the provisions of paragraph 7 shall apply.

7. The charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the charging methodology is not approved. In the absence of any direction within three months of receipt of the charging methodology from the licensee, the charging methodology shall be deemed to be approved.

#### **Provisional Charging Methodology**

8. If the Authority does not approve the charging methodology submitted by the licensee, or if the licensee does not submit a charging methodology for approval, the licensee shall comply with any provisional charging methodology which the Authority may, after giving reasonable notice to the licensee, fix for an interim period and the licensee shall ensure that any compensatory measures set by the Authority are put in place to compensate the licensee and/or users as the case may be if the approved charging methodology deviates from the provisional charging methodology.”;

- (aa) in each of the following paragraphs, for “8, 9 and 10” substitute “11 to 14”—
  - (i) paragraph 9;
  - (ii) paragraph 10;
- (bb) after paragraph 10, omit—

*“Resubmission of charging methodology to the Authority for approval”;*

- (cc) in paragraph 11—
  - (i) for “paragraph 10” substitute “paragraphs 13 and 14”;
  - (ii) in sub-paragraph (a), after “that all persons”, insert “, including those in other Member States,”;
  - (iii) in sub-paragraph (b)(v), for “10” substitute “14”;
- (dd) after paragraph 12, insert—

“13. The licensee shall comply with any direction from the Authority to amend its proposed modified charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology submitted by the licensee. Where the Authority directs changes to the proposed modified

charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified charging methodology to the Authority for approval and the provisions of paragraph 14 shall apply.

14. The proposed modified charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the proposed modified charging methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the proposed modified charging methodology is not approved (in which case paragraph 8 shall apply). In the absence of any direction within three months of receipt of the proposed modified charging methodology from the licensee, the proposed modified charging methodology shall be deemed to be approved.”;

- (ee) in paragraph 16, for “8” substitute “11”;
- (ff) in each of the following paragraphs, for “13” substitute “17”—
  - (i) paragraph 18;
  - (ii) paragraph 19;
  - (iii) paragraph 20;
- (gg) in each of the following paragraphs, for “4 to 11” substitute “5 to 15”—
  - (i) paragraph 20;
  - (ii) paragraph 21 (in both places);
- (hh) in each of the following paragraphs, for “17(b)” substitute “21(b)”—
  - (i) paragraph 22;
  - (ii) paragraph 23;
  - (iii) paragraph 24;
- (ii) in paragraph 21 for “20” substitute “24”.
- (8) In condition 11 (requirement to offer terms for access to the licensee’s interconnector)—
  - (a) omit paragraph 2;
  - (b) re-number paragraph 3 as paragraph 2;
  - (c) re-number paragraph 4 as paragraph 3;
  - (d) re-number paragraph 5 as paragraph 4;
  - (e) re-number paragraph 6 as paragraph 5;
  - (f) in that paragraph, for “4 or 5” substitute “3 or 4”;
  - (g) re-number paragraph 7 as paragraph 6;
  - (h) re-number paragraph 8 as paragraph 7.
- (9) After condition 11 (requirement to offer terms for access to the licensee’s interconnector), insert—

**“Condition 11A. Approval of terms for access to the licensee’s interconnector**

**Initial approval of access rules**

1. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority a statement setting out the Access Rules. The licensee may,

subject to the approval of the Authority, submit a statement which includes both the charging methodology and the Access Rules.

2. In respect of interconnector capacity which was operational prior to 3 March 2011, and which has not been included in Access Rules submitted pursuant to paragraph 1, the licensee shall, by such date as the Authority may direct in writing, prepare and submit for approval by the Authority the Access Rules.

3. The Access Rules shall comply with the Regulation and must include, in particular, but not be limited to:

- (a) arrangements for maximising the available interconnector capacity, including: the methodology for the calculation of interconnector capacity, the netting of capacity of any power flows in the opposite direction over the interconnector, the volume of capacity offered on a firm basis and any additional capacity offered on an interruptible basis to maximise cross-border trade;
- (b) arrangements for users to obtain interconnector capacity at appropriate timescales, including, where relevant, the auction rules and procedures for nominating power flows against the capacity;
- (c) arrangements for the management of congestion, including procedures for the licensee to resell or make available to other users unused interconnector capacity and for users to transfer or resell interconnector capacity;
- (d) arrangements in the event that the licensee curtails, withdraws or is unable to provide available capacity;
- (e) arrangements for any ancillary services, such as balancing arrangements, including where users may offer ancillary services to assist with relevant system operator balancing; and
- (f) any general terms and conditions that a user must accept in order to obtain interconnector capacity.

4. The Access Rules shall be transparent, objective, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency (collectively ‘the relevant access rules objectives’).

5. Prior to submitting the Access Rules to the Authority for approval the licensee shall:

- (a) take all reasonable steps to ensure that all persons, including those in other Member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and
- (b) furnish to the Authority a report setting out:
  - (i) the terms originally proposed in the Access Rules;
  - (ii) the representations, if any, made by interested persons; and
  - (iii) any change in the terms of the Access Rules intended as a consequence of such representations.

6. The licensee shall comply with any direction from the Authority to amend the Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 7 shall apply.

7. The Access Rules shall not be approved unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee, unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

#### **Review of the Access Rules by the licensee**

8. The licensee shall review its Access Rules at least once in each calendar year and, subject to paragraphs 10 to 13, make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.

9. The licensee shall also review its Access Rules where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's Access Rules. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 10 to 13, make such modifications to the Access Rules as may be requisite for the purpose of better achieving the relevant access rules objectives.

#### **Modification of Access Rules**

10. Subject to paragraphs 12 and 13, the licensee shall not make a modification to the Access Rules unless the licensee has:

- (a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in other Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
- (b) furnished the Authority with a report setting out:
  - (i) the terms originally proposed for the modification;
  - (ii) the representations, if any, made by interested persons to the licensee;
  - (iii) any change in the terms of the modification intended in consequence of such representations;
  - (iv) how the intended modification better achieves the relevant access rules objectives; and
  - (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 13 expires.

11. The licensee shall not propose a modification to the Access Rules more than once a year unless the Authority consents otherwise.

12. The licensee shall comply with any direction from the Authority to amend its proposed modified Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules submitted by the licensee. Where the Authority directs changes to the proposed modified Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified Access Rules to the Authority for approval and the provisions of paragraph 13 shall apply.

13. The proposed modified Access Rules shall not be approved unless and until the Authority has issued a direction approving the proposed modified Access Rules on the basis

that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the proposed modified Access Rules are not approved. In the absence of any direction within three months of receipt of the proposed modified Access Rules from the licensee, the proposed modified Access Rules shall be deemed to be approved.

#### **Publication of Access Rules**

**14.** The licensee shall publish (at least on its website) the Access Rules as soon as practicable after the Access Rules have been approved by the Authority, or, where the Access Rules have been modified, the Access Rules as modified. Unless the Authority directs otherwise, the Access Rules shall be published 28 days prior to coming into effect.

#### **Provision of Access Rules to any person**

**15.** The licensee shall send a copy of its Access Rules and/or any proposed modification to the Access Rules proposed under paragraph 10, to any person who requests such Access Rules or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of the Access Rules or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition.”.

- (10) In condition 12 (application of licence conditions 9, 10 and 11: exemption orders)—
- (a) in paragraph 2—
    - (i) after “paragraph 3, the Authority”, for “may” substitute “must”;
    - (ii) after “is satisfied that” insert “it has complied with”;
    - (iii) after “the requirements”, for “of paragraph 6 are met” substitute “placed on the Authority by Article 17 of the Regulation and the issuing of the exemption order is otherwise compliant with that Article”;
  - (b) in paragraph 3—
    - (i) after “set out in paragraph”, for “6” substitute “1 of Article 17 of the Regulation.”;
    - (ii) at the end, insert “The request shall include the Access Rules for approval by the Authority in accordance with paragraph 9 below, which Access Rules shall comply with paragraphs 3 and 4 of licence condition 11A, and prior to submitting the Access Rules for approval, the licensee shall comply with paragraph 5 of licence condition 11A.”;
  - (c) in paragraph 4—
    - (i) in sub-paragraph (a), omit “for an indefinite period or”;
    - (ii) in sub-paragraph (b), omit “unconditionally or” and after “considers appropriate” insert “including any conditions regarding non-discriminatory access to the interconnector to which the exemption relates”;
  - (d) in paragraph 5, after “with its provisions” insert “, and must be revoked if the approval of the European Commission to the exemption expires in accordance with paragraph 8 of Article 17 of the Regulation”;
  - (e) omit paragraph 6;
  - (f) re-number paragraph 7 as paragraph 6;
  - (g) re-number paragraph 8 as paragraph 11;

(h) after paragraph 6, insert—

“7. An exemption order will not be made until the Authority has approved the Access Rules.

8. The licensee shall comply with any direction from the Authority to amend the Access Rules submitted pursuant to paragraph 3 above, for the purposes of meeting the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 9 shall apply.

9. The Access Rules shall not be approved for the purposes of paragraph 7 unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

10. The requirements of this paragraph are that the Authority considers that the Access Rules:

- (a) will require that any unused capacity in the exempt infrastructure is made available to other users or potential users;
- (b) will not restrict reselling of rights to have electricity transmitted through the exempt infrastructure.”;

(i) in paragraph 11, for “3 August” substitute “4 August”.

(11) In condition 13 (capacity utilisation)—

- (a) in the heading, for “Capacity utilisation” substitute “Not Used”;
- (b) omit paragraphs 1 to 9.

(12) In condition 14 (dispute resolution), in paragraph 1, for “non price terms and conditions of access” substitute “Access Rules”.

(13) After condition 18 (offers for connection to or use of the GB transmission system in the transition period), insert—

## “PART II

### SECTION F: OTHER PROVISIONS

#### **Condition 19. Operation and development of the interconnector**

1. The licensee shall at all times act in a manner calculated to secure that it has available to it such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:

- (a) to properly and efficiently participate in the operation of the interconnector; and



(b) to comply in all respects with its obligations under this licence, the Act, the Regulation and any other legislation as the Authority may direct from time to time for the purposes of this licence condition.

2. The licensee shall operate, maintain and develop an economic, efficient, secure and reliable interconnector.

3. The licensee shall ensure adequate interconnector capacity and interconnector reliability to ensure the long-term ability of the interconnector to meet reasonable demands for capacity and contribute to security of supply.

4. The licensee shall manage electricity flows on the licensee's interconnector, taking into account exchanges with any interconnected system and shall ensure the availability of all ancillary services including those provided by demand response, insofar as such availability is independent from an interconnected system.

#### **Condition 20. Prohibition of discrimination and cross-subsidies**

1. The licensee shall not discriminate between users or classes of users particularly in favour of a related undertaking of the licensee.

2. The licensee shall not give any cross-subsidy to, or receive any cross-subsidy from, any entity which is a related undertaking of the licensee and which carries out one or more of the following electricity activities: supply and distribution.

#### **Condition 21. General provisions on disclosure of information**

1. Save to the extent otherwise provided in this or any other licence condition, or required by any other legal duty to disclose, the licensee shall not disclose commercially sensitive information which it has obtained in the course of carrying out its activities.

2. The licensee shall not disclose information about its own activities, which may be commercially advantageous in respect of supply or generation activities, in a discriminatory manner save where this is necessary for carrying out a business transaction.

3. Paragraph 1 above shall not prohibit disclosure by the licensee to any related undertaking which either holds a transmission licence or is the relevant system operator (being a transmission system operator) for an interconnected system.

4. Without limiting the generality of paragraphs 1 to 3 of this licence condition, the licensee shall not, in the context of sales or purchases of electricity by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the licensee's interconnector.

#### **Condition 22. Notification of changes that may affect eligibility for certification**

1. Where the licensee has made or makes an application for certification under section 10B of the Act, if at any time prior to the Authority notifying the licensee of its final certification decision under section 10D(7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the

Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

3. If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.

4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.

5. Where the licensee has been certified, by 31 July of each year following certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:

- (a) whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
- (b) whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or that a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and
- (c) whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

“certified” has the same meaning as in section 10O of the Act

“control” has the same meaning as in section 10O of the Act

“person from a third country” has the same meaning as in section 10O of the Act

“relevant date” has the same meaning as in section 10M of the Act

“shareholder right” has the same meaning as in section 10O of the Act.

### **Condition 23. Regional Cooperation**

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation pursuant to Article 6 of the Directive and Article 12 of the Regulation.

2. A compliance officer of the licensee shall monitor compliance with a compliance programme which must be established and implemented by the joint undertaking to ensure that discrimination and anti-competitive conduct is excluded.

**3.** In this condition:

“vertically integrated undertaking” shall have the meaning given in Article 2 of the Directive.”.