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The Secretary of State is designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to energy and energy sources.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, that Act.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act and it appears to the Secretary of State that it is expedient for any reference in these Regulations to an Annex to the following instruments to be construed as a reference to that Annex as amended from time to time—

- (a) 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>(c)</sup>,
- (b) 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<sup>(d)</sup>, as amended by Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation 2009/715/EC<sup>(e)</sup>, and
- (c) 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<sup>(f)</sup>.

## PART 1

### Introductory provisions

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Electricity and Gas (Internal Markets) Regulations 2011 and come into force on the day after the day on which they are made.

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- (a) S.I. 2010/761.
  - (b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008. Another amendment has been made that is not relevant for these purposes.
  - (c) OJ No L 211, 14.08.2009, p. 15.
  - (d) OJ No L 211, 14.08.2009, p. 36.
  - (e) OJ No L 293, 11.11.2010, p. 67.
  - (f) OJ No L 250, 24.09.2010, p. 5.

- (2) These Regulations, except regulation 3, do not extend to Northern Ireland.

## Interpretation

2. In these Regulations, “standard condition” in relation to—
- (a) a licence granted under section 7, 7ZA or 7A(1) of the Gas Act 1986(a), means a condition which by virtue of section 81(2) of the Utilities Act 2000(b) or section 137(3) or 150(5) of the Energy Act 2004(c) is a standard condition for the purposes of that licence;
  - (b) a licence granted under section 6(1)(b) to (e) of the Electricity Act 1989(d), means a condition which by virtue of section 33(1) of the Utilities Act 2000(e) or section 146(5) of the Energy Act 2004 is a standard condition for the purposes of that licence.

## PART 2

### Consumer protection

#### National Consumer Council to provide guidance to energy consumers

- 3.—(1) The Consumers, Estate Agents and Redress Act 2007(f) is amended as follows.  
(2) After section 19 insert—

##### “19A Guidance for energy consumers

- (1) The Council must prepare, and keep under review—
  - (a) guidance for energy consumers (the “energy consumer guidance”), and
  - (b) a summary prepared in accordance with subsection (4) (the “concise guidance”).
- (2) The energy consumer guidance must address the matters included in any document published by the European Commission pursuant to Article 3(16) of the Electricity Directive or Article 3(12) of the Gas Directive.
- (3) The energy consumer guidance may include any other information relating to the rights of energy consumers which the Council thinks appropriate.
- (4) The concise guidance must—
  - (a) summarise any information in the energy consumer guidance which in the Council’s view is particularly relevant to the interests of energy consumers, and
  - (b) state where a copy of the energy consumer guidance can be obtained.
- (5) In preparing and reviewing the energy consumer guidance and the concise guidance the Council must consult—

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- (a) 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). Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004 (c. 20). Section 7A(1) was inserted by section 6(1) of the Gas Act 1995 and a relevant amendment made by section 3(2) of the Utilities Act 2000.
  - (b) 2000 c.27. Section 81(2) was amended by sections 107 and 168(10) of, and paragraphs 12 and 14 of Schedule 5 to, the Energy Act 2004 (c. 20); and was subsequently amended by section 35 of, and paragraphs 11 and 14 of the Schedule to, the Energy Act 2010 (c. 27).
  - (c) 2004 c. 20.
  - (d) 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). Section 8A was inserted by section 33 of the Utilities Act 2000 and amended by section 137(5) and (6) and section 146(6) of the Energy Act 2004.
  - (e) Section 33(1) was amended by sections 143(1) and 197(9) of, paragraphs 20(a) and (c) of Schedule 19 to, and paragraph 20(b) of part 1 of Schedule 23 to, the Energy Act 2004 (c. 20). Subsection (1) was subsequently amended by section 7(7) of the Climate Change and Sustainable Energy Act 2006 (c. 19); section 107 and 108 of, paragraphs 12 and 13(b) of Schedule 5 to, and paragraphs 12 and 13(b) of Schedule 6 to, the Energy Act 2008 (c. 32); and section 35 of, and paragraphs 11 and 12 of the Schedule to, the Energy Act 2010 (c. 27).
  - (f) 2007 c. 17.

- (a) the Secretary of State,
- (b) the Gas and Electricity Markets Authority, and
- (c) any other person the Council considers appropriate.

(6) The Council must publish the first version of the energy consumer guidance and the concise guidance on its website by 1 December 2011.

(7) If, following a review, the Council considers it necessary to amend the energy consumer guidance or the concise guidance, the Council must, as soon as is reasonably practicable—

- (a) publish the amended version on its website, and
- (b) inform any person it consulted in accordance with subsection (5) that it has done so.

(8) The Council may also make the first and any amended version of the energy consumer guidance and the concise guidance available in any other manner the Council thinks appropriate for the purpose of bringing that guidance to the attention of those likely to be interested.

(9) In this section—

“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(a);

“energy consumer” means an individual who is—

- (a) a consumer in relation to gas supplied by an authorised supplier for consumption by the consumer’s own household;
- (b) a consumer in relation to electricity supplied by an authorised supplier for consumption by the consumer’s own household;

“the Gas 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(b).”.

(3) In section 29(4) (exceptions to restriction on disclosure of information)—

- (a) in paragraph (c) omit “or 24(8)”;
- (b) after paragraph (c) insert—

“(ca) published or made available by the Council under any of subsections (6) to (8) of section 19A,

(cb) published by the Council under section 24(8).”.

(4) In section 65(2) (provisions extending to England and Wales and Scotland only), after paragraph (b) insert—

“(ba) section 19A (guidance for energy consumers);”.

## PART 3

### Transmission and the operation of interconnectors

#### **Gas transmission and the operation of gas interconnectors: independence**

**4.** After section 8B of the Gas Act 1986(c) insert—

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(a) OJ No L 211, 14.08.2009, p.55.  
 (b) OJ No L 211, 14.08.2009, p.94.  
 (c) Section 8B was inserted by section 9(1) of the Gas Act 1995 (c. 45).

**8C Requirement for certain gas transporters and operators of gas interconnectors to be certified as independent**

(1) A person who, for any period on or after the relevant date, holds a licence under section 7 and carries out transmission of gas must ensure that the person is certified by the Authority under section 8F throughout that period.

(2) A person who, for any period on or after the relevant date, holds a licence under section 7ZA and participates in the operation of a gas interconnector must ensure that the person is certified by the Authority under section 8F throughout that period.

(3) In subsections (1) and (2) the “relevant date” in respect of a person is 3 March 2012 or any later date before 4 March 2013 which the Authority specifies under subsection (4) or (5) in respect of the person.

(4) The Authority may specify a later date in respect of a person if—

- (a) the person has asked the Authority to specify a later date;
- (b) the person is not, and is not part of, a vertically integrated undertaking; and
- (c) no senior officer of the person is also a senior officer of a relevant producer or supplier.

(5) The Authority may also specify a later date in respect of a person if the Authority thinks that, for reasons beyond its and the person’s control, the Authority will not reasonably be able to make a final decision before 3 March 2012 as to whether to certify the person.

(6) In this section—

- (a) “transmission” has the meaning given by Article 2(3) of the Gas Directive; and
- (b) “vertically integrated undertaking” has the meaning given by Article 2(20) of that Directive.

**8D Application for certification**

(1) Any person may apply for certification.

(2) An application for certification—

- (a) must be made in writing to the Authority; and
- (b) must be made in such form and contain such information as the Authority may specify.

(3) If the application is made on or after 3 March 2013 and the applicant is a person from a third country or a person controlled by a person from a third country, the Authority must, as soon as is reasonably practicable after receiving the application—

- (a) notify the Secretary of State and the European Commission that an application has been made by such a person; and
- (b) enclose with the notification to the Secretary of State any information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.

(4) The Authority may ask an applicant for certification for any further information the Authority thinks is relevant to the application, and the applicant must supply that information if—

- (a) it is in the applicant’s possession; or
- (b) it is information which the applicant could reasonably be expected to obtain.

(5) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to an application for certification, and the relevant producer or supplier must supply that information if—

- (a) it is in the relevant producer or supplier's possession; or
- (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.

(6) A person required to supply information under subsection (4) or (5) must do so by any deadline specified by the Authority.

### **8E Report where applicant connected with a country outside the European Economic Area**

(1) This section applies if the Secretary of State is notified by the Authority under section 8D(3) that an application has been made by a person from a third country or a person controlled by a person from a third country.

(2) The Secretary of State must prepare a report on whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.

(3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification under section 8D(3) is received.

(4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 8D(4) or (5) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.

(5) In preparing the report, the Secretary of State must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

### **8F Certification**

(1) Where the Authority receives an application for certification, it must make a preliminary decision by the relevant deadline as to whether it should certify the applicant.

(2) The relevant deadline is the end of the 4 months beginning with the day on which the Authority receives the application; but this is subject to any extension under subsection (3).

(3) If, before the deadline mentioned in subsection (2) (or before that deadline as previously extended under this subsection), the Authority asks the applicant or a relevant producer or supplier for information under section 8D(4) or (5), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.

(4) As soon as is reasonably practicable after making the preliminary decision the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) the Secretary of State; and
- (c) the European Commission.

(5) The Authority must enclose with the notification under subsection (4)(c) a copy of any report—

- (a) which the Secretary of State has prepared under section 8E in respect of the applicant; and
- (b) which the Authority receives before giving the notification.

(6) Subsections (7) and (8) apply in relation to the Authority's final decision under Article 3 of the Gas Regulation as to whether to certify the applicant.



(7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) the Secretary of State; and
- (c) the European Commission.

(8) If the final decision is to certify the applicant the applicant is to be taken as certified by the Authority under this section.

### **8G Grounds for certification**

(1) This section applies to—

- (a) a preliminary decision under section 8F as to whether an applicant should be certified;
- (b) a final decision under Article 3 of the Gas Regulation as to whether to certify an applicant.

(2) The Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following six grounds (“the certification grounds”) applies.

(3) The first certification ground is that the applicant meets the ownership unbundling requirement in section 8H.

(4) The second certification ground is that the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraph (9) of Article 9 of the Gas Directive (alternative arrangements for independence), and the Authority thinks the requirements of that paragraph are met.

(5) The third certification ground is that—

- (a) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 14 of the Gas Directive (independent system operator);
- (b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and
- (c) the Authority—
  - (i) thinks that the requirements of those paragraphs are met, and
  - (ii) is minded to designate the nominated independent system operator.

(6) The fourth certification ground is that—

- (a) the applicant holds a licence under section 7ZA;
- (b) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the ground that it meets the requirements of Chapter 4 of the Gas Directive (independent transmission operator), in accordance with Articles 9(8)(b) and 18(10) of that Directive; and
- (c) the Authority thinks that the applicant meets the requirements of that Chapter, in accordance with those Articles.

(7) The fifth certification ground is that—

- (a) the applicant holds a licence under section 7ZA; and
- (b) in accordance with the conditions of that licence, the applicant has been granted an exemption from the ownership unbundling requirement in accordance with Article 36 of the Gas Directive (new infrastructure) and remains entitled to the benefit of it.

(8) The sixth certification ground is that—

- (a) the applicant holds a licence under section 7ZA; and

- (b) either—
  - (i) the applicant has, in accordance with the conditions of that licence, been granted an exemption in accordance with Article 22 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 on common rules for the internal market in natural gas (new infrastructure) and remains entitled to the benefit of it; or
  - (ii) another person benefits from such an exemption, and the applicant is in a position which is substantially similar to the position of that person.
- (9) But, regardless of whether a certification ground applies, the Authority—
  - (a) may, in particular, decide that the applicant should not be certified, or decide not to certify the applicant, if, on the basis of an opinion expressed by the European Commission under Article 11 of the Gas Directive (certification in relation to persons from countries outside the European Economic Area), the Authority thinks that the certification of the applicant would put at risk the security of gas supplies in any EEA state;
  - (b) must not decide that the applicant should be certified, and must not decide to certify the applicant, if a report prepared by the Secretary of State under section 8E states that the certification of the applicant would put at risk the security of gas supplies in the United Kingdom or any other EEA state;
  - (c) must not decide to certify the applicant on the second certification ground if the European Commission has not verified, in accordance with paragraph (10) of Article 9 of the Gas Directive (verification of independence under alternative arrangements), that the requirement in that paragraph as to arrangements for effective independence is met.

### **8H The ownership unbundling requirement**

(1) In section 8G(3) the ownership unbundling requirement is met by an applicant for certification if the Authority thinks that each of the following five tests is passed.

- (2) The first test is that the applicant—
  - (a) does not control a relevant producer or supplier;
  - (b) does not have a majority shareholding in a relevant producer or supplier; and
  - (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.

(3) For the purposes of subsection (2)(c), the Authority is entitled to think that the applicant will not exercise shareholder rights if the applicant has given an undertaking not to exercise those shareholder rights.

(4) The second test is that, where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—

- (a) controls a gas undertaking which is a relevant producer or supplier; or
- (b) has a majority shareholding in a gas undertaking which is a relevant producer or supplier.

(5) The third test is that, where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of a gas undertaking which is a relevant producer or supplier.

(6) The fourth test is that the applicant is not controlled by a person who controls a relevant producer or supplier.

- (7) But even where the fourth test is not passed, the Authority may treat it as passed if—
  - (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant's business; or

- (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (8) The fifth test is that the applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.
- (9) But even where the fifth test is not passed, the Authority may treat it as passed if—
- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant’s business; or
  - (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (10) In subsection (2)(c) “relevant date” means the relevant date for the purposes of section 8C(1) or (2).

**8I The ownership unbundling requirement: supplementary**

- (1) Subsections (2) and (3) apply where—
- (a) by virtue of subsection (7) or (9) of section 8H, the Authority treats the fourth or fifth test under section 8H as passed in relation to a person; and
  - (b) the person is certified in reliance on that treatment.
- (2) The Authority must by notice to the certified person specify a period of time at the end of which the Authority will cease to treat that test as passed by virtue of that subsection.
- (3) The Authority may by notice to the certified person extend that period if the Authority thinks it necessary or expedient to do so.
- (4) In deciding whether to treat a test as passed by virtue of section 8H(7) or (9), and in determining any period or extension under subsection (2) or (3), the Authority—
- (a) must take into account—
    - (i) the period of time for which the test is likely to continue not to be passed, and
    - (ii) whether the relationship (direct or indirect) between the applicant and the relevant producer or supplier has led or might lead the applicant to discriminate in favour of the relevant producer or supplier; and
  - (b) may, in particular, take into account any information or undertaking given to the Authority by the applicant, the relevant producer or supplier or the person who controls the applicant and controls or has a majority shareholding in the relevant producer or supplier.
- (5) The information and undertakings that may be taken into account under subsection (4)(b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the applicant and the business of the relevant producer or supplier.

**8J Designation for the purposes of EU gas legislation**

- (1) This section applies in relation to any period for which a person—
- (a) holds a licence under section 7 or 7ZA; and
  - (b) is certified.
- (2) If the person is certified on the first, second, fourth, fifth or sixth certification ground in section 8G, the person is designated as a gas transmission system operator for the purposes of Article 10(2) of the Gas Directive (designation of transmission system operators).

(3) If the person is certified on the third certification ground in section 8G, the independent system operator nominated in the application for certification is designated as a gas transmission system operator for the purposes of that Article.

(4) As soon as is reasonably practicable after a person is designated by virtue of this section, the Authority must notify the designation to—

- (a) the person designated;
- (b) the Secretary of State; and
- (c) the European Commission.

### **8K Monitoring and review of certification**

(1) The Authority must monitor, in respect of each certified person, whether the basis on which the Authority decided to certify the person, including the certification ground on which the person was certified, (the “certification basis”) continues to apply.

(2) If, on or after 3 March 2013, as result of information it has received or obtained, the Authority thinks that a person from a third country has taken or may take control of a certified person, the Authority must, as soon as is reasonably practicable—

- (a) notify the information to the Secretary of State and the European Commission; and
- (b) enclose with the notification to the Secretary of State any further information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Authority must review whether the certification basis in respect of a certified person continues to apply if the European Commission asks it to do so.

(4) A review under subsection (3) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.

(5) The Authority may also review whether the certification basis in respect of a certified person continues to apply if—

- (a) the certified person notifies it of any event or circumstance which may affect that basis; or
- (b) the Authority thinks that the basis may no longer apply.

(6) A review under subsection (5) is to be carried out within the 4 months beginning with—

- (a) if paragraph (a) of subsection (5) applies, the day on which the Authority receives the notification under that paragraph;
- (b) otherwise, the first day on which the Authority thinks that the certification basis may no longer apply.

(7) Subsection (8) applies where—

- (a) by virtue of section 8H(7) or (9), the Authority has treated the fourth or fifth test under section 8H as passed;
- (b) a person is certified in reliance on that treatment; and
- (c) the period specified under section 8I as the period at the end of which that treatment will cease comes to an end.

(8) Where this subsection applies, the Authority must review whether that test is now passed.

(9) A review under subsection (8) is to be carried out within the 4 months beginning with the end of the period mentioned in subsection (7)(c).

### **8L Review of certification: requirement to provide information etc**

(1) As soon as is reasonably practicable after beginning a review under section 8K, the Authority must notify the certified person that the review is being carried out and of the reasons for it.

(2) The Authority may ask that person for any information the Authority thinks is relevant to the review, and the person must supply the information if—

- (a) it is in the person's possession; or
- (b) it is information which the person could reasonably be expected to obtain.

(3) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to a review under section 8K, and the relevant producer or supplier must supply that information if—

- (a) it is in the relevant producer or supplier's possession; or
- (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.

(4) A person required to supply information under subsection (2) or (3) must do so by any deadline specified by the Authority.

### **8M Report as to any connection of certified person with a country outside the European Economic Area**

(1) This section applies if the Authority notifies information to the Secretary of State under section 8K(2) in respect of a certified person.

(2) The Secretary of State must prepare a report on whether the security of gas supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

(4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 8L(2) or (3) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.

(5) In preparing the report, the Secretary of State must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

### **8N Continuation or withdrawal of certification**

(1) Where the Authority reviews under section 8K(3) or (5) whether the certification basis in respect of a certified person continues to apply, it may, within the 4 months mentioned in section 8K(4) or (6) either—

- (a) make a preliminary decision that the certification should be continued on the certification ground mentioned in section 8K(1); or
- (b) make a preliminary decision that the certification should be withdrawn.

(2) If the Authority does not make a decision under subsection (1) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the certification ground mentioned in section 8K(1).

(3) Where the Authority reviews under section 8K(8) whether the fourth or fifth test under section 8H is now passed, it may, within the 4 months mentioned in section 8K(9), either—

- (a) make a preliminary decision that the certification should be continued on the basis that the test is now passed; or

- (b) make a preliminary decision that the certification should be withdrawn.
- (4) If the Authority does not make a decision under subsection (3) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the basis that the test is now passed.
- (5) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this section, the Authority must—
  - (a) notify the decision to the certified person and the Secretary of State; and
  - (b) notify the decision to the European Commission, enclosing the information it considers relevant to the decision.
- (6) Subsections (7) to (9) apply in relation to the Authority's final decision under Article 3 of the Gas Regulation whether to confirm the certification.
- (7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—
  - (a) the person in relation to whom the review was carried out;
  - (b) the Secretary of State; and
  - (c) the European Commission.
- (8) If the final decision is to continue the certification the person is to be taken as continuing to be certified by the Authority under section 8F.
- (9) Otherwise, the person is to be taken as no longer certified.
- (10) Section 8G(9)(a) and (b) applies in relation to a decision mentioned in this section as it applies in relation to a decision mentioned in section 8G(1), but as if—
  - (a) the references in section 8G(9)(a) and (b) to the certification of the applicant were references to the continued certification of the person certified; and
  - (b) the reference in section 8G(9)(b) to a report prepared under section 8E were a reference to a report prepared under section 8M.

**80 Prohibition on the exercise of certain shareholder rights and rights of appointment**

- (1) A person must not exercise a shareholder right or a right of appointment if—
  - (a) the right falls within subsection (2), (3), (4) or (5);
  - (b) the relevant date in respect of the certified person mentioned in that subsection has been reached;
  - (c) the exercise of the right would or might lead the certified person to discriminate in favour of the relevant producer or supplier mentioned in that subsection; and
  - (d) the relevant producer or supplier is a person to whom subsection (6) applies.
- (2) A right falls within this subsection if—
  - (a) it is a shareholder right;
  - (b) it is held by a person who controls a person certified on the certification ground in section 8G(3); and
  - (c) it is exercisable in relation to a relevant producer or supplier.
- (3) A right falls within this subsection if—
  - (a) it is a shareholder right;
  - (b) it is exercisable in relation to a person certified on the certification ground in section 8G(3); and
  - (c) it is held by a person who controls a relevant producer or supplier.
- (4) A right falls within this subsection if—
  - (a) it is a shareholder right;

- (b) the person who holds it appointed a senior officer of a person certified on the certification ground in section 8G(3);
  - (c) the person appointed continues to hold that office; and
  - (d) the right is exercisable in relation to a gas undertaking which is a relevant producer or supplier.
- (5) A right falls within this subsection if—
- (a) it is a right to appoint a senior officer of a person certified on the certification ground in section 8G(3); and
  - (b) the person who holds it has, within the immediately preceding period of 3 years, exercised a shareholder right in relation to a gas undertaking which is a relevant producer or supplier.
- (6) This subsection applies to a person if, in order to carry out some or all of the activity by virtue of which the person is a relevant producer or supplier, the person—
- (a) requires a licence under section 7A of this Act, section 6 of the Electricity Act 1989 (licences authorising supply, etc), or section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum); or
  - (b) would require such a licence if carrying out the activity in Great Britain.
- (7) In this section—
- (a) “exercise” means exercise directly or indirectly, and “exercisable” is to be interpreted accordingly; and
  - (b) “relevant date” means the relevant date for the purposes of section 8C(1) or (2).

#### **8P Validity of acts infringing section 8O**

- (1) The following are voidable on an application to the court—
  - (a) the exercise of a shareholder right in breach of section 8O;
  - (b) the appointment of a senior officer in breach of that section.
- (2) Any person may make an application under subsection (1).
- (3) Such an application may not be made after the end of the 5 years beginning with the day on which the shareholder right was exercised or the appointment made.
- (4) If, by virtue of this section, the court declares the exercise of a shareholder right or an appointment to be void, it may make an order as to the consequences of its declaration.
- (5) In this section, “the court” means—
  - (a) in relation to England and Wales, the High Court, and
  - (b) in relation to Scotland, the Court of Session.

#### **8Q Interpretation**

- (1) In sections 8C to 8P and this section—
  - “control”, in relation to one person having control over another, has the meaning given by Article 2(36) of the Gas Directive (but in determining whether one person (“person A”) has control over another (“person B”) no account is to be taken of any unexercised contractual or other right which would, if exercised, give person A control over person B and which was conferred as a condition of the provision of either financial support or a guarantee (or both), by person A in relation to the business of person B); and references to one person controlling another are to be interpreted accordingly;
  - “certified” means taken in accordance with section 8F(8) or 8N(8) to be certified (or as continuing to be certified) by the Authority under section 8F; and “certify” and “certification” are to be interpreted accordingly;
  - “certification grounds” has the meaning given by section 8G(2);

“person from a third country” means a person the Authority thinks is from a third country;

“shareholder right” means a right, conferred by the holding of a share in the company’s share capital—

- (a) to vote at general meetings of the company; or
- (b) to appoint or remove a member of the company’s board of directors;

“third country” means a country that is not, and is not part of, an EEA state.

(2) In this Part “gas undertaking” means a person who—

- (a) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain;
- (b) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7;
- (c) supplies to any premises gas which has been conveyed to those premises through pipes;
- (d) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or
- (e) otherwise sells gas.

(3) In this Part “relevant producer or supplier”, in relation to an applicant for certification or a certified person, means a person who falls within each of subsections (4) and (5).

(4) A person falls within this subsection if the person—

- (a) is a gas undertaking;
- (b) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (c) supplies electricity to any premises; or
- (d) otherwise generates or sells electricity,

and terms used in paragraphs (b) and (c) of this subsection have the same meanings in those paragraphs as in Part 1 of the Electricity Act 1989.

(5) A person falls within this subsection if the person carries out in an EEA state some or all of the activity by virtue of which the person falls within subsection (4) and—

- (a) requires a licence under section 7A of this Act<sup>(a)</sup> or section 6 of the Electricity Act 1989 (licences authorising supply, etc)<sup>(b)</sup> to do so;
- (b) would, in the Authority’s opinion, require such a licence if carrying out the activity in Great Britain; or
- (c) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of the person.”.

## **Electricity transmission and the operation of electricity interconnectors: independence**

**5.** After section 10 of the Electricity Act 1989 insert—

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- (a) 1986 c. 44. Section 7A was inserted by section 6(1) of the Gas Act 1995 (c. 45) and subsequently amended by section 108 of, and paragraphs 1 and 2(1) of Part 1 to Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); and by section 149(1) and (7) of the Energy Act 2004 (c. 20).
  - (b) 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and subsequently amended by sections 89(3), 136(1) and (2), 143(1), 145(1) and (5) to (7), and 197(9) of, and paragraphs 3 and 5 of Schedule 19 and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20); and by section 79 of, and paragraph 2 of Schedule 8 to, the Climate Change Act 2008 (c. 27).



**10A Electricity transmission and the operation of electricity interconnectors: requirement for certain participants to be certified as independent**

(1) A person who, for any period on or after the relevant date, holds a transmission licence and participates in the transmission of electricity for the purpose mentioned in subsection (2) must ensure that the person is certified by the Authority under section 10D throughout that period.

(2) That purpose is the purpose of—

- (a) giving a supply to any premises; or
- (b) enabling a supply to be so given.

(3) A person who, for any period on or after the relevant date, holds an interconnector licence and participates in the operation of an electricity interconnector must ensure that the person is certified by the Authority under section 10D throughout that period.

(4) In subsections (1) and (3) the “relevant date” in respect of a person is 3 March 2012 or any later date before 4 March 2013 which the Authority specifies under subsection (5) or (6) in respect of the person.

(5) The Authority may specify a later date in respect of a person if—

- (a) the person has asked the Authority to specify a later date;
- (b) the person is not, and is not part of, a vertically integrated undertaking; and
- (c) no senior officer of the person is also a senior officer of a relevant producer or supplier.

(6) The Authority may also specify a later date in respect of a person if the Authority thinks that, for reasons beyond its and the person’s control, the Authority will not reasonably be able to make a final decision before 3 March 2012 as to whether to certify the person.

(7) In subsection (5)(b) “vertically integrated undertaking” has the meaning given by Article 2(21) of the Electricity Directive.

**10B Application for certification**

(1) Any person may apply for certification.

(2) An application for certification—

- (a) must be made in writing to the Authority; and
- (b) must be made in such form and contain such information as the Authority may specify.

(3) If the application is made on or after 3 March 2013 and the applicant is a person from a third country or a person controlled by a person from a third country, the Authority must, as soon as is reasonably practicable after receiving the application—

- (a) notify the Secretary of State and the European Commission that an application has been made by such a person; and
- (b) enclose with the notification to the Secretary of State any information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.

(4) The Authority may ask an applicant for certification for any further information the Authority thinks is relevant to the application, and the applicant must supply that information if—

- (a) it is in the applicant’s possession; or

(b) it is information which the applicant could reasonably be expected to obtain.

(5) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to an application for certification, and the relevant producer or supplier must supply that information if—

(a) it is in the relevant producer or supplier's possession; or

(b) it is information which the relevant producer or supplier could reasonably be expected to obtain.

(6) A person required to supply information under subsection (4) or (5) must do so by any deadline specified by the Authority.

### **10C Report where applicant connected with a country outside the European Economic Area**

(1) This section applies if the Secretary of State is notified by the Authority under section 10B(3) that an application has been made by a person from a third country or a person controlled by a person from a third country.

(2) The Secretary of State must prepare a report on whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.

(3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

(4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 10B(4) or (5) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.

(5) In preparing the report, the Secretary of State must take into account—

(a) any relevant international law; and

(b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

### **10D Certification**

(1) Where the Authority receives an application for certification, it must make a preliminary decision by the relevant deadline as to whether it should certify the applicant.

(2) The relevant deadline is the end of the 4 months beginning with the day on which the Authority receives the application; but this is subject to any extension under subsection (3).

(3) If, before the deadline mentioned in subsection (2) (or before that deadline as previously extended under this subsection), the Authority asks the applicant or a relevant producer or supplier for information under section 10B(4) or (5), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.

(4) As soon as is reasonably practicable after making the preliminary decision the Authority must notify the decision and the reasons for it to—

(a) the applicant;

(b) the Secretary of State; and

(c) the European Commission.

(5) The Authority must enclose with the notification under subsection (4)(c) a copy of any report—

(a) which the Secretary of State has prepared under section 10C in respect of the applicant; and

(b) which the Authority receives before giving the notification.

(6) Subsections (7) and (8) apply in relation to the Authority's final decision under Article 3 of the Electricity Regulation as to whether to certify the applicant.

(7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) the Secretary of State; and
- (c) the European Commission.

(8) If the final decision is to certify the applicant the applicant is to be taken as certified by the Authority under this section.

#### **10E Grounds for certification**

(1) This section applies to—

- (a) a preliminary decision under section 10D as to whether an applicant should be certified;
- (b) a final decision under Article 3 of the Electricity Regulation as to whether to certify an applicant.

(2) The Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following five grounds ("the certification grounds") applies.

(3) The first certification ground is that the applicant meets the ownership unbundling requirement in section 10F.

(4) The second certification ground is that the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraph (9) of Article 9 of the Electricity Directive (alternative arrangements for independence), and the Authority thinks the requirements of that paragraph are met.

(5) The third certification ground is that—

- (a) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 13 of the Electricity Directive (independent system operator);
- (b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and
- (c) the Authority—
  - (i) thinks that the requirements of those paragraphs are met, and
  - (ii) is minded to designate the nominated independent system operator.

(6) The fourth certification ground is that—

- (a) the applicant holds a licence under section 6(1)(e); and
- (b) in accordance with the conditions of that licence, the applicant has been granted an exemption under Article 17 of the Electricity Regulation (new interconnectors) and remains entitled to the benefit of it.

(7) The fifth certification ground is that—

- (a) the applicant holds a licence under section 6(1)(e); and
- (b) in accordance with the conditions of that licence, the applicant has been granted an exemption under Article 7 of Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (new interconnectors) and remains entitled to the benefit of it.

(8) But, regardless of whether a certification ground applies, the Authority—

- (a) may, in particular, decide that the applicant should not be certified, or decide not to certify the applicant, if, on the basis of an opinion expressed by the European

Commission under Article 11 of the Electricity Directive (certification in relation to persons from countries outside the European Economic Area), the Authority thinks that the certification of the applicant would put at risk the security of electricity supplies in any EEA state;

- (b) must not decide that the applicant should be certified, and must not decide to certify the applicant, if a report prepared by the Secretary of State under section 10C states that the certification of the applicant would put at risk the security of electricity supplies in the United Kingdom or any other EEA state;
- (c) must not decide to certify the applicant on the second certification ground if the European Commission has not verified, in accordance with paragraph (10) of Article 9 of the Electricity Directive (verification of independence under alternative arrangements), that the requirement in that paragraph as to arrangements for effective independence is met.

### **10F The ownership unbundling requirement**

(1) In section 10E(3) the ownership unbundling requirement is met by an applicant for certification if the Authority thinks that each of the following five tests is passed.

(2) The first test is that the applicant—

- (a) does not control a relevant producer or supplier;
- (b) does not have a majority shareholding in a relevant producer or supplier; and
- (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.

(3) For the purposes of subsection (2)(c), the Authority is entitled to think that the applicant will not exercise shareholder rights if the applicant has given an undertaking not to exercise those shareholder rights.

(4) The second test is that, where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—

- (a) controls an electricity undertaking which is a relevant producer or supplier; or
- (b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.

(5) The third test is that, where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of an electricity undertaking which is a relevant producer or supplier.

(6) The fourth test is that the applicant is not controlled by a person who controls a relevant producer or supplier.

(7) But even where the fourth test is not passed, the Authority may treat it as passed if—

- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant's business; or
- (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.

(8) The fifth test is that the applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.

(9) But even where the fifth test is not passed, the Authority may treat it as passed if—

- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant's business; or

- (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.

(10) In subsection (2)(c) “relevant date” means the relevant date for the purposes of section 10A(1) or (3).

#### **10G The ownership unbundling requirement: supplementary**

(1) Subsections (2) and (3) apply where—

- (a) by virtue of subsection (7) or (9) of section 10F, the Authority treats the fourth or fifth test under section 10F as passed in relation to a person; and
- (b) the person is certified in reliance on that treatment.

(2) The Authority must by notice to the certified person specify a period of time at the end of which the Authority will cease to treat that test as passed by virtue of that subsection.

(3) The Authority may by notice to the certified person extend that period if the Authority thinks it necessary or expedient to do so.

(4) In deciding whether to treat a test as passed by virtue of section 10F(7) or (9), and in determining any period or extension under subsection (2) or (3), the Authority—

- (a) must take into account—
  - (i) the period of time for which the test is likely to continue not to be passed, and
  - (ii) whether the relationship (direct or indirect) between the applicant and the relevant producer or supplier has led or might lead the applicant to discriminate in favour of the relevant producer or supplier; and
- (b) may, in particular, take into account any information or undertaking given to the Authority by the applicant, the relevant producer or supplier or the person who controls the applicant and controls or has a majority shareholding in the relevant producer or supplier.

(5) The information and undertakings that may be taken into account under subsection (4)(b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the applicant and the business of the relevant producer or supplier.

#### **10H Designation for the purposes of EU electricity legislation**

(1) This section applies in relation to any period for which a person—

- (a) holds a transmission licence or an interconnector licence; and
- (b) is certified.

(2) If the person is certified on the first, second, fourth or fifth certification ground in section 10E, the person is designated as an electricity transmission system operator for the purposes of Article 10(2) of the Electricity Directive (designation of transmission system operators).

(3) If the person is certified on the third certification ground in section 10E, the independent system operator nominated in the application for certification is designated as an electricity transmission system operator for the purposes of that Article.

(4) As soon as is reasonably practicable after a person is designated by virtue of this section, the Authority must notify the designation to—

- (a) the person designated;
- (b) the Secretary of State; and
- (c) the European Commission.

### **10I Monitoring and review of certification**

(1) The Authority must monitor, in respect of each certified person, whether the basis on which the Authority decided to certify the person, including the certification ground on which the person was certified, (the “certification basis”) continues to apply.

(2) If, on or after 3 March 2013, as result of information it has received or obtained, the Authority thinks that a person from a third country has taken or may take control of a certified person, the Authority must, as soon as is reasonably practicable—

- (a) notify the information to the Secretary of State and the European Commission; and
- (b) enclose with the notification to the Secretary of State any further information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Authority must review whether the certification basis in respect of a certified person continues to apply if the European Commission asks it to do so.

(4) A review under subsection (3) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.

(5) The Authority may also review whether the certification basis in respect of a certified person continues to apply if—

- (a) the certified person notifies it of any event or circumstance which may affect that basis; or
- (b) the Authority thinks that the basis may no longer apply.

(6) A review under subsection (5) is to be carried out within the 4 months beginning with—

- (a) if paragraph (a) of subsection (5) applies, the day on which the Authority receives the notification under that paragraph;
- (b) otherwise, the first day on which the Authority thinks that the certification basis may no longer apply.

(7) Subsection (8) applies where—

- (a) by virtue of section 10F(7) or (9), the Authority has treated the fourth or fifth test under section 10F as passed in relation to a person;
- (b) the person is certified in reliance on that treatment; and
- (c) the period specified under section 10G as the period at the end of which that treatment will cease comes to an end.

(8) Where this subsection applies, the Authority must review whether that test is now passed.

(9) A review under subsection (8) is to be carried out within the 4 months beginning with the end of the period mentioned in subsection (7)(c).

### **10J Review of certification: requirement to provide information etc**

(1) As soon as is reasonably practicable after beginning a review under section 10I, the Authority must notify the certified person that the review is being carried out and of the reasons for it.

(2) The Authority may ask that person for any information the Authority thinks is relevant to the review, and the person must supply the information if—

- (a) it is in the person’s possession; or
- (b) it is information which the person could reasonably be expected to obtain.

(3) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to a review under section 10I, and the relevant producer or supplier must supply that information if—

- (a) it is in the relevant producer or supplier's possession; or
- (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.

(4) A person required to supply information under subsection (2) or (3) must do so by any deadline specified by the Authority.

### **10K Report as to any connection of certified person with a country outside the European Economic Area**

(1) This section applies if the Authority notifies information to the Secretary of State under section 10I(2) in respect of a certified person.

(2) The Secretary of State must prepare a report on whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

(4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 10J(2) or (3) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.

(5) In preparing the report, the Secretary of State must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

### **10L Continuation or withdrawal of certification**

(1) Where the Authority reviews under section 10I(3) or (5) whether the certification basis in respect of a certified person continues to apply, it may, within the 4 months mentioned in section 10I(4) or (6), either—

- (a) make a preliminary decision that the certification should be continued on the certification ground mentioned in section 10I(1); or
- (b) make a preliminary decision that the certification should be withdrawn.

(2) If the Authority does not make a decision under subsection (1) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the certification ground mentioned in section 10I(1).

(3) Where the Authority reviews under section 10I(8) whether the fourth or fifth test under section 10F is now passed, it may, within the 4 months mentioned in section 10I(9), either—

- (a) make a preliminary decision that the certification should be continued on the basis that the test is now passed; or
- (b) make a preliminary decision that the certification should be withdrawn.

(4) If the Authority does not make a decision under subsection (3) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the basis that the test is now passed.

(5) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this section, the Authority must—

- (a) notify the decision to the certified person and the Secretary of State; and

(b) notify the decision to the European Commission, enclosing the information it considers relevant to the decision.

(6) Subsections (7) to (9) apply in relation to the Authority's final decision under Article 3 of the Electricity Regulation whether to confirm the certification.

(7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—

- (a) the person in relation to whom the review was carried out;
- (b) the Secretary of State; and
- (c) the European Commission.

(8) If the final decision is to continue the certification the person is to be taken as continuing to be certified by the Authority under section 10D.

(9) Otherwise, the person is to be taken as no longer certified.

(10) Section 10E(8)(a) and (b) applies in relation to a decision mentioned in this section as it applies in relation to a decision mentioned in section 10E(1), but as if—

- (a) the references in section 10E(8)(a) and (b) to the certification of the applicant were references to the continued certification of the person certified; and
- (b) the reference in section 10E(8)(b) to a report prepared under section 10C were a reference to a report prepared under section 10K.

#### **10M Prohibition on the exercise of certain shareholder rights and rights of appointment**

(1) A person must not exercise a shareholder right or a right of appointment if—

- (a) the right falls within subsection (2), (3), (4) or (5);
- (b) the relevant date in respect of the certified person mentioned in that subsection has been reached;
- (c) the exercise of the right would or might lead the certified person to discriminate in favour of the relevant producer or supplier mentioned in that subsection; and
- (d) the relevant producer or supplier is a person to whom subsection (6) applies.

(2) A right falls within this subsection if—

- (a) it is a shareholder right;
- (b) it is held by a person who controls a person certified on the certification ground in section 10E(3); and
- (c) it is exercisable in relation to a relevant producer or supplier.

(3) A right falls within this subsection if—

- (a) it is a shareholder right;
- (b) it is exercisable in relation to a person certified on the certification ground in section 10E(3); and
- (c) it is held by a person who controls a relevant producer or supplier.

(4) A right falls within this subsection if—

- (a) it is a shareholder right;
- (b) the person who holds it appointed a senior officer of a person certified on the certification ground in section 10E(3);
- (c) the person appointed continues to hold that office; and
- (d) the right is exercisable in relation to an electricity undertaking which is a relevant producer or supplier.

(5) A right falls within this subsection if—



- (a) it is a right to appoint a senior officer of a person certified on the certification ground in section 10E(3); and
  - (b) the person who holds it has, within the immediately preceding period of 3 years, exercised a shareholder right in relation to an electricity undertaking which is a relevant producer or supplier.
- (6) This subsection applies to a person if, in order to carry out some or all of the activity by virtue of which the person is a relevant producer or supplier, the person—
- (a) requires a licence under section 6 of this Act, section 7A of the Gas Act 1986 (licensing of gas suppliers and gas shippers) or section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum); or
  - (b) would require such a licence if carrying out the activity in Great Britain.
- (7) In this section—
- (a) “exercise” means exercise directly or indirectly, and “exercisable” is to be interpreted accordingly; and
  - (b) “relevant date” means the relevant date for the purposes of section 10A(1) or (3).

#### **10N Validity of acts infringing section 10M**

- (1) The following are voidable on an application to the court—
- (a) the exercise of a shareholder right in breach of section 10M;
  - (b) the appointment of a senior officer in breach of that section.
- (2) Any person may make an application under subsection (1).
- (3) Such an application may not be made after the end of the 5 years beginning with the day on which the shareholder right was exercised or the appointment made.
- (4) If, by virtue of this section, the court declares the exercise of a shareholder right or an appointment to be void, it may make an order as to the consequences of its declaration.
- (5) In this section, “the court” means—
- (a) in relation to England and Wales, the High Court, and
  - (b) in relation to Scotland, the Court of Session.

#### **10O Interpretation**

- (1) In sections 10A to 10N and this section—
- “control”, in relation to one person having control over another, has the meaning given by Article 2(34) of the Electricity Directive (but in determining whether one person (“person A”) has control over another (“person B”) no account is to be taken of any unexercised contractual or other right which would, if exercised, give person A control over person B and which was conferred as a condition of the provision of either financial support or a guarantee (or both), by person A in relation to the business of person B); and references to one person controlling another are to be interpreted accordingly;
- “certified” means taken in accordance with section 10D(8) or 10L(8) to be certified (or as continuing to be certified) by the Authority under section 10D; and “certify” and “certification” are to be interpreted accordingly;
- “certification grounds” has the meaning given by section 10E(2);
- “majority shareholding” means a simple majority of shares;
- “person from a third country” means a person the Authority thinks is from a third country;
- “shareholder right” means a right, conferred by the holding of a share in a company’s share capital—
- (a) to vote at general meetings of the company; or

- (b) to appoint or remove a member of the company's board of directors;  
"third country" means a country that is not, and is not part of, an EEA state.

(2) In this Part "electricity undertaking" means a person who—

- (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) supplies electricity to any premises; or
- (c) otherwise generates or sells electricity.

(3) In this Part "relevant producer or supplier", in relation to an applicant for certification or a certified person, means a person who falls within each of subsections (4) and (5).

(4) A person falls within this section if the person—

- (a) is an electricity undertaking;
- (b) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain;
- (c) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7 of the Gas Act 1986;
- (d) supplies to any premises gas which has been conveyed to those premises through pipes;
- (e) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or
- (f) otherwise sells gas,

and terms used in paragraphs (b) to (f) of this subsection have the same meanings in those paragraphs as in Part 1 of the Gas Act 1986.

(5) A person falls within this subsection if the person carries out in an EEA state some or all of the activity by virtue of which the person falls within subsection (4) and—

- (a) requires a licence under section 7A of the Gas Act 1986 (licensing of gas suppliers and gas shippers) or section 6 of this Act to do so;
- (b) would, in the Authority's opinion, require such a licence if carrying out the activity in Great Britain; or
- (c) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of the person."

## PART 4

### Gas facilities

#### Independence of storage facilities

6. After section 8Q of the Gas Act 1986(a) insert—

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(a) Section 8Q is inserted by regulation 4 of these Regulations.

**8R Independence of storage facilities**

(1) This section applies to a storage facility unless a minor facility exemption is in force in respect of that facility under section 8S.

(2) The owner of a storage facility to which this section applies must, notwithstanding any licence held by the owner, refrain from producing gas in an EEA state.

(3) The owner must also, notwithstanding any licence held by the owner, refrain from carrying out any of the following activities in an EEA state except to the extent that the activity is necessary for the efficient operation of the storage facility or of another facility used by the owner to store gas—

- (a) the supply to any premises of gas which has been conveyed to those premises through pipes;
- (b) the making of an arrangement with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that gas transporter;
- (c) any other sale of gas.

(4) If an affiliate of the owner carries out in an EEA state an activity which, under subsection (2) or (3), the owner must refrain from carrying out, the owner must operate the storage facility independently of the interests of that affiliate and must, in particular, ensure that—

- (a) no senior officer or manager of the owner is a senior officer or manager of the affiliate;
- (b) if a senior officer or manager of the owner has an interest in the affiliate that conflicts, or is likely to conflict, with the interests of the storage facility, the owner maintains procedures to ensure that the storage facility is operated independently of that interest in the affiliate;
- (c) the owner is entitled to take decisions without the consent of that affiliate in respect of any assets necessary to operate, maintain or develop the storage facility; and
- (d) the owner does not take instructions from the affiliate regarding day to day operations or individual decisions concerning the construction or upgrading of the storage facility.

(5) Subsection (4)(c) and (d) does not prevent a parent undertaking of the owner from requiring the owner—

- (a) to obtain the parent undertaking’s approval of the owner’s annual financial planning;
- (b) to comply with restrictions on the owner’s overall indebtedness.

(6) The owner must establish a programme (the “independence programme”) in relation to the owner’s senior officers, other officers, managers and employees for the purpose of ensuring that they do not cause the owner to—

- (a) discriminate against persons who are not affiliates of the owner; or
- (b) breach any of the owner’s obligations under section 11C(a) regarding the disclosure or use of information.

(7) The owner must—

- (a) ensure that compliance with the independence programme is monitored; and

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(a) Inserted by regulation 7 of these Regulations.

- (b) each year, publish a report setting out the measures taken in accordance with the independence programme and send a copy to the Authority.
- (8) For the purposes of this section a person produces gas if the person—
- (a) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain; or
  - (b) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7.
- (9) In this section—
- “affiliate”, in relation to a person (“person A”), means—
- (a) a person who has control of person A; or
  - (b) a person who is under the control of the same person as person A;
- “control” has the meaning given by section 8Q(1);
- “manager”, in relation to the owner of a storage facility or an affiliate of the owner, means a natural person who is responsible, directly or indirectly, for the day to day management of the owner or the affiliate;
- “parent undertaking” has the meaning given by section 1162 of the Companies Act 2006(a).
- (10) The reference in subsection (4)(b) to a conflict of interests includes a conflict of interest and duty and a conflict of duties.

### **8S Independence of storage facilities and duty to allow others to use them: exemptions for minor facilities**

(1) A person who is or expects to be an owner of a storage facility may apply in writing to the Authority for an exemption from the requirements of sections 8R and 19B(b) in respect of that facility (a “minor facility exemption”).

(2) The Authority must give a minor facility exemption in respect of a facility where it is satisfied that use of the facility by other persons is not technically or economically necessary for the operation of an efficient gas market.

(3) A minor facility exemption—

- (a) must be in writing;
- (b) may be given—
  - (i) for an indefinite period or for a period determined under the exemption;
  - (ii) unconditionally or subject to such conditions as the Authority considers appropriate.

(4) The Authority must publish its decision to give or refuse to give a minor facility exemption together with the reasons for the decision.

(5) A minor facility exemption may be revoked—

- (a) in accordance with provisions contained in it;
- (b) at any other time, if the Authority considers that the condition in subsection (2) is no longer met.

(6) The Authority must from time to time publish a document setting out how it will determine whether the use of a facility by other persons is technically or economically

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(a) 2006 c. 46. Amendments have been made that are not relevant for these purposes.

(b) 1986 c. 44. Section 19B was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Amendments have been made that are not relevant for these purposes.

necessary for the operation of an efficient gas market, including the matters it will take into account when determining this.

(7) Publication under subsection (4) or (6) must be in such manner as the Authority considers appropriate.

(8) Before publishing a document under subsection (6) the Authority must consult—

- (a) the Secretary of State; and
- (b) such other persons as the Authority considers appropriate.”.

## **General duties of storage facility owners, LNG import or export facility owners etc**

7.—(1) The Gas Act 1986 is amended as follows.

(2) After section 11(a) insert—

### *“Duties of facility owners and prospective facility owners*

#### **11A General duties of facility owners**

(1) This section applies to—

- (a) a storage facility;
- (b) an LNG import or export facility.

(2) The owner of a facility to which this section applies must—

- (a) operate, maintain and develop the facility, so far as it is economical to do so, in a manner calculated to ensure that the facility is secure, reliable and efficient;
- (b) take any steps required by the Authority to ensure that the owner maintains sufficient financial resources to enable the owner to comply with the owner’s obligations under this Act and under the Gas Regulation.

#### **11B Duty of current and prospective LNG import or export facility owners to provide information**

A person who is or expects to be the owner of an LNG import or export facility must provide the Authority with such information in such manner and at such times as the Authority may reasonably require to facilitate the performance of its functions under this Act.

#### **11C Restrictions on disclosure of information by facility owners**

(1) The owner of a storage facility or LNG import or export facility must take all reasonable steps to ensure that commercially sensitive information relating to the operation of the facility is not disclosed—

- (a) to a person in a way that discriminates against any other person or description of persons;
- (b) to an associated undertaking unless the disclosure is necessary in order to enable a transaction with that associated undertaking to take place.

(2) Information which is obtained by the owner of a storage facility or LNG import or export facility from an associated undertaking for the purpose of, or in the course of, a transaction with that undertaking must not be used by the owner for any other purpose.”.

(3) Omit section 19DA (provision of information)(b).

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(a) Amendments have been made to section 11 that are not relevant for these purposes.

(b) Section 19DA was inserted by regulation 2(2) of, and paragraph 5 of Schedule 2 to, S.I. 2004/2043.

(4) In section 19E (sections 19A to 19D: supplemental)(a), in subsection (1) for “19DA” substitute “19D”.

### **Duty to allow others to use storage facilities: exemptions for new and modified facilities**

8.—(1) For the italic heading preceding section 19 of the Gas Act 1986 substitute—

*“Pipe-line systems, storage facilities and LNG import or export facilities: rights of use etc”.*

(2) Section 19A of the Gas Act 1986 (exemptions from duty to allow others to use storage facilities)(b) is amended as follows.

(3) For subsection (1) substitute—

“(1) Section 19B applies to a storage facility, except as provided in subsections (1A) and (1B).

(1A) Section 19B does not apply to a storage facility if it is subject to a minor facility exemption under section 8S(c).

(1B) Section 19B does not apply to a storage facility if, or to the extent that, it is exempt under this section.

(1C) The Authority must maintain on its website a list of the facilities to which section 19B applies.

(1D) If only part of the capacity of a storage facility is exempt under this section, the list under subsection (1C) must specify the extent to which section 19B applies to the facility.”.

(4) In subsection (2), after “an exemption” insert “under this section”.

(5) After subsection (2) insert—

“(2A) An application under subsection (2) must relate to—

- (a) a storage facility (or proposed storage facility) which is not yet operational; or
- (b) a modification (or proposed modification) which falls within subsection (2B) and is not yet operational.

(2B) A modification (or proposed modification) falls within this subsection if it is—

- (a) a modification of a storage facility to provide for a significant increase in the capacity of the facility; or
- (b) a modification of a storage facility to enable the development of new sources of gas supply.

(2C) The Authority must send to the European Commission a copy of an application under subsection (2) as soon as is reasonably practicable following its receipt.”.

(6) For subsection (3) substitute—

“(3) An exemption under this section must be given in writing and on the following terms—

- (a) a term specifying the period of the exemption, or specifying how that period is to be determined;
- (b) a term as to whether the exemption applies to all of the capacity of the facility or part of that capacity only;
- (c) a term that the owner must comply with the capacity allocation mechanism approved in accordance with section 19DB(d); and

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(a) Section 19E was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Subsection (1) was subsequently amended by regulation 2(2) of, and paragraph 6(1) of Schedule 2 to, S.I. 2004/2043. Other amendments have been made that are not relevant for these purposes.

(b) Section 19A was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937 and has since been amended by the Utilities Act 2000 (c. 27), section 3(2); Regulation 2(2) of, and paragraph 1 and 2 of Schedule 2 to, S.I. 2004/2043; and regulation 4 of S.I. 2009/1349.

(c) Inserted by regulation 6 of these Regulations.

(d) Inserted by regulation 15 of these Regulations.

- (d) such other terms regarding non-discriminatory access to the facility or any other matter as the Authority considers appropriate.
- (3A) When determining a term under subsection (3) the Authority must take into account—
- (a) the capacity of the facility or (as the case may be) the increase in capacity of the facility;
  - (b) the length of time required to recover the investment in the facility or (as the case may be) the investment in the modification;
  - (c) the implications of the exemption for the operation of the gas market in Great Britain.”.
- (7) Omit subsections (4) and (5).
- (8) In subsection (6)—
- (a) for the words from the beginning to “either” substitute “Where the Authority receives an application under subsection (2) in relation to a facility or modification, it must give an exemption if it is satisfied that”;
  - (b) omit paragraph (a).
- (9) After subsection (6) insert—
- “(6A) An exemption given in accordance with subsection (6) may apply to all of the capacity of the facility concerned or to part of that capacity only, regardless of the extent of the exemption applied for; but this is subject to subsection (7).”.
- (10) In subsection (7), at the end insert “or part of that increase in its capacity”.
- (11) After subsection (7) insert—
- “(7A) When deciding whether the requirements of subsection (8)(a), (d) and (e) are met, the Authority must take into account the way in which capacity is to be allocated under the capacity allocation mechanism approved in accordance with section 19DB.”.
- (12) In subsection (8)—
- (a) in paragraph (a) for “significant increase in its capacity” substitute “modification”;
  - (b) in paragraph (b) omit “to provide for a significant increase in its capacity”;
  - (c) in paragraph (d) after “capacity;” insert “and”;
  - (d) omit paragraph (f) (and the “and” preceding it).
- (13) In subsection (9), for “subsection (10)” substitute “subsections (9A) and (10)”.
- (14) After subsection (9) insert—
- “(9A) Subsection (9) does not prevent a further exemption being given by virtue of subsection (6)(b) in respect of a facility if the previous exemption given by virtue of that provision in respect of the facility has been revoked under section 19AA(5)(a).”.
- (15) In subsection (10)—
- (a) after “a significant increase in its capacity” insert “or to enable the development of new sources of gas supply”;
  - (b) for “that increase in its capacity” (in each place) substitute “that modification”.
- (16) In subsection (11), for “together with the reasons for its decision” substitute “under this section, together with the reasons for its decision,”.

### **Duty to allow others to use storage facilities: review and revocation of exemptions**

9. After section 19A of the Gas Act 1986 insert—

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(a) Inserted by regulation 9 of these Regulations.

**“19AA Review and revocation of exemptions under section 19A**

(1) If the Authority gives, or refuses to give, an exemption under section 19A it must send the following to the European Commission as soon as is reasonably practicable—

- (a) if the exemption was given, a copy of the exemption and of the terms on which it has been given;
- (b) the Authority’s reasons for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Gas Directive;
- (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—
  - (i) relevant financial information;
  - (ii) analysis of the likely effect of the exemption on competition and on the effective functioning of the EU market for natural gas;
- (d) if the exemption was given, the basis on which the Authority determined—
  - (i) the period of the exemption or how that period is to be determined; and
  - (ii) the capacity to which the exemption applies;
- (e) any contribution by the storage facility to the diversification of the supply of gas; and
- (f) any other information requested by the European Commission.

(2) If, in accordance with Article 36(9) of the Gas Directive, the European Commission requires the Authority to revoke an exemption given under section 19A, or to modify the terms on which it is given, the Authority must—

- (a) comply with that request within the period of 1 month beginning with the day on which it receives the request; and
- (b) inform the European Commission when it has done so.

(3) The Authority must revoke an exemption given under section 19A in respect of a facility—

- (a) if the construction of the facility, or (as the case may be) the making of the modification to which the exemption relates, has not been started within the 2 years beginning with the relevant date; or
- (b) if the facility, or (as the case may be) the modification to which the exemption relates, is not operational within the 5 years beginning with the relevant date.

(4) In subsection (3) “relevant date” means—

- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under subsection (1), the date of that notification;
- (b) if, in accordance with Article 36(9) of the Gas Directive, the European Commission required the Authority to modify the terms, the date of that requirement;
- (c) otherwise, the date 4 months after the Authority sent the Commission a copy of the exemption and terms under subsection (1).

(5) The Authority may at any other time revoke an exemption given under section 19A, or modify the terms on which such an exemption is given, in respect of a facility—

- (a) in accordance with the provisions of the exemption; or
- (b) by giving the owner of the facility a notice of revocation at least 4 months before the revocation takes effect.”.



### **Duty to allow others to use storage facilities**

**10.** In section 19B of the Gas Act 1986 (acquisition of rights to use storage facilities)(a), after subsection (3) insert—

“(3A) At least 2 months before publishing the main commercial conditions, or any changes to the published conditions, under subsection (1), the owner of a relevant facility must—

- (a) publish a draft of the proposed conditions or changes; and
- (b) inform any person who has a right to have gas stored in the facility that the draft has been published.

(3B) When finalising conditions or changes under subsection (1), the owner of a relevant facility must take into account any representations it has received about the proposed conditions or changes.”.

### **Duty to allow others to use LNG import or export facilities: exemptions for new and modified facilities**

**11.—**(1) Section 19C of the Gas Act 1986 (application of section 19D to LNG facilities)(b) is amended as follows.

(2) For subsection (1) substitute—

“(1) Section 19D applies to an LNG import or export facility, except as provided in subsections (1A) and (1B).

(1A) Section 19D does not apply to an LNG import or export facility if, or to the extent that, it is exempt under this section.

(1B) Section 19D does not apply to an LNG import or export facility if it is exempt under section 19DZA.”.

(3) In subsection (2)—

- (a) for “LNG import facility” substitute “LNG import or export facility”;
- (b) after “an exemption” insert “under this section”.

(4) After subsection (2) insert—

“(2A) An application under subsection (2) must relate to—

- (a) a facility (or proposed facility) which is not yet operational; or
- (b) a modification (or proposed modification) which falls within subsection (2B) and is not yet operational.

(2B) A modification (or proposed modification) falls within this subsection if it is—

- (a) a modification of an LNG import or export facility to provide for a significant increase in the capacity of the facility; or
- (b) a modification of an LNG import or export facility to enable the development of new sources of gas supply.

(2C) The Authority must send to the European Commission a copy of an application under subsection (2) as soon as is reasonably practicable following its receipt.”.

(5) For subsection (3) substitute—

“(3) An exemption under this section must be given in writing and on the following terms—

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(a) 1986 c. 44. Section 19B was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Amendments have been made that are not relevant for these purposes.

(b) Section 19C was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937 and has since been amended by the Utilities Act 2000 (c. 27), section 3(2) and regulation 2(2) to, and paragraph 3 of Schedule 2 to S.I. 2004/2043. Other amendments have been made that are not relevant for these purposes.

- (a) a term specifying the period of the exemption, or specifying how that period is to be determined;
- (b) a term as to whether the exemption applies to all of the capacity of the facility or part of that capacity only;
- (c) a term that the owner must comply with the capacity allocation mechanism approved in accordance with section 19DB; and
- (d) such other terms regarding non-discriminatory access to the facility or any other matter as the Authority considers appropriate.

(3A) When determining a term under subsection (3) the Authority must take into account—

- (a) the capacity of the facility or (as the case may be) the increase in capacity of the facility;
- (b) the length of time required to recover the investment in the facility or (as the case may be) the investment in the modification; and
- (c) the implications of the exemption for the operation of the gas market in Great Britain.”.

(6) Omit subsection (4).

(7) After subsection (5) insert—

“(5A) An exemption given in accordance with subsection (5) may apply to all of the capacity of the facility concerned or to part of that capacity only, regardless of the extent of the exemption applied for; but this is subject to subsection (6).”.

(8) In subsection (6), at the end insert “or part of that increase in its capacity”.

(9) After subsection (6) insert—

“(6A) When deciding whether the requirements of subsection (7)(a), (d) and (e) are met, the Authority must take into account the way in which capacity is to be allocated under the capacity allocation mechanism approved in accordance with section 19DB.”.

(10) In subsection (7)—

- (a) in paragraph (a) for “significant increase in its capacity” substitute “modification”;
- (b) in paragraph (b) omit “to provide for a significant increase in its capacity”;
- (c) in paragraph (d) at the end insert “and”;
- (d) omit paragraph (f) (and the “and” preceding it).

(11) In subsection (8), for “subsection (9)” substitute “subsections (8A) and (9)”.

(12) After subsection (8) insert—

“(8A) Subsection (8) does not prevent a further exemption being given by virtue of subsection (5) in respect of a facility if the previous exemption given by virtue of that subsection in respect of the facility has been revoked under section 19CA(3).”.

(13) In subsection (9)—

- (a) after “a significant increase in its capacity” insert “or to enable the development of new sources of gas supply”;
- (b) for “that increase in its capacity” (in each place) substitute “modification”.

(14) In subsection (10), for “together with the reasons for its decision” substitute “under this section, together with the reasons for its decision,”.

**Duty to allow others to use LNG import or export facilities: review and revocation of exemptions**

12. After section 19C of the Gas Act 1986 insert—

### **“19CA Review and revocation of exemptions under section 19C**

(1) If the Authority gives, or refuses to give, an exemption under section 19C it must send the following to the European Commission as soon as is reasonably practicable—

- (a) if an exemption was given, a copy of the exemption and of the terms on which it has been given;
- (b) the Authority’s reasons for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Gas Directive;
- (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—
  - (i) relevant financial information;
  - (ii) analysis of the likely effect of the exemption on competition and on the effective functioning of the EU market for natural gas;
- (d) if an exemption was given, the basis on which the Authority determined—
  - (i) the period of the exemption or how that period is to be determined; and
  - (ii) the capacity to which the exemption applies;
- (e) any contribution by the storage facility to the diversification of gas supply; and
- (f) any other information requested by the European Commission.

(2) If, in accordance with Article 36(9) of the Gas Directive, the European Commission requires the Authority to revoke an exemption given under section 19C, or to modify the terms on which such an exemption is given, the Authority must—

- (a) comply with that request within the period of 1 month beginning with the day on which it receives the request; and
- (b) inform the European Commission when it has done so.

(3) The Authority must revoke an exemption given under section 19C in respect of a facility—

- (a) if the construction of the facility, or (as the case may be) the making of the modification to which the exemption relates, has not been started within the 2 years beginning with the relevant date; or
- (b) if the facility, or (as the case may be) the modification to which the exemption relates, is not operational within the 5 years beginning with the relevant date.

(4) In subsection (4) “relevant date” means—

- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under subsection (1), the date of that notification;
- (b) if, in accordance with Article 36(9) of the Gas Directive, the European Commission required the Authority to modify the terms, the date of that requirement;
- (c) otherwise, the date 4 months after the Authority sent the Commission a copy of the exemption and terms under subsection (1).

(5) The Authority may at any other time revoke an exemption given under section 19C, or modify the terms on which such an exemption is given, in respect of a facility—

- (a) in accordance with the provisions of the exemption; or
- (b) by giving the owner of the facility a notice of revocation at least 4 months before the revocation takes effect.”.

### **Duty to allow others to use LNG import or export facilities**

13.—(1) Section 19D of the Gas Act 1986 (acquisition of rights to use LNG import or export facilities)(a) is amended as follows.

- (2) In subsection (1), for “LNG import facility” substitute “LNG import or export facility”.
- (3) Before “liquid gas” (in each place) insert “gas or”.
- (4) In subsection (11), at the end insert “; but this is subject to subsections (11A) and (11B)”.
- (5) After subsection (11) insert—

“(11A) When considering whether the giving of directions under subsection (11) in respect of an LNG import or export facility would be prejudicial as mentioned in that subsection, the Authority must disregard any difficulties by virtue of which the owner of the facility may or must apply for an exemption under section 19DZA with respect to the facility.

(11B) The Authority must not give directions under subsection (11) in respect of an LNG import or export facility if—

- (a) such directions would prevent the owner from carrying out any public service obligation, within the meaning of paragraph (2) of Article 3 of the Gas Directive, which is imposed on the owner pursuant to that paragraph; or
- (b) an exemption is in force with respect to the facility under section 19DZA (regardless of whether that exemption was given before or after the application to the Authority under subsection (8) was made).”.

### **Duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments**

14. After section 19D of the Gas Act 1986(b) insert—

#### **“19DZA Duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments**

(1) The owner of an LNG import or export facility may apply to the Authority for an exemption under this section with respect to the facility if the owner—

- (a) receives an application under section 19D(4) with respect to the facility; and
- (b) considers that allowing the application would cause the owner serious financial difficulties because of take-or-pay commitments of the owner under one or more gas-purchase contracts.

(2) The owner of an LNG import or export facility must apply to the Authority for an exemption under this section with respect to the facility if—

- (a) the owner refuses an application under section 19D(4) with respect to the facility; and
- (b) the reason, or one of the reasons, given under section 19D(7) for the refusal is the consideration mentioned in subsection (1)(b).

(3) An application made by virtue of subsection (2) must be made before the end of the 7 days beginning with the day of the refusal.

(4) An application for an exemption under this section must enclose all relevant information, including in particular information in respect of—

- (a) the nature and extent of the difficulties mentioned in subsection (1)(b) which the owner considers would arise (the “difficulties”);

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(a) Section 19D was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Amendments have been made that are not relevant for these purposes.

(b) Section 19DA was inserted by regulation 2(2) to, and paragraph 5 of Schedule 2 to, S.I. 2004/2043.

- (b) any steps taken by the owner to prevent the difficulties from arising; and
  - (c) the period over which the owner considers the difficulties would arise.
- (5) The Authority may give an exemption under this section if it considers that—
- (a) having regard to any steps taken by the owner to prevent the difficulties from arising, the only reasonably available means of prevention is an exemption under this section; and
  - (b) an exemption ought to be given, having regard to—
    - (i) the objective of achieving a competitive gas market;
    - (ii) the need for the owner to comply with any relevant public service obligation, within the meaning of paragraph (2) of Article 3 of the Gas Directive, which is imposed on the owner pursuant to that paragraph;
    - (iii) the need to ensure security of the supply of gas;
    - (iv) the position of the owner of the facility in the gas market and the level of competition in the market;
    - (v) the level of seriousness of the difficulties;
    - (vi) the time when the gas-purchase contract was entered into, and the extent to which the owner could reasonably have foreseen at that time that the difficulties were likely to arise;
    - (vii) the terms of the gas-purchase contract, including the extent to which the contract allows for market changes;
    - (viii) the significance of the facility to the gas market; and
    - (ix) the overall effect of the exemption on the operation of an economically efficient gas market.
- (6) An exemption under this section must be given for a limited period and in writing and must specify—
- (a) the period of the exemption; and
  - (b) any conditions the Authority considers necessary in order to ensure that the owner takes all reasonably practicable steps to ensure that, by the time the exemption expires, the difficulties would no longer arise.
- (7) If the Authority has given an exemption under this section it must send to the European Commission as soon as is reasonably practicable—
- (a) a copy of its decision to give the exemption, including the terms on which the exemption was given; and
  - (b) any other information the Authority considers relevant to the exemption or to the terms on which the exemption was given.
- (8) An exemption under this section may be modified or revoked by the Authority—
- (a) in accordance with its provisions;
  - (b) at any other time, if the Authority considers that an exemption under this section is no longer required.
- (9) The Authority must modify or revoke an exemption given under this section if required to do so by the European Commission in accordance with Article 48(2) of the Gas Directive.
- (10) In this section “take-or-pay commitment” and “gas-purchase contract” have the same meanings as in Article 48(1) of the Gas Directive.”.

## **Exempt new and modified facilities: mechanisms for the allocation of capacity**

15. After section 19DA of the Gas Act 1986(a) insert—

### **“19DB Allocation of capacity in exempt new and modified facilities**

- (1) This section applies in relation to an application for an exemption—
  - (a) under section 19A(2), in respect of all or part of the capacity of a storage facility;  
or
  - (b) under section 19C(2), in respect of all or part of the capacity of an LNG import or export facility.
- (2) The application must specify the criteria that will be used to determine—
  - (a) who is to be granted rights to use the facility, or the part of the capacity of the facility, to which the application relates (the “exempt infrastructure”); and
  - (b) the way in which those rights may be exercised,(the “capacity allocation mechanism”).
- (3) The Authority must not give an exemption under section 19A or 19C in response to the application unless it has—
  - (a) approved the capacity allocation mechanism specified in the application; or
  - (b) approved the mechanism on condition that certain modifications are made to it.
- (4) The Authority may only approve the capacity allocation mechanism under subsection (3)(a) if it considers that the mechanism meets the following three conditions.
- (5) The first condition is that before a right to use the exempt infrastructure is granted to the owner of the facility or to any other person—
  - (a) the intention to grant a right to use the exempt infrastructure must be published in a way that the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be interested in using the infrastructure; and
  - (b) such persons must be able to register an interest in using the exempt infrastructure.
- (6) The second condition is that the mechanism must require that any unused capacity in the exempt infrastructure be made available to other users or potential users.
- (7) The third condition is that the mechanism must not prevent, and must not be capable of being used to prevent, subsequent trading of rights to use the exempt infrastructure.
- (8) The Authority may only approve the capacity allocation mechanism under subsection (3)(b) if it considers that the mechanism will meet those three conditions once the modifications on which the approval is conditional have been made.”.

## **Consequential amendments of the Petroleum Act 1998 in respect of storage facilities**

- 16.—(1) The Petroleum Act 1998(b) is amended as follows.
- (2) Omit section 17C (application of section 17D)(c).
  - (3) Omit section 17D (access to offshore gas storage facilities)(d).
  - (4) Omit section 17E (section 17D: supplemental)(e).

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(a) 1986 c. 44. Section 19E was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Amendments have been made that are not relevant for these purposes.

(b) 1998 c. 17.

(c) Section 17C was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, S.I. 2000/1937 and was subsequently amended by regulation 2(3) of, and paragraph 1 of Schedule 3 to, S.I. 2004/2043; and regulation 4 of S.I. 2009/1349.

(d) Section 17D was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, S.I. 2000/1937.

(e) Section 17E was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, S.I. 2000/1937 and was subsequently amended by articles 3(1)(b) and 6 of, and paragraph 206 of Part 2 of Schedule 1 to, S.I. 2008/948; and the Corporation Tax Act 2010, section 1177 and paragraph 298 of Part 2 of Schedule 1.

(5) In section 17H (enforcement of certain duties in relation to access to pipelines and offshore gas storage facilities)(a)—

- (a) In subsection (1)—
  - (i) omit “with any notice under section 17D(11) or”;
  - (ii) omit “and the obligation to comply with any duty in section 17B(6) or section 17D(7)”;
  - (iii) for “duties” substitute “a duty”;
  - (iv) for “them” substitute “it”;
- (b) omit subsection (4);
- (c) change the section title to “Enforcement of duty in section 17GA”,

but this paragraph is subject to paragraph (7).

(6) In section 28(1) (interpretation) omit the definition of “offshore gas storage facility”(b).

(7) So far as section 17H would, but for the amendments made by paragraph (5), have effect in relation to a past breach, it continues to have effect in relation to that past breach as if those amendments had not been made.

(8) In paragraph (7) “past breach” means a failure before the coming into force of these Regulations to comply with—

- (a) a duty under section 17D(1), (3), or (7);
- (b) a notice under section 17D(11);
- (c) a duty in section 17E(2).

#### **Transitional provision in relation to exempt storage and LNG import or export facilities**

17.—(1) An exemption given under—

- (a) section 19A(6)(a) of the Gas Act 1986 (duty to allow others to use storage facilities: exemptions for minor facilities)(c); or
- (b) section 17C(5A)(a) of the Petroleum Act 1998 (duty to allow others to use offshore gas storage facilities: exemptions for minor facilities),

before the date on which these Regulations come into force shall be treated as having been given under section 8S of the Gas Act 1986 (independence of storage facilities and duty to allow others to use them: exemptions for minor facilities)(d).

(2) An exemption given under section 17C(5A)(b) of the Petroleum Act 1998 (duty to allow others to use offshore gas storage facilities: exemptions for new and modified facilities) before the date on which these Regulations come into force shall be treated as having been given under section 19A(6)(b) of the Gas Act 1986 (duty to allow others to use storage facilities: exemptions for new and modified facilities).

- 
- (a) Section 17H was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, S.I. 2000/1937 and was subsequently amended by regulation 2(3) of, and paragraph 2 of Schedule 3 to, S.I. 2004/2043; and article 2 of, and paragraph 3 of the Schedule to, S.I. 2007/290; and the Energy Act 2004, section 197(9) and Part 1 of Schedule 23 (the commencement date for the relevant part of Part 1 of Schedule 23 is yet to be appointed in accordance with section 198 of the Energy Act 2004).
  - (b) Section 28(1) was amended by regulation 2(4) of, and paragraph 9 of Schedule 4 to, S.I. 2000/1937 and was subsequently amended by regulation 2(3) of, and paragraph 3 to Schedule 3 to, S.I. 2004/2043. Other amendments have been made that are not relevant for these purposes.
  - (c) Section 19A was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Amendments have been made that are not relevant for these purposes.
  - (d) Inserted by regulation 6 of these Regulations.

## PART 5

### Distribution

#### **Independence of gas transporters authorised to convey gas to premises**

**18.**—(1) Section 7 of the Gas Act 1986 (licensing of gas transporters)(a) is amended as follows.

(2) In subsection (2), for “subsection (3)” substitute “subsections (3) and (3A)”.

(3) After subsection (3) insert—

“(3A) A licence authorising the conveyance of gas through pipes to any premises must not be granted under this section to a person who is a gas producer unless it is a condition of the licence that the person must not convey gas through pipes to 100,000 or more sets of premises.”.

(4) In subsection (4), for “The” substitute “Subject to subsection (3A), the”.

(5) In subsection (10), before paragraph (a) insert—

“(za) “gas producer” means a person who—

- (i) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain; or
- (ii) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7;”.

#### **Independence of electricity distributors**

**19.** In section 6(2) of the Electricity Act 1989 (licences authorising supply, etc)(b), for “a supply licence” substitute—

“—

- (a) a generation licence; or
- (b) a supply licence.”.

## PART 6

### Licence exempt undertakings

#### **Duties of gas distribution exemption holders and supply exemption holders**

**20.**—(1) The Gas Act 1986 is amended as follows.

(2) After section 6A(c) insert—

##### **“6B Duties of distribution exemption holders**

Schedule 2AA (which relates to the duties of distribution exemption holders) has effect.

- 
- (a) Section 7 was amended by the Gas Act 1995 (c. 45), section 5; and the Energy Act 2004, section 149(1) and (5). Other amendments have been made that are not relevant for these purposes.
  - (b) 1989 c. 29. Section 6 was substituted for section 6 as originally enacted by the Utilities Act 2000 (c. 27), section 30. Other amendments have been made that are not relevant for these purposes.
  - (c) 1986 c. 44; section 6A was inserted by the Gas (Exempt Supplies) Act 1993 (c. 1), section 2; and substituted by the Gas Act 1995 (c. 45), section 4. Other amendments have been made that are not relevant for these purposes.



## **6C Duties of supply exemption holders**

Schedule 2AB (which relates to the duties of supply exemption holders) has effect.”.

- (3) After Schedule 2A(a) insert the Schedules set out in Schedule 1.

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

**21.**—(1) The Electricity Act 1989 is amended as follows.

- (2) After section 5(b) insert—

### **“5A Duties of distribution exemption holders**

Schedule 2ZA (which relates to the duties of distribution exemption holders) has effect.

### **5B Duties of supply exemption holders**

Schedule 2ZB (which relates to the duties of supply exemption holders) has effect.”.

- (3) Before Schedule 2A(c) insert the Schedules set out in Schedule 2.

## **PART 7**

### **Regulatory authority**

#### *Designation, reporting and members*

## **Designation of the Gas and Electricity Markets Authority as the regulatory authority for Great Britain**

**22.** After section 3 of the Utilities Act 2000(d) insert—

### **“3A Designation of Authority as regulatory authority for Great Britain**

(1) The Authority is designated as the regulatory authority for Great Britain in accordance with Article 35 of the Electricity Directive and Article 39 of the Gas Directive.

(2) The Authority must ensure that members of its staff do not—

- (a) seek or take any instructions that might compromise, or might reasonably be seen to compromise, the Authority’s independence in relation to its functions as designated regulatory authority for Great Britain; or
- (b) carry out any other activity, or have any financial or other interest, that might compromise, or might reasonably be seen to compromise, the impartiality of those members of staff.

(3) If a representative of the Authority is appointed under Article 13(2) of the Agency Regulation to represent the United Kingdom on the Board of Regulators of the Agency, the Authority must—

- 
- (a) Schedule 2A was inserted by section 3(2) of, and Schedule 1 to, the Gas Act 1995; and subsequently repealed by section 75 of the Utilities Act 2000 (c. 27) (the commencement date for section 75 is yet to be appointed in accordance with section 110(2) of the Utilities Act 2000).
  - (b) Section 5 was substituted by the Utilities Act 2000 (c. 27), section 29. Other amendments have been made that are not relevant for these purposes.
  - (c) Schedule 2A was inserted by the Energy Act 2008, s44(4) and Schedule 2.
  - (d) 2000 c. 27.

- (a) in advance of any meeting of the Board, ensure that the designated regulatory authority for Northern Ireland is given access to any documents and other information that the Authority has access to in relation to that meeting;
- (b) provide that authority with an opportunity to make representations in respect of those documents or that information;
- (c) have regard to any representations so made; and
- (d) notify that authority of the matters discussed and decisions taken by the Board.”.

### **Authority to prepare annual reports on its activities as designated regulatory authority**

23. After section 5 of the Utilities Act 2000 insert—

#### **“5ZA Report on activities as designated regulatory authority**

(1) The Authority must, as soon as is practicable after the end of each reporting period, prepare a report on the activities it has carried out in that period as designated regulatory authority for Great Britain.

(2) A report prepared under subsection (1) is referred to as a regulatory authority report.

(3) The regulatory authority report must include, in particular, a general survey of the steps taken and results achieved by the Authority in the performance of its functions in accordance with Article 37 of the Electricity Directive and Article 41 of the Gas Directive.

(4) In preparing the regulatory authority report, the Authority must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

(5) The Authority must—

- (a) send a copy of the regulatory authority report to—
  - (i) the Secretary of State,
  - (ii) the European Commission, and
  - (iii) the Agency; and

- (b) publish it in such manner as the Authority considers appropriate.

(6) In this section “reporting period” means—

- (a) the period beginning with the date on which this section comes into force and ending on 15 July 2012;
- (b) each subsequent period of 12 months.

(7) Nothing in this section or section 5 prevents a regulatory authority report and an annual report from including a report on the same matters.”.

### **Members of the Gas and Electricity Markets Authority**

24.—(1) Schedule 1 to the Utilities Act 2000 (Gas and Electricity Markets Authority) is amended as follows.

(2) After paragraph 2 insert—

**“2A.** A person holding office as chairman or other member must not—

- (a) seek or take any instructions that might compromise, or might reasonably be seen to compromise, the independence of the Authority in relation to its functions as designated regulatory authority for Great Britain; or
- (b) carry out any other activity, or have any financial or other interest, that might compromise, or might reasonably be seen to compromise, that person’s impartiality.”.

(3) For paragraph 3 substitute—

“3.—(1) An appointment of a person to hold office as chairman or other member must be for a term of not less than 5 years and not more than 7 years.

(2) But in appointing as chairman or other member a person who is on the Authority’s staff, the Secretary of State may make the appointment subject to a condition that the appointment will end if that person ceases to be on the Authority’s staff.

(3) The appointment of a person as chairman or other member may be renewed only once.

(4) The Secretary of State must ensure that there is sufficient continuity in the persons holding office as chairman or other member in determining—

(a) the term of a person’s appointment in accordance with sub-paragraph (1) (whether initially or on renewal); and

(b) whether or not to renew an appointment in accordance with sub-paragraph (3).

(5) A person holding office as chairman or other member may resign that office by giving notice in writing to the Secretary of State.

(6) A person holding office as chairman or other member may be removed from office by the Secretary of State on one of the following grounds only—

(a) a breach of paragraph 2A;

(b) incapacity; or

(c) misbehaviour.”.

#### **Definitions in the Utilities Act 2000**

**25.** In section 106(1) of the Utilities Act 2000 (interpretation), in the appropriate places insert—

““the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;”;

““the Agency Regulation” means Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators(a);”;

““designated regulatory authority” means an authority designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive;”;

““designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A;”;

““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(b);”;

““the Gas 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(c);”.

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(a) OJ No L 211, 14.08.2009, p. 1.  
(b) OJ No L 211, 14.08.2009, p. 55.  
(c) OJ No L 211, 14.08.2009, p. 94.

### *Principal objectives*

#### **Authority's principal objective in relation to gas**

**26.**—(1) In section 4AA(1A) of the Gas Act 1986 (principal objective and general duties of the Secretary of State and the Authority: interests of consumers)(a)—

- (a) omit “and” immediately preceding paragraph (b); and
- (b) after paragraph (b) insert—
  - “; and
  - (c) their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Great Britain, of the objectives set out in Article 40(a) to (h) of the Gas Directive.”.

#### **Authority's principal objective in relation to electricity**

**27.** In section 3A(1A) of the Electricity Act 1989 (principal objective and general duties of the Secretary of State and the Authority: interests of consumers)(b)—

- (a) omit “and” immediately preceding paragraph (b); and
- (b) after paragraph (b) insert—
  - “; and
  - (c) their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Great Britain, of the objectives set out in Article 36(a) to (h) of the Electricity Directive.”.

### *Dispute resolution*

#### **Authority's dispute resolution functions in relation to gas**

**28.**—(1) The Gas Act 1986(c) is amended as follows.

(2) In each of the following, for “Article 25” substitute “Article 41”—

- (a) the italic heading preceding section 27B (meaning of “Article 25 dispute”); and
- (b) the title of section 27B.

(3) In section 27B—

- (a) for subsection (1) substitute—

“(1) For the purposes of sections 27C and 27D, a dispute is an “Article 41 dispute” if—

- (a) it arises from a written complaint—
  - (i) made against a gas transporter,
  - (ii) made against the holder of a licence under section 7ZA,
  - (iii) made against the owner of an LNG import or export facility,
  - (iv) made against the owner of a storage facility,
  - (v) made against a person carrying out an activity described in section 5(1)(a) or (aa) who has been granted an exemption under section 6A(1), or

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(a) Section 4AA was inserted by section 9 of the Utilities Act 2000 (c. 27), and was subsequently amended by section 16(1) and (3) of the Energy Act 2010 (c. 27). Other amendments have been made that are not relevant for these purposes.

(b) Section 3A was inserted by section 13 of the Utilities Act 2000 (c. 27), and was subsequently amended by section 17(1) and (3) of the Energy Act 2010 (c. 27). Other amendments have been made that are not relevant for these purposes.

(c) 1986 c. 44. Sections 27B to 27D, and the italic heading preceding section 27B, were inserted by regulation 3 of S.I. 2009/1349.

- (vi) made by a person falling within paragraph (a) of subsection (1B) against a person falling within paragraph (b) of that subsection;
  - (b) it is wholly or mainly a dispute regarding an obligation of the person complained against under any relevant condition or relevant requirement in relation to that person imposed for the purpose of implementing the Gas Directive; and
  - (c) it is a dispute between the complainant and the person complained against.
- (1A) Until section 75 of the Utilities Act 2000 comes into force the reference in subsection (1)(a)(v) above to a person who has been granted an exemption under section 6A(1) includes a person to whom one or more of the exceptions to section 5(1) contained in Schedule 2A applies.
- (1B) For the purposes of subsection (1)(a)(vi)—
- (a) a person falls within this paragraph if the person is certified on the ground mentioned in section 8G(5) in respect of a pipe-line system or gas interconnector;
  - (b) a person falls within this paragraph if the person is designated under section 8J(3) in respect of the pipe-line system or gas interconnector mentioned in paragraph (a).”;
- (b) in subsection (2), for “(1)(b)” substitute “(1)(a)”;
  - (c) in subsection (3)—
    - (i) omit the definitions of “2003 Directive”, “LNG import facility” and “owner”, and
    - (ii) for the definition of “household customer” substitute—
 

““household customer” means a customer who purchases gas for consumption by the customer’s own household.”.
- (4) In section 27C (determination of disputes)—
- (a) in subsections (1), (2) and (3), for “Article 25” substitute “Article 41”;
  - (b) for subsection (8), substitute—
 

“(8) Sections 28 to 30F and 38 have effect in relation to a person against whom a complaint is made as mentioned in section 27B(1)(a), and on whom a duty or other requirement is imposed by an order under this section—

    - (a) as if references in those sections to a relevant requirement (other than the reference in section 28(8)) included references to that duty or requirement; and
    - (b) if the complaint is made against the person as mentioned in sub-paragraph (vi) of section 27B(1)(a), also as if references in those sections to a regulated person included references to that person.”;
  - (c) omit subsection (9).
- (5) In section 27D (time limit for determinations), in subsections (1) and (4)(a), for “Article 25” substitute “Article 41”.

**Authority’s dispute resolution functions in relation to electricity**

**29.**—(1) The Electricity Act 1989(a) is amended as follows.

(2) In each of the following, for “Article 23” substitute “Article 37”—

- (a) the italic heading preceding section 44B (meaning of “Article 37 dispute”); and
- (b) the title of section 44B.

(3) In section 44B—

- (a) for subsection (1) substitute—

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(a) 1989 c. 29. Sections 44B to 44D, and the italic heading preceding section 44B, were inserted by S.I. 2009/1349, regulation 3.

- “(1) For the purposes of sections 44C and 44D a dispute is an “Article 37 dispute” if—
- (a) it arises from a written complaint—
    - (i) made against the holder of a transmission licence,
    - (ii) made against the holder of a distribution licence,
    - (iii) made against the holder of an interconnector licence,
    - (iv) made against a distribution exemption holder, or
    - (v) made by a person falling within paragraph (a) of subsection (1A) against a person falling within paragraph (b) of that subsection;
  - (b) it is wholly or mainly a dispute regarding an obligation of the person complained against under any relevant condition or relevant requirement in relation to that person imposed for the purpose of implementing the Electricity Directive; and
  - (c) it is a dispute between the complainant and the person complained against.
- (1A) For the purposes of subsection (1)(a)(v)—
- (a) a person falls within this paragraph if the person is certified on the ground mentioned in section 10E(5) in respect of a transmission system or electricity interconnector;
  - (b) a person falls within this paragraph if the person is designated under section 10H(3) in respect of the transmission system or electricity interconnector mentioned in paragraph (a).”;
- (b) in subsection (2)—
- (i) for “(1)(b)” substitute “(1)(a)”, and
  - (ii) in paragraph (a)(i) for “the licence” substitute “a licence”;
- (c) for subsection (3) substitute—
- “(3) In this section, “household customer” means a customer who purchases electricity for consumption by the customer’s own household.”.
- (4) In section 44C (determination of disputes)—
- (a) in subsections (1), (2) and (3), for “Article 23” substitute “Article 37”; and
  - (b) for subsection (8) substitute—
 

“(8) Sections 25 to 28 have effect in relation to a person against whom a complaint is made as mentioned in section 44B(1)(a), and on whom a duty or other requirement is imposed by an order under this section—

    - (a) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to that duty or requirement;
    - (b) if the complaint is made against the person as mentioned in sub-paragraph (v) of section 44B(1)(a), also as if references in those sections to a regulated person included references to that person.”.
- (5) In section 44D (time limit for determinations)—
- (a) in subsections (1) and (6)(a), for “Article 23” substitute “Article 37”;
  - (b) in subsection (2) omit “and (5)”; and
  - (c) omit subsections (4) and (5).

### *Monitoring*

#### **Authority’s monitoring functions in relation to gas**

- 30.**—(1) The Gas Act 1986 is amended as follows.
- (2) In section 34 (general functions), in subsection (1)(a) after “above” insert “or subsection (2A) below”.

(3) After section 34(2) insert—

“(2A) The activities referred to in subsection (1)(a) are the matters specified in the following provisions of the Gas Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 41(1)(g) to (k), (m), (n) and (r) to (t);
- (c) where a person is certified on the ground mentioned in subsection (5) of section 8G(a), Article 41(3)(a) and (b);
- (d) where a person is certified on the ground mentioned in subsection (6) of section 8G(b), Article 41(5)(b) and (d); and
- (e) Article 41(9).”.

(4) After section 34 insert—

**“34A Power to require information etc for the purpose of monitoring**

(1) The Authority may, for the purpose of performing its duty under subsection (1)(a) or (b) of section 34 in relation to activities falling within subsection (2A) of that section, serve a notice under subsection (2) on any regulated person.

(2) A notice under this subsection is a notice signed by the Authority which—

- (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority any documents which are specified or described in the notice and are in that person’s custody or under that person’s control; or
- (b) requires that person, if that person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

(3) In paragraphs (a) and (b) of subsection (2) the reference to the Authority includes a reference to a person appointed by the Authority for the purpose of exercising the power in question.

(4) Sections 28 to 30 have effect in relation to a person on whom a notice is served under subsection (2) as if references in those sections to a relevant requirement (other than the reference in section 28(8)) included references to a requirement of that notice.

(5) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is liable—

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

(6) The definition of “regulated person” in section 28(8)(c) applies for the purposes of this section.”.

**Authority’s monitoring functions in relation to electricity**

**31.—**(1) The Electricity Act 1989 is amended as follows.

(2) In section 47 (general functions), after subsection (1B)(d) insert—

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- (a) Inserted by regulation 4 of these Regulations.
  - (b) Inserted by regulation 4 of these Regulations.
  - (c) The definition of “regulated person” in section 28(8) is substituted by regulation 39(4)(a) of these Regulations. Other amendments to section 28(8) have been made that are not relevant for these purposes.
  - (d) Subsection (1B) of section 47 was inserted by section 9 of the Climate Change and Sustainable Energy Act 2006 (c. 19). Other amendments have been made that are not relevant for these purposes.

“(1C) The activities to which subsection (1) applies also include, in particular, the matters specified in the following provisions of the Electricity Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 37(1)(g) to (k), (m) and (q) to (t); and
- (c) where a person is certified on the ground mentioned in subsection (5) of section 10E(a), Article 37(3)(a), (b) and (f).”.

(3) After section 47 insert—

**“47A Power to require information etc for the purpose of monitoring**

(1) The Authority may, for the purpose of performing its duty under subsection (1)(a) or (b) of section 47 in relation to activities falling within subsection (1C) of that section, serve a notice under subsection (2) on any regulated person.

(2) A notice under this subsection is a notice signed by the Authority which—

- (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority any documents which are specified or described in the notice and are in that person’s custody or under that person’s control; or
- (b) requires that person, if that person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

(3) In paragraphs (a) and (b) of subsection (2) the reference to the Authority includes a reference to a person appointed by the Authority for the purpose of exercising the power in question.

(4) Sections 25 to 27 have effect in relation to a person on whom a notice is served under subsection (2) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to a requirement of that notice.

(5) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is liable—

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

*Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission*

**Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission in relation to gas**

32. After section 4B of the Gas Act 1986(b) insert—

**“4C Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission**

The Authority must carry out its functions under this Part in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the

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(a) Inserted by regulation 5 of these Regulations.  
(b) Section 4B was inserted by section 12 of the Utilities Act 2000 (c. 27). An amendment has been made that is not relevant for these purposes.



Agency or the European Commission made under the Gas Directive, the Gas Regulation or the Agency Regulation in relation to gas.”.

**Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission in relation to electricity**

33. After section 3D of the Electricity Act 1989(a) insert—

**“3E Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission**

The Authority must carry out its functions under this Part in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Electricity Directive, the Electricity Regulation or the Agency Regulation in relation to electricity.”.

*Consultation and cooperation*

**Authority to consult and cooperate with other authorities in relation to gas**

34. After section 4C of the Gas Act 1986(b) insert—

**“4D Authority to consult and cooperate with other authorities**

(1) When carrying out its functions as designated regulatory authority for Great Britain, the Authority must, wherever it thinks fit—

- (a) consult and cooperate with the Agency and the designated regulatory authorities for Northern Ireland and other Member States;
- (b) provide the Agency and the designated regulatory authorities for Northern Ireland and other Member States with information they may require in order to carry out their functions under the Gas Directive, the Gas Regulation or the Agency Regulation as it applies in relation to gas; and
- (c) consult relevant national authorities.

(2) In exercising functions in accordance with subsection (1), the Authority must, wherever it thinks fit, cooperate with the designated regulatory authorities for Northern Ireland and other Member States within a region which includes Great Britain with a view, within that region, to—

- (a) the integration of national markets;
- (b) the promotion and facilitation of cooperation between transmission system operators;
- (c) the optimal management of gas networks;
- (d) the promotion of jointly managed cross-border trade in gas and the allocation of cross-border capacity;
- (e) ensuring an adequate level of interconnection capacity;
- (f) the coordination of the development of network codes; and
- (g) the coordination of the regulation of gas markets, including rules concerning the management of congestion of gas networks.

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(a) Section 3D was inserted by section 16 of the Utilities Act 2000 (c. 27). Amendments have been made that are not relevant for these purposes.

(b) Inserted by regulation 32 of these Regulations.

(3) In this section—

“network code” means a network code developed under Article 6 of the Gas Regulation and adopted by the European Commission;

“region” includes a geographical area defined in accordance with Article 12(3) of the Gas Regulation; and

“relevant national authority” means any of the following—

- (a) the Competition Commission;
- (b) the Office of Communications;
- (c) the Office of Fair Trading;
- (d) the Water Services Regulation Authority.”.

### **Authority to consult and cooperate with other authorities in relation to electricity**

35. After section 3E of the Electricity Act 1989(a) insert—

#### **“3F Authority to consult and cooperate with other authorities**

(1) When carrying out its functions as designated regulatory authority for Great Britain the Authority must, wherever it thinks fit—

- (a) consult and cooperate with the Agency and designated regulatory authorities for Northern Ireland and other Member States;
- (b) provide the Agency and the designated regulatory authorities for Northern Ireland and other Member States with information they may require in order to carry out their functions under the Electricity Directive, the Electricity Regulation or the Agency Regulation as it applies in relation to electricity; and
- (c) consult relevant national authorities.

(2) In exercising functions in accordance with subsection (1) the Authority must, wherever it thinks fit, cooperate with the designated regulatory authorities for Northern Ireland and other Member States within a region which includes Great Britain with a view, within that region, to—

- (a) the integration of national markets;
- (b) the promotion and facilitation of cooperation between transmission system operators;
- (c) the optimal management of electricity networks;
- (d) the promotion of jointly managed cross-border trade in electricity and the allocation of cross-border capacity;
- (e) enabling an adequate level of interconnection capacity;
- (f) the coordination of the development of network codes; and
- (g) the coordination of the regulation of electricity markets, including rules concerning the management of congestion of electricity networks.

(3) In this section—

“network code” means a network code developed under Article 6 of the Electricity Regulation and adopted by the European Commission;

“region” includes a geographical area defined in accordance with Article 12(3) of the Electricity Regulation; and

“relevant national authority” means any of the following—

- (a) the Competition Commission;

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(a) Inserted by regulation 33 of these Regulations.

- (b) the Office of Communications;
- (c) the Office of Fair Trading;
- (d) the Water Services Regulation Authority.”.

**Confidentiality requirements in respect of cross-border exchanges of information**

36.—(1) The Utilities Act 2000(a) is amended as follows.

(2) In section 105 (general restrictions on disclosure of information), after subsection (11A)(b) insert—

“(11B) Nothing in this section applies to information to which section 105A applies.”.

(3) After section 105 insert—

**“105A Restrictions on disclosure in respect of cross-border exchanges of information**

(1) This section applies to any information provided to the Authority—

- (a) for the purpose of enabling it to carry out its functions as designated regulatory authority for Great Britain; and
- (b) by the designated regulatory authority for Northern Ireland or for another Member State (“the originating authority”) in accordance with Article 38(1) of the Electricity Directive or Article 42(1) of the Gas Directive.

(2) The Authority may disclose information to which this section applies only if—

- (a) the originating authority has confirmed in writing that the originating authority would be permitted to disclose the information in the circumstances in question; and
- (b) the Authority would be permitted under section 105 to disclose the information if it was received under or by virtue of an enactment listed in subsection (1) of that section.

(3) Subsection (1) applies whether the information is provided directly or indirectly by the originating authority.”.

**PART 8**

**Enforcement**

**Enforcement provisions of the Gas Act 1986**

37.—(1) Part 1 of the Gas Act 1986 (gas supply)(c) is amended as follows.

(2) In section 22 (effect of directions)(d)—

- (a) in subsection (1)—
  - (i) omit “, 19B(11), 19D(11)”;
  - (ii) for the words from “and the obligation” to “are duties” substitute “is a duty”;
- (b) in subsection (3) omit “or relevant duties”;
- (c) omit subsection (5).

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(a) 2000 c. 27.  
 (b) Subsection (11A) of section 105 was inserted by section 63(1) of, and paragraphs 18 and 20(d) of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17). Other amendments have been made to section 105 that are not relevant for these purposes.  
 (c) 1986 c. 44.  
 (d) Section 22 was amended by regulation 2(2) of, and paragraph 2 of Schedule 2 to, S.I. 2000/1937. Another amendment has been made that is not relevant for these purposes.

- (3) For the italic heading preceding section 28(a) substitute—  
*“Enforcement of obligations of regulated persons”.*
- (4) In each of the following provisions, for “licence holder” wherever it occurs substitute “regulated person”—
- (a) section 28 (orders for securing compliance with certain provisions);
  - (b) section 29 (procedural requirements)(b);
  - (c) section 30 (validity and effect of orders)(c);
  - (d) section 30A (penalties)(d);
  - (e) section 30C (time limits on the imposition of penalties)(e);
  - (f) section 30E (appeals)(f);
  - (g) section 30F (recovery of penalties)(g);
  - (h) section 38(1) (power to require information etc)(h).
- (5) In section 28(8)—
- (a) after the definition of “provisional order” insert—  
“regulated person” means a person who is one or more of the following—
    - (a) a licence holder;
    - (b) a distribution exemption holder;
    - (c) a supply exemption holder;
    - (d) the owner of a storage facility;
    - (e) the owner of an LNG import or export facility;
    - (f) a gas undertaking which is a relevant producer or supplier;”;
  - (b) in the definition of “relevant condition”, for “his licence” substitute “any licence held by that person”;
  - (c) in the definition of “relevant requirement”, for the words from “him” to the end of the definition substitute “that person under a provision specified in Schedule 4B as a relevant provision in respect of that person”.
- (6) After Schedule 4A (as inserted by regulation 41(7)) insert the Schedule set out in Schedule 3.

### **Saving provision in relation to enforcement action under section 22 of the Gas Act 1986**

**38.** The amendments in regulation 37(1) do not affect any proceedings under section 22 of the Gas Act 1986 commenced before the day on which these Regulations come into force.

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- (a) Section 28 was amended by section 48(1) and (2) of the Competition and Service (Utilities) Act 1992 (c. 43); by section 10(1) of, and paragraph 27(1), (3) and (5) of Schedule 3 to, the Gas Act 1995 (c. 45); by sections 3(2), 77(2), 95(2)(b), 96(1), (2), (3) and (5) and 108 of, and paragraphs 1 and 12 of Part 1 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c. 27); by sections 25(8), 45(4), 52(1) and 63(1) of, paragraph 1 of Schedule 2 to, paragraph 1(1) and (2) of Schedule 5 to, and paragraphs 4 and 6 of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17); and by section 35 of, and paragraphs 1 and 2(1) of the Schedule to, the Energy Act 2010 (c. 27). Other amendments have been made that are not relevant for these purposes.
  - (b) Section 29 was amended by section 10(1) of, and paragraph 28 of Schedule 3 to, the Gas Act 1995 (c. 45) and by sections 3(2) and 96(1) and (6) of the Utilities Act 2000 (c. 27).
  - (c) Section 30 was amended by section 10(1) of, and paragraph 29 of Schedule 3 to, the Gas Act 1995 (c. 45) and by sections 95(3) and 108 of, and Schedule 8 to, the Utilities Act 2000 (c. 27). Another amendment has been made that is not relevant for these purposes.
  - (d) Section 30A was inserted by section 95(1) of the Utilities Act 2000 (c. 27).
  - (e) Section 30C was inserted by section 95(1) of the Utilities Act 2000 and subsequently amended by section 24(1) of the Energy Act 2010 (c. 27).
  - (f) Section 30E was inserted by section 95(1) of the Utilities Act 2000 (c. 27).
  - (g) Section 30F was inserted by section 95(1) of the Utilities Act 2000 (c. 27).
  - (h) Section 38(1) was amended by section 10(1) of, and paragraph 46(1) of Schedule 3 to, and Schedule 6 to, the Gas Act 1995 (c. 45) and by section 95(5) of the Utilities Act 2000 (c. 27).

## Enforcement provisions of the Electricity Act 1989

- 39.**—(1) Part 1 of the Electricity Act 1989 (electricity supply)(a) is amended as follows.
- (2) For the italic heading preceding section 25(b) substitute—
- “Enforcement of obligations of regulated persons”*.
- (3) In each of the following provisions, for “licence holder” wherever it occurs substitute “regulated person”—
- (a) section 25 (orders for securing compliance);
  - (b) section 26 (procedural requirements)(c);
  - (c) section 27 (validity and effect of orders)(d);
  - (d) section 27A (penalties)(e);
  - (e) section 27C (time limits on the imposition of financial penalties)(f);
  - (f) section 27E (appeals)(g);
  - (g) section 27F (recovery of penalties)(h);
  - (h) section 28(1) (power to require information etc)(i).
- (4) In section 25(8)—
- (a) after the definition of “provisional order” insert—
    - ““regulated person” means a person who is one or more of the following—
      - (a) a licence holder;
      - (b) a distribution exemption holder;
      - (c) a supply exemption holder;
      - (d) an electricity undertaking which is a relevant producer or supplier;”;
- (b) in the definition of “relevant condition”, for “his licence” substitute “any licence held by that person”;
- (c) in the definition of “relevant requirement”, for the words from “him” to the end of the definition substitute “that person under a provision specified in Schedule 6A as a relevant provision in respect of that person”.
- (5) After Schedule 6 insert the Schedule set out in Schedule 4.

## Amendment of Electricity and Gas (Determination of Turnover for Penalties) Order 2002

**40.**—(1) The Electricity and Gas (Determination of Turnover for Penalties) Order 2002(j) is amended as follows.

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- (a) 1989 c. 29.
  - (b) Section 25 was amended by sections 3(2), 60(1) to (5) and 108 of, and paragraphs 24, 27 and 28 of Part 2 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c. 27); by section 54(3) of, and paragraph 12(1) and (5) of Schedule 10 to, the Competition Act 1998 (c. 41); by sections 25(8), 45(4), 52(2) and 63(1) of, paragraph 2 of Schedule 2 to, paragraph 2(1) and (2) of Schedule 5 to, and paragraphs 7 and 9 of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17); by section 107(1) of, and paragraph 3 of Schedule 5 to, the Energy Act 2008 (c. 32); and by section 35 of, and paragraphs 5 and 6(1) of the Schedule to, the Energy Act 2010 (c. 27).
  - (c) Section 26 was amended by sections 3(2) and 60(1) and (6) of the Utilities Act 2000 (c. 27).
  - (d) Amendments have been made that are not relevant for these purposes.
  - (e) Section 27A was inserted by section 59(1) of the Utilities Act 2000 (c. 27).
  - (f) Section 27C was inserted by section 59(1) of the Utilities Act 2000 (c. 27) and subsequently amended by section 24(2) of the Energy Act 2010 (c. 27).
  - (g) Section 27E was inserted by section 59(1) of the Utilities Act 2000 (c. 27). Amendments have been made that are not relevant for these purposes.
  - (h) Section 27F was inserted by section 59(1) of the Utilities Act 2000 (c. 27).
  - (i) Section 28(1) was amended by section 59(2) of the Utilities Act 2000 (c. 27).
  - (j) S.I. 2002/1111.

(2) In each of the following, for “licence holder” wherever it occurs substitute “regulated person”—

- (a) the definitions of “applicable turnover” and “business year” in article 2;
- (b) article 3(1), (3) and (4).

## PART 9

### Licence modification procedure

#### **Amendment of licence modification provisions in the Gas Act 1986**

**41.**—(1) The Gas Act 1986(a) is amended as follows.

(2) Section 23 (modification by agreement)(b) is amended as set out in paragraphs (3) to (5).

(3) For the heading and subsections (1) to (4) substitute—

#### **“23 Modification of conditions of licences**

(1) The Authority may make modifications of—

- (a) the conditions of a particular licence;
- (b) the standard conditions of licences of any type under section 7, 7ZA, or 7A(1) or (2)(c).

(2) Before making any modifications under this section, the Authority must give notice—

- (a) stating that it proposes to make modifications;
- (b) setting out the proposed modifications and their effect;
- (c) stating the reasons why it proposes to make the modifications; and
- (d) specifying the time within which representations with respect to the proposed modifications may be made.

(3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.

(4) A notice under subsection (2) must be given—

- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and
- (b) by sending a copy of the notice to—
  - (i) each relevant licence holder,
  - (ii) the Secretary of State,
  - (iii) the Health and Safety Executive, and
  - (iv) the Council.

(4A) The Authority must consider any representations which are duly made.”.

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(a) 1986 c. 44.

(b) Section 23 was substituted by section 10(1) of, and paragraph 21 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2) and 82(2) to (4) of the Utilities Act 2000 (c. 27); and by section 150(8) and (9) of the Energy Act 2004 (c. 20).

(c) Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2), 76(1) to (6), and 108 of, and paragraphs 1 and 4 of Part 1 to Schedule 6 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). Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004. Section 7A was inserted by section 6(1) of the Gas Act 1995 and subsequently amended by section 108 of, and paragraphs 1 and 2(1) of Part 1 to Schedule 6 and Schedule 8 to, the Utilities Act 2000; and by section 149(1) and (7) of the Energy Act 2004.

(4) In subsection (5), for “in the notice under subsection (3) above” substitute “by virtue of subsection (2)(d)”.

(5) For subsections (6) to (13) substitute—

“(6) Subsections (7) to (9) apply where, having complied with subsections (2) to (4A), the Authority decides to proceed with the making of modifications of the conditions of any licence under this section.

(7) The Authority must—

- (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,
- (b) state the effect of the modifications,
- (c) state how it has taken account of any representations duly made, and
- (d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).

(8) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 4A)(a).

(9) The date specified by virtue of subsection (8) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.

(10) In this section “relevant licence holder”—

- (a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
  - (i) which is to be modified by the inclusion of any new standard condition, or
  - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d); or
- (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.”.

(6) After section 23 insert—

**“23A Modification of conditions under section 23: supplementary**

(1) Subsections (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under section 23.

(2) If the conditions modified are standard conditions, the Authority must—

- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and
- (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under section 23 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 4A in relation to the decision to which the modification relates.”.

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(a) Schedule 4A is inserted by regulation 41(8) of these Regulations.

(7) After section 23A, insert—

*“Appeal from decisions of the Authority*

**23B Appeal to the Competition Commission**

(1) An appeal lies to the Competition Commission (“the Commission”) against a decision by the Authority to proceed with the modification of a condition of a licence under section 23.

(2) An appeal may be brought under this section only by—

- (a) a relevant licence holder (within the meaning of section 23);
- (b) any other person who holds a licence of any type under section 7, 7ZA, or 7A(1) or (2) whose interests are materially affected by the decision;
- (c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);
- (d) the Council in the capacity of representing consumers whose interests are materially affected by the decision.

(3) The permission of the Commission is required for the bringing of an appeal under this section.

(4) The Commission may refuse permission to bring an appeal only on one of the following grounds—

- (a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;
- (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
- (c) in relation to an appeal brought by the Council, that the interests of the consumers represented are not materially affected by the decision;
- (d) in relation to any appeal—
  - (i) that the appeal is brought for reasons that are trivial or vexatious;
  - (ii) that the appeal has no reasonable prospect of success.

(5) References in this section to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

**23C Procedure on appeal to Commission**

(1) The functions of the Commission with respect to appeals under section 23B are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (manner in which general functions are to be carried out)(a).

(2) Instead, Schedule 4A to this Act has effect.

**23D Determination by Commission of appeal**

(1) This section applies to every appeal brought under section 23B.

(2) In determining an appeal the Commission must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

- (a) in the carrying out of its principal objective under section 4AA(b);

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(a) 1998 c. 41. Amendments to Part 2 of Schedule 7 have been made that are not relevant for these purposes.

(b) Section 4AA was inserted by section 4 of the Utilities Act 2000 (c. 27) and subsequently amended by section 406(1) of, and paragraph 81 of Schedule 17 to, the Communications Act 2003 (c. 21); by sections 83(a) and (b), 149(1) and (8)(a), 178 and 179(2) and (3)(d) of the Energy Act 2004 (c. 20); by sections 83(1)(a) to (d), 102(1) to (3) and (7) and 108 of, and Schedule



- (b) in the performance of its duties under that section; and
  - (c) in the performance of its duties under sections 4AB and 4A(a).
- (3) In determining the appeal the Commission—
- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
  - (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.
- (4) The Commission may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
- (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);
  - (b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);
  - (c) that the decision was based, wholly or partly, on an error of fact;
  - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 23(7)(b)(b);
  - (e) that the decision was wrong in law.
- (5) To the extent that the Commission does not allow the appeal, it must confirm the decision appealed against.

### **23E Commission’s powers on allowing appeal**

- (1) This section applies where the Commission allows an appeal to any extent.
- (2) If the appeal is in relation to a price control decision, the Commission must do one or more of the following—
- (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission;
  - (c) substitute the Commission’s decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.
- (3) If the appeal is in relation to any other decision, the Commission must do one or both of the following—
- (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission.
- (4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).
- (5) A person to whom a direction is given under that subsection must comply with it.
- (6) A direction given under that subsection to a person other than the Authority is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.

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6 to, the Energy Act 2008 (c. 32); and by section 16(1) to (3), (4)(a) and (b), (5), (6)(a) and (b), (7) and (8) of the Energy Act 2010 (c. 27).

(a) Section 4AB was inserted by section 10 of the Utilities Act 2000 (c. 27) and subsequently amended by section 63(1) of, and paragraphs 4 and 5 of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17). Section 4A was inserted by section 2 of the Gas Act 1995 (c. 45) and was subsequently amended by article 2 of, and the Schedule to, S.I. 2000/3343.

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

(7) For the purposes of this section a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the Commission's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

(8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.

(9) In this section and sections 23F and 23G any reference to a party to an appeal is to be read in accordance with Schedule 4A.

### **23F Time limits for Commission to determine an appeal**

(1) The Commission must—

- (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
- (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.

(2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.

(3) This subsection applies where—

- (a) the Commission has received representations on the timing of the determination from a party to the appeal; and
- (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).

(4) Where subsection (3) applies, the Commission must—

- (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
- (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.

(5) Where subsection (3) applies, the Commission must also—

- (a) inform the parties to the appeal of the time limit for determining the appeal, and
- (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.

(6) In this section “price control decision” is to be read in accordance with section 23E.

(7) References in this section to the permission date are to the date on which the Commission gave permission to bring the appeal in accordance with section 23B(3).

### **23G Determination of appeal by Commission: supplementary**

(1) A determination by the Commission on an appeal—

- (a) must be contained in an order made by the Commission;
- (b) must set out the reasons for the determination;
- (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
- (d) must be notified by the Commission to the parties to the appeal;
- (e) must be published by the Commission—
  - (i) as soon as reasonably practicable after the determination is made;

- (ii) in such manner as the Commission considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The Commission may exclude from publication under subsection (1)(e) any information which it is satisfied is—
- (a) commercial information, the disclosure of which would, or might in the Commission’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or
  - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the Commission’s opinion, significantly harm the individual’s interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the Commission made by virtue of subsection (1)(a).
- (4) The steps must be taken—
- (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
  - (b) in any other case, within a reasonable time.
- (5) Subsections (2) to (4) of section 23A(a) apply where a condition of a licence is modified in accordance with section 23E as they apply where a condition of a licence is modified under section 23.”.
- (8) After Schedule 4(b), insert the Schedule set out in Schedule 5.
- (9) Omit sections 24 to 26A (modification references to the Competition Commission)(c).

**Transitional and savings provision for the Gas Act 1986 in relation to modification of licence conditions, references to the Competition Commission and Competition Commission membership**

**42.—**(1) The following provisions apply notwithstanding any amendment or repeal of any enactment made by this Part of these Regulations.

- (2) Paragraphs (3) to (5) apply where—
- (a) the Authority has made a reference under section 24 of the 1986 Act before the operative date, but
  - (b) the Commission has not made a report on that reference before that date.
- (3) Sections 24 to 25 of the 1986 Act are to continue in force on and after the operative date in relation to the reference until—
- (a) the Commission has made a report on that reference; and
  - (b) any actions required or permitted under those sections in connection with the reference have been taken.

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(a) Section 23A is inserted by regulation 41(6) of these Regulations.

(b) 1986 c. 44. Amendments to Schedule 4 have been made that are not relevant for these purposes.

(c) Section 24 was amended by section 54(3) of, and paragraph 10(2) of Schedule 10 to, the Competition Act 1998 (c. 41); by article 20(a) and (b) of S.I. 1999/506; by section 10(1) of, and paragraph 22(1) to (6) of Schedule 3 to, the Gas Act 1995 (c. 45); by sections 3(2), 83(1) and 108 of, and paragraphs 1 and 8(1) to (4) of Part 1 of Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); by section 278 of, and paragraph 15(1) and (3)(a) and (b) of Schedule 25 and Schedule 26 to, the Enterprise Act 2002 (c. 40); and by section 149(1) and (9) of the Energy Act 2004 (c. 20). Sections 24A and 24B were inserted by section 278(1) of, and paragraph 15(1) and (4) of Schedule 25 to, the Enterprise Act 2002. Section 25 was amended by section 10(1) of, and paragraph 23(1), (3), (4) and (5)(a) and (b) of Schedule 3 to, the Gas Act 1995; by sections 54(3) and 74(3) of, and paragraph 10(3) of Schedule 10 and Part 1 of Schedule 14 to, the Competition Act 1998; by article 20(b) of S.I. 1999/506; by section 3(2) of the Utilities Act 2000; and by section 278 of, and paragraph 15(1) and (5)(a) and (b) of Schedule 25 to, the Enterprise Act 2002. Section 26 was amended by article 20(b) of S.I. 1999/506; by section 10(1) of, and paragraph 24(1) to (4) of Schedule 3 to, the Gas Act 1995; by sections 3(2) and 83(2) and (3) of the Utilities Act 2000; and by section 150(8) and (9) of the Energy Act 2004. Section 26A was inserted by section 83(4) of the Utilities Act 2000 and subsequently amended by section 278(1) of, and paragraph 15(1) and (6)(a) and (b) of Schedule 25 to, the Enterprise Act 2002; and by section 150(10) of the Energy Act 2004.

(4) Any persons who are, immediately before the operative date, members of the Commission by virtue of section 104(1)(a) of the 2000 Act(a) are to continue as members of the Commission on and after the operative date for the purpose of performing functions of the Commission—

- (a) in relation to that section as amended by this Part of these Regulations; and
- (b) in relation to the reference mentioned in paragraph (2).

(5) Any persons who are, immediately before the operative date, members of a group selected under section 104(2) of the 2000 Act are to continue as members of the group on and after the operative date for the purpose of performing functions of the Commission in relation to the reference mentioned in paragraph (2).

(6) Paragraphs (7) and (8) apply where—

- (a) the Authority has given notice under section 23(3) of the 1986 Act(b) before the operative date; and
- (b) the period specified in the notice by virtue of section 23(3)(c) of that Act has not ended before that date.

(7) On and after the operative date the notice is to be treated for the purposes of sections 23 to 23G of, and Schedule 4A to, the 1986 Act(c) as if it were a notice given under section 23(2) of that Act.

(8) Any representations or objections made in accordance with section 23(3) of the 1986 Act in connection with the notice before the operative date are to be treated on and after the operative date as if they were representations made in accordance with section 23(2)(d) of that Act.

(9) The following references to provisions of the 1986 Act are to those provisions as amended or inserted by this Part of these Regulations—

- (a) the references in paragraph (7);
- (b) the reference to section 23(2)(d) in paragraph (8).

(10) In this regulation—

- (a) “the Authority” means the Gas and Electricity Markets Authority;
- (b) “the Commission” means the Competition Commission;
- (c) “the operative date” means the date on which these Regulations come into force;
- (d) “the 1986 Act” means the Gas Act 1986;
- (e) “the 2000 Act” means the Utilities Act 2000.

#### **Amendment of licence modification provisions in the Electricity Act 1989**

**43.**—(1) The Electricity Act 1989(d) is amended as follows.

(2) Omit section 11 (modification by agreement)(e).

(3) Section 11A (modification of standard conditions)(f) is amended as set out in paragraphs (4) to (6).

(4) For the heading and subsections (1) to (4) substitute—

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- (a) 2000 c. 27. Section 104 was amended by section 53(1)(a) and (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 Part 1 of the Schedule to, S.I. 2005/3172.
  - (b) Section 23 was substituted by section 10(1) of, and paragraph 21 of Schedule 3 to, the Gas Act 1995 (c. 45) and subsequently amended by sections 3(2) and 82(2) to (4) of the Utilities Act 2000 (c. 27); and by section 150(8) and (9) of the Energy Act 2004 (c. 20).
  - (c) By virtue of regulation 42(9) of these Regulations references to sections 23 to 23G and Schedule 4A are references to those sections or Schedule as amended or inserted by these Regulations. Section 23 is amended by regulation 41(3) to (5) of these Regulations. Section 23A is inserted by regulation 41(6) of these Regulations. Sections 23B to 23G are inserted by regulation 41(7) of these Regulations. Schedule 4A is inserted by regulation 41(8) of these Regulations.
  - (d) 1989 c. 29.
  - (e) Section 11 was amended by sections 3(2) and 34(1) and (2) of the Utilities Act 2000 (c. 27).
  - (f) Section 11A was inserted by section 35 of the Utilities Act 2000 (c. 27) and subsequently amended by section 197(8) and (9) and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

**“11A Modification of conditions of licences**

- (1) The Authority may make modifications of—
  - (a) the conditions of a particular licence;
  - (b) the standard conditions of licences of any type mentioned in section 6(1).
- (2) Before making any modifications under this section, the Authority must give notice—
  - (a) stating that it proposes to make modifications;
  - (b) setting out the proposed modifications and their effect;
  - (c) stating the reasons why it proposes to make the modifications; and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.
- (4) A notice under subsection (2) must be given—
  - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and
  - (b) by sending a copy of the notice to—
    - (i) each relevant licence holder,
    - (ii) the Secretary of State, and
    - (iii) the Council.
- (4A) The Authority must consider any representations which are duly made.”.
- (5) In subsection (5), for “in the notice under subsection (3)” substitute “by virtue of subsection (2)(d)”.
- (6) For subsections (6) to (11) substitute—

“(6) Subsections (7) to (9) apply where, having complied with subsections (2) to (4A)(a), the Authority decides to proceed with the making of modifications of the conditions of any licence under this section.

  - (7) The Authority must—
    - (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,
    - (b) state the effect of the modifications,
    - (c) state how it has taken account of any representations duly made, and
    - (d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).
  - (8) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 5A)(b).
  - (9) The date specified by virtue of subsection (8) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.
  - (10) In this section “relevant licence holder”—
    - (a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
      - (i) which is to be modified by the inclusion of any new standard condition, or

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(a) Section 11A(2) to (4A) is inserted by regulation 43(4) of these Regulations.

(b) Schedule 5A is inserted by regulation 43(9) of these Regulations.

- (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d); or
- (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.”.

(7) After section 11A insert—

**“11B Modification of conditions under section 11A: supplementary**

(1) Subsections (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under section 11A.

(2) If the conditions modified are standard conditions, the Authority must—

- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and
- (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under section 11A does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 5A in relation to the decision to which the modification relates.”.

(8) After section 11B insert—

*“Appeal from decisions of the Authority*

**11C Appeal to the Competition Commission**

(1) An appeal lies to the Competition Commission (“the Commission”) against a decision by the Authority to proceed with the modification of a condition of a licence under section 11A.

(2) An appeal may be brought under this section only by—

- (a) a relevant licence holder (within the meaning of section 11A);
- (b) any other person who holds a licence of any type under section 6(1)(a) whose interests are materially affected by the decision;
- (c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);
- (d) the Council in the capacity of representing consumers whose interests are materially affected by the decision.

(3) The permission of the Commission is required for the bringing of an appeal under this section.

(4) The Commission may refuse permission to bring an appeal only on one of the following grounds—

- (a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;

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(a) Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and subsequently amended by sections 89(3), 136(1) and (2), 143(1), 145(1) and (5) to (7), and 197(9) of, and paragraphs 3 and 5 of Schedule 19 and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20); and by section 79 of, and paragraph 2 of Schedule 8 to, the Climate Change Act 2008 (c. 27).

- (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
- (c) in relation to an appeal brought by the Council, that the interests of the consumers represented are not materially affected by the decision;
- (d) in relation to any appeal—
  - (i) that the appeal is brought for reasons that are trivial or vexatious;
  - (ii) that the appeal has no reasonable prospect of success.

(5) References in this section to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

#### **11D Procedure on appeal to Commission**

(1) The functions of the Commission with respect to appeals under section 11C are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (manner in which general functions are to be carried out)(a).

(2) Instead, Schedule 5A to this Act has effect.

#### **11E Determination by Commission of appeal**

(1) This section applies to every appeal brought under section 11C.

(2) In determining an appeal the Commission must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

- (a) in the carrying out of its principal objective under section 3A(b);
- (b) in the performance of its duties under that section; and
- (c) in the performance of its duties under sections 3B and 3C(c).

(3) In determining the appeal the Commission—

- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
- (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The Commission may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);
- (b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);
- (c) that the decision was based, wholly or partly, on an error of fact;
- (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 11A(7)(b)(d);

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(a) 1998 c. 41. Amendments to Part 2 of Schedule 7 have been made that are not relevant for these purposes.

(b) 1989 (c. 29). Section 3A was substituted by section 3 of the Utilities Act 2000 (c. 27) and subsequently amended by section 406(1) of, and paragraph 98 of Schedule 17 to, the Communications Act 2003 (c. 21); by sections 83(a) and (b), 143(1), 147(1) and (2)(b), 178, 179(2) and (3)(a), and 190(3) of, and paragraphs 3 and 4 of Schedule 19 to, the Energy Act 2004 (c. 20); by sections 83(2)(a) to (d), 102(4) to (7) and 108 of, and Schedule 6 to, the Energy Act 2008 (c. 32); and by sections 17(1) to (3), (4)(a) and (b), (5), (6)(a) and (b), (7) and (8) and 179(2) and (3)(a) of the Energy Act 2010 (c. 27).

(c) Section 3B was inserted by section 14 of the Utilities Act 2000 (c. 27) and subsequently amended by section 63(1) of, and paragraphs (7) and (8) of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17). Section 3C was inserted by section 15 of the Utilities Act 2000 (c. 27) and subsequently amended by article 22 of, and Schedule 3 to, S.I. 2008/960.

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

(e) that the decision was wrong in law.

(5) To the extent that the Commission does not allow the appeal, it must confirm the decision appealed against.

### **11F Commission's powers on allowing appeal**

(1) This section applies where the Commission allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the Commission must do one or more of the following—

- (a) quash the decision (to the extent that the appeal is allowed);
- (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission;
- (c) substitute the Commission's decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.

(3) If the appeal is in relation to any other decision, the Commission must do one or both of the following—

- (a) quash the decision (to the extent that the appeal is allowed);
- (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the Commission.

(4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).

(5) A person to whom a direction is given under that subsection must comply with it.

(6) A direction given under that subsection to a person other than the Authority is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.

(7) For the purposes of this section a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the Commission's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

(8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.

(9) In this section and sections 11G and 11H any reference to a party to an appeal is to be read in accordance with Schedule 5A.

### **11G Time limits for Commission to determine an appeal**

(1) The Commission must—

- (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
- (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.

(2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.

(3) This subsection applies where—

- (a) the Commission has received representations on the timing of the determination from a party to the appeal; and
- (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).

(4) Where subsection (3) applies, the Commission must—



- (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
  - (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (5) Where subsection (3) applies, the Commission must also—
- (a) inform the parties to the appeal of the time limit for determining the appeal, and
  - (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.
- (6) In this section “price control decision” is to be read in accordance with section 11F.
- (7) References in this section to the permission date are to the date on which the Commission gave permission to bring the appeal in accordance with section 11C(3).

### **11H Determination of appeal by Commission: supplementary**

- (1) A determination by the Commission on an appeal—
- (a) must be contained in an order made by the Commission;
  - (b) must set out the reasons for the determination;
  - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
  - (d) must be notified by the Commission to the parties to the appeal;
  - (e) must be published by the Commission—
    - (i) as soon as reasonably practicable after the determination is made;
    - (ii) in such manner as the Commission considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The Commission may exclude from publication under subsection (1)(e) any information which it is satisfied is—
- (a) commercial information, the disclosure of which would, or might in the Commission’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or
  - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the Commission’s opinion, significantly harm the individual’s interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the Commission made by virtue of subsection (1)(a).
- (4) The steps must be taken—
- (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
  - (b) in any other case, within a reasonable time.
- (5) Subsections (2) to (4) of section 11B apply where a condition of a licence is modified in accordance with section 11F as they apply where a condition of a licence is modified under section 11A.”.
- (9) After Schedule 5(a) insert the Schedule set out in Schedule 6.

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(a) Amendments to Schedule 5 have been made that are not relevant for these purposes.

(10) Omit sections 12 to 14A (modification references to the Competition Commission)(a).

**Transitional and savings provision for the Electricity Act 1989 in relation to modification of licence conditions, references to the Competition Commission and Competition Commission membership**

**44.**—(1) The following provisions apply notwithstanding any amendment or repeal of any enactment made by this Part of these Regulations.

(2) Paragraphs (3) to (5) apply where—

- (a) the Authority has made a reference under section 12 of the 1989 Act before the operative date, but
- (b) the Commission has not made a report on that reference before that date.

(3) Sections 12 to 13 of the 1989 Act are to continue in force on and after the operative date in relation to the reference until—

- (a) the Commission has made a report on that reference; and
- (b) any actions required or permitted under those sections in connection with the reference have been taken.

(4) Any persons who are, immediately before the operative date, members of the Commission by virtue of section 104(1)(b) of the 2000 Act(b) are to continue as members of the Commission on and after the operative date for the purpose of performing functions of the Commission—

- (a) in relation to that section as amended by this Part of these Regulations; and
- (b) in relation to the reference mentioned in paragraph (2).

(5) Any persons who are, immediately before the operative date, members of a group selected under section 104(2) of the 2000 Act are to continue as members of the group on and after the operative date for the purpose of performing functions of the Commission in relation to the reference mentioned in paragraph (2).

(6) Paragraphs (7) and (8) apply where—

- (a) the Authority has given notice under section 11(2) or 11A(3) of the 1989 Act(c) before the operative date; and
- (b) the period specified in the notice by virtue of section 11(2)(c) or 11A(3)(c) of that Act has not ended before that date.

(7) On and after the operative date the notice is to be treated for the purposes of sections 11A to 11H of, and Schedule 5A to, the 1989 Act(d) as if it were a notice given under section 11A(2) of that Act.

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- (a) Section 12 was amended by section 54(3) of, and paragraph 12(2) of Schedule 10 to, the Competition Act 1998 (c. 41); by article 24 (a) and (b) of S.I. 1999/506; by sections 3(2), 36(1) to (7), 104(4) to (6) and 108 of, and paragraphs 24, and 25 of Part 2 of Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c. 27); and by sections 278(1) of, and paragraphs 20(1) and (3)(a) and (b) of Schedule 25, and Schedule 26 to, the Enterprise Act 2002 (c. 40). Sections 12A and 12B were inserted by section 278(1) of, and paragraphs 20(1) and (4) of Schedule 25 to, the Enterprise Act 2002. Section 13 was amended by sections 54(3) and 74(3) of, and paragraph 12(3) of Schedule 10 and Part 1 of Schedule 14 to, the Competition Act 1998; by article 24(b) of S.I. 1999/506; by sections 3(2) and 37(1), (2), (3)(a) and (b), (4) and (5) of the Utilities Act 2000; and by section 278(1) of, and paragraph 20(1), (5)(a) and (b) of Schedule 25 to, the Enterprise Act 2002. Section 14 was amended by article 24(b) of S.I. 1999/506; and by sections 3(2) and 38(1) to (5) of the Utilities Act 2000. Section 14A was inserted by section 39 of the Utilities Act 2000 and subsequently amended by section 278 of, and paragraph 20(1), (6)(a) and (b) of Schedule 25 and Schedule 26 to, the Enterprise Act 2002.
  - (b) 2000 c. 27. Section 104 was amended by section 53(1)(a) and (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 Part 1 of the Schedule to, S.I. 2005/3172.
  - (c) Section 11 was amended by sections 3(2) and 34(1) and (2) of the Utilities Act 2000 (c. 27). Section 11A was inserted by section 35 of the Utilities Act 2000 and subsequently amended by section 197(8) and (9) and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).
  - (d) By virtue of regulation 44(9) of these Regulations references to sections 11A to 11H and Schedule 5A are references to those sections and Schedule as amended or inserted by these Regulations. Section 11A is amended by regulation 44(4) to (6) of these Regulations. Section 11B is inserted by regulation 43(7) of these Regulations. Sections 11C to 11H are inserted by regulation 43(8) of these Regulations. Schedule 5A is inserted by regulation 43(9) of these Regulations.

(8) Any representations or objections made in accordance with section 11(2)(c) or 11A(3)(c) of the 1989 Act in connection with the notice before the operative date are to be treated on and after the operative date as if they were representations made in accordance with section 11A(2)(d) of that Act.

(9) The following references to provisions of the 1989 Act are to those provisions as amended or inserted by this Part of these Regulations—

- (a) the references in paragraph (7);
- (b) the reference to section 11A(2)(d) in paragraph (8).

(10) In this regulation—

- (a) “the Authority” means the Gas and Electricity Markets Authority;
- (b) “the Commission” means the Competition Commission;
- (c) “the operative date” means the date on which these Regulations come into force;
- (d) “the 1989 Act” means the Electricity Act 1989;
- (e) “the 2000 Act” means the Utilities Act 2000.

### **Minor and consequential amendments**

**45.**—(1) In section 10(4) of the Electricity Act 1989 (duty to copy notice and comply with direction)(a) omit “, 11”.

(2) In paragraph 19A(9) of Schedule 7 to the Competition Act 1998 (manner in which general functions are to be carried out)(b), in the definition of “special reference group”—

- (a) in paragraph (d) omit “24 or”; and
- (b) in paragraph (e) omit “12 or”.

(3) In section 104(1) of the Utilities Act 2000 (specialist members of the Competition Commission)(c)—

- (a) in paragraph (a), for “section 24, 26A or” substitute “any of sections 23B to 23G(d) or section”; and
- (b) in paragraph (b), for “section 12, 14A or” substitute “any of sections 11C to 11H or section”.

## **PART 10**

### **Miscellaneous provisions**

#### **Amendment of section 19E of the Gas Act 1986**

**46.** In section 19E of the Gas Act 1986 (sections 19A to 19D: supplemental)(e)—

- (a) omit the definitions of “LNG import facility”, “main commercial conditions”, “new facility”, “owner”, “storage”, “storage facility” and “treatment”;

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(a) 1989 c. 29.

(b) 1998 c. 41. Paragraph 19A was inserted by section 187(3) of the Enterprise Act 2002 (c. 40). The definition of ‘special reference group’ was amended by section 406(1) and (7) of, and paragraph 153(1) and (3) of Schedule 17, and Schedule 19(1) to, the Communications Act 2003 (c. 21); by section 1010(1) of, and paragraph 54 of Schedule 8 to, the Water Act 2003 (c. 37); and by article 11 of, and paragraph 3(a)(i) and (ii) of the Schedule to, S.I. 2005/3172. Other amendments have been made to Schedule 7 that are not relevant for these purposes.

(c) Section 104 was amended by section 53(1)(a) and (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 Part 1 of the Schedule to, S.I. 2005/3172.

(d) Sections 23B to 23G of the Gas Act 1986 (c. 44) are inserted by regulation 41(7) of these Regulations.

(e) 1986 c. 44. Section 19E was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Relevant amendments have been made by section 3(2) of the Utilities Act 2000 (c. 27); section 1177 of, and paragraph 202 of Part 2 of Schedule 1 to, the Corporation Tax Act 2010 (c. 4); and regulation 2(2) of, and paragraph 6(b) to (k) of Schedule 2 to, S.I. 2004/2043.

- (b) in the definition of “significant transaction”, in paragraph (a) for “liquid gas treated in an LNG import facility” substitute “treated in an LNG import or export facility”; and
- (c) omit subsection (4).

**Amendment of section 48 of the Gas Act 1986**

47.—(1) Section 48 of the Gas Act 1986 (interpretation of Part 1 and savings)(a) is amended as follows.

(2) In subsection (1)—

(a) for the definition of “owner” substitute—

““owner”—

- (a) in relation to any premises or other property, includes a lessee;
  - (b) in relation to a storage facility or an LNG import or export facility, includes a person occupying or having control of the facility,
- and cognate expressions shall be construed accordingly;”;

(b) insert at the appropriate places—

““the 2010 Amending Decision” means 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(b);”;

““the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;”;

““the Agency Regulation” means Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators(c);”;

““associated undertaking”, in relation to a person (“person A”), means a person who—

- (a) has control of person A; or
- (b) is under the control of a person who controls person A,

and sections 450 and 451(1) to (3) of the Corporation Tax Act 2010(d) (meaning of “control”) apply, with any necessary modifications, for the purposes of this definition as they apply for the purposes of Part 10 of that Act;”;

““designated regulatory authority” means an authority designated in accordance with Article 39 of the Gas Directive;”;

““designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A of the Utilities Act 2000(e);”;

““distribution exemption holder” means a person who—

- (a) is carrying on an activity such as is mentioned in section 5(1)(a), the whole or part of which is also an activity of distribution within the meaning given by Article 2(5) of the Gas Directive; and
- (b) is authorised to carry on that activity by an exemption;”;

““exempt distribution system” means a distribution system operated or controlled by a distribution exemption holder who is covered by an exemption granted to it in relation to that system;”

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(a) Relevant amendments to section 48 of the Gas Act 1986 were made by section 10(1) of, and paragraph 54(1)(f) of Schedule 3 to, the Gas Act 1995 (c. 45). Other amendments have been made that are not relevant for these purposes.

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

(c) OJ No L 211, 14.08.2009, p. 1.

(d) 2010 c. 4.

(e) 2000 c. 27.

“the Gas 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(a);”;

“the Gas 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(b), as amended by the 2010 Amending Decision;”;

“gas undertaking” has the meaning given by section 8Q(c);”;

“LNG import or export facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964)(d) for—

- (a) the importation into Great Britain and regasification of liquid gas prior to its conveyance to a pipeline system operated by the holder of a licence under section 7 or section 7ZA, or the liquefaction of gas for the purpose of its export from Great Britain; and
- (b) any activity, including temporary storage of gas or liquid gas, which is necessary for that importation, regasification or liquefaction;”;

“main commercial conditions” means—

- (a) in the case of a storage facility, such information as would enable a potential applicant for a right to have gas or liquid gas stored in the facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) in the case of an LNG import or export facility, the terms setting out the cost or the method of determining the cost of acquiring the right to have gas or liquid gas treated in the facility;
- (c) the other significant terms on which such a right as is mentioned in paragraph (a) or (b) would be granted; and
- (d) such additional information as the Authority may from time to time specify by notice;”;

“relevant producer or supplier” has the meaning given by section 8Q;”;

“senior officer” means—

- (a) in relation to a company, a director;
- (b) in relation to a partnership, a partner;
- (c) in any other case, a person holding a position equivalent to that of a director or partner;”;

“storage”, in relation to liquid gas in a storage facility, includes any liquefaction of gas or regasification of liquid gas ancillary to the storage of liquid gas, and “stored”, in relation to liquid gas in a storage facility, shall be construed accordingly;”;

“storage facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for either or both of the following—

- (a) the storage in porous strata, or in cavities in strata, of gas which has been, or will be, conveyed in a pipeline system operated by the holder of a licence under section 7 or 7ZA;
- (b) the storage of liquid gas which, if regasified, would be suitable for conveyance through pipes to premises in accordance with a licence under section 7,

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

(b) OJ No L 211, 14.08.2009, p. 36.

(c) Inserted by regulation 4 of these Regulations.

(d) 1964 c. 29. Areas have been designated under this section by S.I. 1987/1265, 2000/3062 and 2001/3670.

but the reference in paragraph (b) to the storage of liquid gas does not include such temporary storage as is mentioned in the definition of “LNG import or export facility”;

“supply exemption holder” means a person who—

- (a) is carrying on the activity mentioned in section 5(1)(b); and
- (b) is authorised to carry on that activity by an exemption;

“treatment”, in relation to gas or liquid gas in an LNG import or export facility, includes importation, regasification, liquefaction and temporary storage, and “treat” shall be construed accordingly.

(3) After subsection (1) insert—

“(1ZA) Until section 75 of the Utilities Act 2000 comes into force the references to an exemption in the definitions in subsection (1) above of “distribution exemption holder”, “exempt distribution system” and “supply exemption holder” to an exemption include an exception under Schedule 2A(a).”

### **Amendment of section 64 of the Electricity Act 1989**

**48.** In section 64(1) of the Electricity Act 1989 (interpretation of Part 1) insert at the appropriate places—

“the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;

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

“designated regulatory authority” means an authority designated in accordance with Article 35 of the Electricity Directive;

“designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A of the Utilities Act 2000;

“distribution exemption holder” means a person who—

- (a) is distributing electricity for the purpose mentioned in section 4(1)(bb); and
- (b) is authorised to do so by an exemption;

“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;

“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;

“electricity undertaking” has the meaning given by section 100;

“exempt distribution system” means a distribution system operated or controlled by a distribution exemption holder who is covered by an exemption granted to it in relation to that system;

“senior officer” means—

- (a) in relation to a company, a director;
- (b) in relation to a partnership, a partner;

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(a) 1986 c. 44. Schedule 2A was inserted by section 3(2) of, and Schedule 1 to, the Gas Act 1995; and subsequently repealed by section 75 of the Utilities Act 2000 (c. 27) (the commencement date for section 75 is yet to be appointed in accordance with section 110(2) of the Utilities Act 2000).

(b) OJ No L 211, 14.08.2009, p. 55.

(c) OJ No L 211, 14.08.2009, p. 15.

(c) in any other case, a person holding a position equivalent to that of a director or partner;”;

““supply exemption holder” means a person who—

(a) is carrying on the activity mentioned in section 4(1)(c); and

(b) is authorised to do so by an exemption;”;

““regulated person” has the meaning given by section 25(8);”;

““relevant producer or supplier” has the meaning given by section 100;”.

### **Modifications of standard conditions of gas licences**

**49.**—(1) Schedule 7 to these Regulations (which modifies the standard conditions of transporter, interconnector and supply licences granted under Part 1 of the Gas Act 1986(a)) has effect.

(2) In section 81(2) of the Utilities Act 2000 (standard conditions of gas transporter, supply and shipping licences)(b), after “made” insert “under section 2(2) of the European Communities Act 1972,”.

(3) In section 150(5) of the Energy Act 2004 (standard conditions of gas interconnector licences)(c), after “made” insert “under section 2(2) of the European Communities Act 1972,”.

### **Modifications of standard conditions of electricity licences**

**50.**—(1) Schedule 8 to these Regulations (which modifies the standard conditions of transmission, distribution, supply and interconnector licences granted under Part 1 of the Electricity Act 1989(d)) has effect.

(2) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity generation, distribution and supply licences)(e), before paragraph (a) insert—

“(za) under section 2(2) of the European Communities Act 1972,”.

(3) In section 137(3) of the Energy Act 2004 (standard conditions of electricity transmission licences), before paragraph (a) insert—

“(za) under section 2(2) of the European Communities Act 1972,”.

(4) In section 146(5) of the Energy Act 2004 (standard conditions of electricity interconnector licences), after “made” insert “under section 2(2) of the European Communities Act 1972,”.

### **Review**

**51.**—(1) Before the end of each review period, the Secretary of State must—

(a) carry out a review of these Regulations,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

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(a) 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). Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004 (c. 20). Section 7A(1) was inserted by section 6(1) of the Gas Act 1995 and a relevant amendment made by section 3(2) of the Utilities Act 2000.

(b) 2000 c. 27. Section 81(2) was amended by sections 107 and 168(10) of, and paragraphs 12 and 14 of Schedule 5 to, the Energy Act 2004 (c. 20); and was subsequently amended by section 35 of, and paragraphs 11 and 14 of the Schedule to, the Energy Act 2010 (c. 27).

(c) 2004 c. 20.

(d) 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). Section 8A was inserted by section 33 of the Utilities Act 2000 and amended by section 137(5) and (6) and section 146(6) of the Energy Act 2004.

(e) Section 33(1) was amended by sections 143(1) and 197(9) of, paragraphs 20(a) and (c) of Schedule 19 to, and paragraph 20(b) of part 1 of Schedule 23 to, the Energy Act 2004 (c. 20). Subsection (1) was subsequently amended by section 7(7) of the Climate Change and Sustainable Energy Act 2006 (c. 19); section 107 and 108 of, paragraphs 12 and 13(b) of Schedule 5 to, and paragraphs 12 and 13(b) of Schedule 6 to, the Energy Act 2008 (c. 32); and section 35 of, and paragraphs 11 and 12 of the Schedule to, the Energy Act 2010 (c. 27).

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Third Package and ITC Regulation (relevant provisions of which are implemented by means of these Regulations) are implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which these Regulations come into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

(6) In this regulation—

“2010 Amending Decision” means 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 network(a);

“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(b);

“Third Package” means—

- (a) Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators(c);
- (b) 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(d);
- (c) 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(e), as amended by the 2010 Amending Decision;
- (d) 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(f);
- (e) 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(g).

*Name*

[Minister’s title]

Date

Department of Energy and Climate Change

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(a) OJ No L 293, 11.11.2010, p. 67.  
(b) OJ No L 250, 24.09.2010, p. 5.  
(c) OJ No L 211, 14.08.2009, p. 1.  
(d) OJ No L 211, 14.08.2009, p. 15.  
(e) OJ No L 211, 14.08.2009, p. 36.  
(f) OJ No L 211, 14.08.2009, p. 55.  
(g) OJ No L 211, 14.08.2009, p. 94.



## 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 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(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)(a) 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 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

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(a) 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.

- (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(a).

(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
- (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.

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

(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)(a); 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(b);
- “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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(a) 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.

(b) 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(a);
  - (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(b).

## 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—

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(a) 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.

(b) 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 subparagraph (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 subparagraph (3), (4) or (5) (whichever is applicable).

(2) But the supply exemption holder is required to specify the matters mentioned in subparagraphs (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(a) 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(b) 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—

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

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

- (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
  - (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)(a) 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)(b) were to paragraph 8(3)(a).

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

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(a) 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.

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

*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(a);
- (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(b).

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(a) 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.

(b) 2006 c. 46. Amendments have been made that are not relevant for these purposes.

## 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 subparagraph (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 subparagraph (3), (4) or (5) (whichever is applicable).

(2) But the supply exemption holder is required to specify the matters mentioned in subparagraphs (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(a) 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(b) 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.”

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(a) 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.

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

## 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—
  - (a) section 33DB(a);
  - (b) section 33F(b);
  - (c) in the Consumers, Estate Agents and Redress Act 2007(c)—
    - (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)(d).

**Gas transporters**

2. The following are relevant provisions in relation to all holders of a licence under section 7(e)—
  - (a) section 9(1), (1A) and (2)(f);
  - (b) section 10(2), (3) and (14)(g);
  - (c) section 10A(1)(h);
  - (d) section 11(2)(i);
  - (e) section 12(1) and (6)(j);
  - (f) section 16(10)(k);

- 
- (a) 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).
  - (b) 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.
  - (c) 2007 c. 17.
  - (d) 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.
  - (e) 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).
  - (f) 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).
  - (g) 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.
  - (h) Section 10A was inserted by section 77(1) of the Utilities Act 2000 (c. 27).
  - (i) 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).
  - (j) 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).
  - (k) Section 16 was inserted by section 101 of the Utilities Act 2000 (c. 27).



- (g) section 18(11)(a);
- (h) section 22A(1)(b);
- (i) section 27A(5)(c);
- (j) section 33BA(d);
- (k) section 33C(e);
- (l) section 33D(f);
- (m) paragraphs 3, 6, 15, 16 and 28(2) of Schedule 2B(g);
- (n) sections 26 to 29 of the Energy Act 2010 (adjustment of charges to help disadvantaged groups of customers)(h).

### 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(i) and is required to be certified under section 8F(j)—

- (a) section 8C(k);
- (b) section 8D(4) and (6)(l);
- (c) section 8L(2) and (4)(m);
- (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),

- 
- (a) 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.
  - (b) 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.
  - (c) 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.
  - (d) Section 33BA was inserted by section 91 of the Utilities Act 2000 (c. 27).
  - (e) 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).
  - (f) Section 33D was substituted by section 94 of the Utilities Act 2000 (c. 27).
  - (g) 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.
  - (h) 2010 c. 27.
  - (i) Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004 (c. 20).
  - (j) Section 8F is inserted by regulation 4 of these Regulations.
  - (k) Section 8C is inserted by regulation 4 of these Regulations.
  - (l) Section 8D is inserted by regulation 4 of these Regulations.
  - (m) Section 8L is inserted by regulation 4 of these Regulations.

- (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),
  - (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(a)—

- (a) section 27A(6)(b);
- (b) sections 33B(c) and 33C;
- (c) paragraph 3(4) of Schedule 2AA(d);
- (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);

- 
- (a) 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).
  - (b) 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).
  - (c) 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).
  - (d) Schedule 2AA is inserted by regulation 20(3) of, and Schedule 1 to, these Regulations.

- (h) paragraph 9;
- (i) paragraph 13(2);
- (j) paragraph 14(5), (6), (9) and (12);
- (k) paragraph 15(1).

### **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(a)—
  - (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)(b);
- (b) section 11A(2)(c);
- (c) section 11C(d);
- (d) section 19B(1), (3), (3A), (3B), (7) and (11)(e);
- (e) section 19E(2) and (3)(f);
- (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(g);
- (c) section 11C;

- 
- (a) Schedule 2AB is inserted by regulation 20(3) of, and Schedule 1 to, these Regulations.
  - (b) Section 8R is inserted by regulation 6 of these Regulations.
  - (c) Section 11A is inserted by regulation 7(2) of these Regulations.
  - (d) Section 11C is inserted by regulation 7(2) of these Regulations.
  - (e) 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.
  - (f) 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.
  - (g) Section 11B is inserted by regulation 7(2) of these Regulations.

- (d) section 19D(1), (2A), (2B), (3), (7) and (11)(a);
- (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)(b);
- (d) section 10J(3) and (4) of that Act (duties concerning supply of information for review of certification as to independence)(c);
- (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.”

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(a) 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.

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

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

Obligations enforceable as relevant requirements under the Electricity  
Act 1989

## “SCHEDULE 6A

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(a);
  - (b) section 42C(b);
  - (c) section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (directions to comply with requirements under section 24 of that Act)(c);
  - (d) in the Electricity Regulation(d)—
    - (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(e);
  - (b) sections 26 to 29 of the Energy Act 2010 (adjustment of charges to help disadvantaged groups of customers)(f).

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(a) 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.

(b) 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) 2007 c. 17.

(d) OJ No L 211, 14.08.2009, p. 15.

(e) 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).

(f) 2010 c. 27.

### 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(a)—

- (a) section 10A(b);
- (b) section 10B(4) and (6)(c);
- (c) section 10J(2) and (4)(d);
- (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),
  - (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)(e);
- (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;

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(a) Section 10D is inserted by regulation 5 of these Regulations.  
(b) Section 10A is inserted by regulation 5 of these Regulations.  
(c) Section 10B is inserted by regulation 5 of these Regulations.  
(d) Section 10J is inserted by regulation 5 of these Regulations.  
(e) OJ No L 250, 24.09.2010, p. 5.

- (b) sections 16 to 23(a);
- (c) section 40A(b);
- (d) sections 42 and 42A(c);
- (e) section 42AB(d);
- (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—

- (a) section 40(e);
- (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(f);
- (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;

- 
- (a) 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.
  - (b) Section 40A was inserted by section 55 of the Utilities Act 2000 (c. 27).
  - (c) 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).
  - (d) 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).
  - (e) 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).
  - (f) Schedule 2ZA is inserted by regulation 21(3) of, and Schedule 2 to, these Regulations.

- (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(a)—
  - (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.

### **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)(b);
- (d) section 8L(3) and (4) of that Act (duties concerning supply of information for review of certification as to independence)(c);
- (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.”

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(a) Schedule 2ZB is inserted by regulation 21(3) of, and Schedule 2 to, these Regulations.  
 (b) 1986 c. 44. Section 8D is inserted by regulation 4 of these Regulations.  
 (c) Section is inserted by regulation 4 of these Regulations.



## 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(a) 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)(b), 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 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

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

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

- (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(a).

#### *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 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.

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

(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)(a) 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(b), 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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(a) 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.  
(b) Section 23F is inserted by regulation 41(7) 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 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<sup>(a)</sup>.
- (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<sup>(b)</sup> 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)<sup>(c)</sup>, 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—

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

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

<sup>(c)</sup> Section 11A(7) is inserted by regulation 43(6) of these Regulations.



- (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 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).
- (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(a).

*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;

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

- (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.

*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)(a) 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(b), 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—

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(a) 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.

(b) Section 11G is inserted by regulation 43(8) of these Regulations.

- (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 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(a).
- (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)(b);
- “gas interconnector licence” means a licence granted under section 7ZA of the Gas Act 1986 (licences for operation of gas interconnectors)(c);
- “gas supply licence” means a licence granted under section 7A(1) of the Gas Act 1986 (licensing of gas suppliers)(d).

#### 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—
  - ““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(e);”;
- (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

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(a) 1971 c. 80.  
(b) 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).  
(c) Section 7ZA was inserted by section 149(1) and (6) of the Energy Act 2004 (c. 20).  
(d) 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).  
(e) OJ No L 211, 14.08.2009, p. 94.

networks and repealing Regulation 2005/1775/EC(a), 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(b);”.

- (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.”;
  - (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”;

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(a) OJ No L 211, 14.08.2009, p. 36.

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



- (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(a);”;

(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**”;

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

- (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;

“**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 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(a);”;

- (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 (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(b);”;

- (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:

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

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



- (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.”;
- (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**

**Condition 15. Not Used**

**Condition 16. Not Used**

**Condition 17. Not Used**

**Condition 18. Not Used**

**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 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.”.

## 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)(a);

“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(b).”;

(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(c).”;

(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(d).”;

(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

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(a) 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).

(b) OJ No L 211, 14.08.2009, p. 1.

(c) OJ No L 211, 14.08.2009, p. 55.

(d) OJ No L 211, 14.08.2009, p. 15.

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—

**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(a).”;

(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(b).”.

(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”.

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(a) OJ No L 211, 14.08.2009, p. 55.

(b) OJ No L 211, 14.08.2009, p. 15.

(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—

“**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(a) 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;

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(a) 2006 c. 46. Amendments have been made that are not relevant for these purposes.

- (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.

### **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 (c); 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(a);”;

- (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(b);”.

(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—

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(a) OJ No L 211, 14.08.2009, p. 55.

(b) OJ No L 211, 14.08.2009, p. 15.

## **“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.

**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:
  - (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**(a)**;

“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—

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**(a)** OJ No L 211, 14.08.2009, p. 1.

“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(a);”;

- (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(b);”;

- (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;  
(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.”;

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(a) OJ No L 211, 14.08.2009, p. 55.

(b) OJ No L 211, 14.08.2009, p. 15.

- (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) it’s 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.”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 2(2) of the European Communities Act 1972. They make amendments to the electricity and gas regulatory regimes in Great Britain in order to implement, and address matters arising out of or related to, the requirements of a package of European energy measures collectively referred to as the “Third Package”.

The Third Package comprises 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 repealing Directive 2003/54/EC (“the Electricity Directive”); 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 (“the Gas Directive”); Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (“the Agency Regulation”); 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 (“the Electricity Regulation”); and Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 concerning conditions for access to the natural gas transmission networks and repealing Regulation 2005/1775/EC (“the Gas Regulation”) (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).

These Regulations also provide for the enforcement, by the Gas and Electricity Markets Authority (“the Authority”), of certain provisions of 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.

In Part 1, regulation 1 covers the citation, commencement and extent of the Regulations. With the exception of the provision in Regulation 3 described below, the Regulations do not extend to Northern Ireland. Regulation 2 contains the interpretation provision for the Regulations.

In Part 2, regulation 3 inserts new section 19A into the Consumers, Estate Agents and Redress Act 2007, which requires the National Consumer Council to prepare and publish guidance for energy consumers, and a summary of that guidance, addressing the matters in the energy consumer checklist published by the European Commission in accordance with the Gas and Electricity Directives.

In Part 3, regulation 4 inserts new sections 8C to 8Q into the Gas Act 1986 (“the 1986 Act”) introducing a new scheme for the certification of the independence of persons who are gas transmission system operators within the meaning of the Gas Directive. Regulation 5 inserts new sections 10A to 10O into the Electricity Act 1989 (“the 1989 Act”) to make equivalent provision in accordance with the Electricity Directive.

New section 8C of the 1986 Act requires any licensed gas transporter who carries out the activity of transmission of gas or any person who participates in the operation of a gas interconnector, to be certified by the Authority. New section 10A of the 1989 Act requires this where any person holds an electricity transmission licence or participates in the operation of an electricity interconnector.

New sections 8D to 8N of the 1986 Act, and new sections 10B to 10L of the 1989 Act, make provision regarding the procedure in connection with applications. This includes particular reporting requirements in respect of security of gas supplies in the United Kingdom and the European Economic Area (“EEA”) where a person connected with a country outside the EEA applies for certification after 3 March 2013. The Authority’s preliminary certification decision must be notified to the European Commission. The Gas Regulation and Electricity Regulation (“the EU Regulations”) require that the Authority’s final decision (which is taken under Article 3(2) of the EU Regulations) must take utmost account of the European Commission’s opinion as



to whether certification would be compatible with the Gas Directive, or the Electricity Directive, as applicable.

New section 8G of the 1986 Act identifies the grounds on which a person may be certified, namely that the person complies with section 8H (applicant is ownership unbundled), Article 9(9) of the Gas Directive (alternative arrangements ensure the independence of the applicant), Article 14 of the Gas Directive (applicant has nominated an independent system operator for designation), Chapter 4 of the Gas Directive (applicant is an independent transmission operator) or on the basis that the person benefits from an exemption granted in accordance with Article 36 of the Gas Directive or is in an equivalent position. New section 10E of the 1989 Act makes equivalent provision with respect to compliance with the Electricity Directive except that it does not permit certification on the ground that the applicant is an independent transmission operator.

New section 8J of the 1986 Act, and new section 10H of the 1989 Act, designate as a transmission system operator for the purposes of the Gas Directive or the Electricity Directive (as applicable) any person certified under new section 8G of the 1986 Act or section 10E of the 1989 Act, unless certification was granted on the basis that an independent system operator has been nominated. In that case, the independent system operator is designated for this purpose.

New sections 8O and 8P of the 1986 Act, and sections 10M and 10N of the 1989 Act, prohibit the exercise of shareholder rights and rights of appointment in specified cases and make these voidable on an application to the court.

In Part 4, Regulations 6 to 15 make amendments to the 1986 Act relating to the operation of gas storage facilities and LNG import or export facilities (“LNG facilities”).

Regulation 6 inserts new section 8R, which imposes requirements relating to independence on the owners of gas storage facilities. Regulation 6 also inserts new section 8S, which enables the Authority to grant exemptions from new section 8R, and from section 19B, in relation to minor gas storage facilities.

Regulation 7 inserts new sections 11A to 11C. New sections 11A and 11C impose new duties on owners of gas storage and LNG facilities regarding the operation of such facilities and the treatment of information. New section 11B replicates the duties of owners of LNG facilities regarding the provision of information to the Authority previously imposed by section 19DA and repeals that section.

Regulation 8 amends section 19A (exemptions in respect of gas storage facilities) to require the Authority to comply with additional procedural requirements granting an exemption under that section, including a requirement to impose conditions regarding the use of exempt facilities, and to repeal the giving of exemptions in respect of minor facilities (now provided for by new section 8S). Regulation 9 inserts new section 19AA which imposes new procedural requirements relating to review by the European Commission of exemptions given under section 19A and the modification and revocation of such exemptions.

Regulation 10 amends section 19B (third party access to gas storage facilities) to require owners of gas storage facilities to consult when preparing the main commercial conditions relating to the use of their facility.

Regulation 11 amends section 19C (exemptions in respect of LNG facilities) and regulation 12 inserts new section 19CA in line with the amendments made by regulations 9 and 10 in respect of gas storage facilities, with the exception of the amendment in regulation 8 in respect of minor facility exemptions, as such exemptions are not available in respect of LNG facilities.

Regulation 13 amends section 19D (third party access to LNG facilities) to address, in particular, matters arising from the insertion of new section 19DZA (take or pay exemptions for LNG facilities).

Regulation 14 inserts new section 19DZA which enables the Authority to grant exemptions from section 19D where granting third party access to an LNG facility would cause the owner

significant difficulties because of take-or-pay commitments under one or more gas-purchase contracts.

Regulation 15 inserts new section 19DB (capacity allocation in exempt gas storage and LNG facilities), which requires applications for an exemption under section 19A or 19C to specify criteria relating to the use of the gas storage or LNG facilities by others and prevents the Authority from giving such an exemption if the criteria do not satisfy the conditions listed in section 19DB.

Regulation 16 repeals sections 17C to 17E of the Petroleum Act 1998 (“the 1998 Act”), relating to the use of offshore gas storage facilities and exemptions from the requirement to give access to those facilities, due to the extension (by virtue of regulation 48) of the regime in the 1986 Act to gas storage facilities located offshore, i.e. in the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964. It also makes consequential amendments to section 17H of the 1998 Act (enforcement of certain duties in relation to access to pipelines and offshore gas storage facilities).

Regulation 17 makes transitional provision in relation to exemptions in respect of gas storage and LNG facilities granted under provisions repealed by these Regulations.

In Part 5, regulation 18 amends section 7 of the 1986 Act to restrict the granting of a gas transporter licence to a person who is a gas producer. Regulation 19 amends section 6 of the 1989 Act to prevent the same person holding both an electricity distribution licence and an electricity generation or supply licence.

In Part 6, regulation 20 makes amendments to the 1986 Act, and regulation 21 makes amendments to the 1989 Act, in order to impose new duties on persons exempt from the need for a gas transporter licence or gas supply licence, and persons exempt from the need for a distribution licence or electricity supply licence, respectively.

Regulation 20(2) inserts new sections 6B and 6C into the 1986 Act, which introduce new Schedules 2AA and 2AB respectively, to that Act. Regulation 21(2) inserts new sections 5A and 5B into the 1989 Act, which introduce new Schedules 2ZA and 2ZB respectively, to that Act.

New Schedule 2AA to the 1986 Act and new Schedule 2ZA to the 1989 Act impose new duties on persons who are exempt from the requirement to hold a gas transporter licence, or an electricity distribution licence, respectively. These include a duty to give third party suppliers access to licence-exempt networks in order to enable customers connected to those networks to switch supplier; arrangements for connection in the context of the provision of such access; a duty to submit methodologies for use of system charges to the Authority for approval; requirements relating to the preparation and separation of distribution accounts; and provisions relating to closed distribution systems.

New Schedule 2AB to the 1986 Act and new Schedule 2ZB to the 1989 Act impose new duties on persons exempt from the need for a gas or electricity supply licence, respectively. These include a duty to enable customers, free of charge, to switch suppliers within three weeks (unless the customer requests otherwise or conditions in the contract with the existing supplier prevent this) and duties regarding the conditions of customer contracts and the provision of the energy consumer guidance (published under new section 19A of the Consumers, Estate Agents and Redress Act 2007 inserted by regulation 3) and other information to customers. The Schedules also provide for the Authority to resolve disputes relating to obligations in the Schedules.

Part 7 of the Regulations makes amendments to the 1986 and 1989 Acts and to the Utilities Act 2000 (“the 2000 Act”) relating to the designation, independence, objectives, powers and duties of the regulatory authority for Great Britain.

Regulation 22 inserts new section 3A into the 2000 Act in order to designate the Authority as the regulatory authority for Great Britain for the purposes of the Third Package and insert independence requirements in respect of the Authority’s staff in the context of that role. It also imposes duties on the Authority to keep the regulatory authority for Northern Ireland informed, and to have regard to its representations, in relation to meetings and decisions of the Agency for the Cooperation of Energy Regulators (“the Agency”), if a representative of the Authority is

appointed as the United Kingdom representative on the Board of Regulators of the Agency, under the Agency Regulation.

Regulation 23 inserts new section 5ZA into the 2000 Act, which requires the Authority to prepare and publish an annual report on the activities it has carried out in the preceding 12 months as designated regulatory authority for Great Britain.

Regulation 24 makes amendments to Schedule 1 to the 2000 Act in order to impose independence requirements in respect of the Authority's board members (of a nature similar to those relating to staff members contained in new section 3A), and to amend the provisions setting out the rules for the appointment and removal of the Authority's board members.

Regulation 25 inserts new definitions into section 106(1) of the 2000 Act, which relate to the amendments made by regulations 22 to 24.

Regulations 26 and 27 make amendments to section 4AA(1A) of the 1986 Act and of section 3A(1A) of the 1989 Act respectively, in order to specify that, when the Authority is carrying out its functions as regulatory authority for Great Britain, its principal objective of protecting the interests of existing and future consumers includes the interests of those consumers in the Authority's fulfilment of particular objectives, set out in the Electricity and Gas Directives.

Regulations 28 and 29 make amendments to sections 27B to 27D of the 1986 Act and sections 44B to 44D of the 1989 Act respectively, in order to extend and rename the dispute resolution procedure put in place by the Gas and Electricity (Dispute Resolution) Regulations 2009 (S.I. 2009/1349). The combined effect of the amendments is that, in addition to the categories of disputes currently covered, the procedure will cover disputes arising from written complaints against persons exempt from the need for a distribution licence, owners of gas storage facilities, owners of LNG import or export facilities and independent system operators. (Disputes arising from written complaints against independent gas transmission operators will be covered by the reference in section 27B(1)(a)(i) to complaints made against gas transporters.) In order to update the title of the procedures to reflect references in the Gas and Electricity Directives, references in the 1986 Act to an "Article 25 dispute" become references to an "Article 41 dispute", and references in the 1989 Act to an "Article 23 dispute" become references to an "Article 37 dispute".

Regulations 30 and 31 make amendments to sections 34 and 47 of the 1986 and 1989 Acts (general functions) respectively. They also insert new sections 34A and 47A into the 1986 and 1989 Acts respectively, in order to impose new monitoring duties on the Authority, when the Authority is carrying out its functions as regulatory authority for Great Britain, and to ensure that the Authority has the necessary information gathering powers in relation to those duties. By virtue of new sections 34A(4) and 47A(4), the enforcement provisions contained in sections 28 to 30 of the 1986 Act, and sections 25 to 27 of the 1989 Act respectively, have effect in relation to information gathering notices served by the Authority under new sections 34A(2) and 47A(2). New sections 34A(5) and 47A(5) of the 1986 and 1989 Acts respectively contain a new criminal offence (triable either summarily or on indictment) of intentionally altering, suppressing or destroying any document or record of information requested by the Authority under an information gathering notice served under the powers mentioned above.

Regulations 32 and 33 insert new sections 4C and 3E into the 1986 and 1989 Acts respectively, for the purpose of imposing a duty on the Authority to carry out its functions under Part 1 of those Acts in a manner that it considers is best calculated to ensure compliance with any binding decisions of the Agency or European Commission under the Third Package.

Regulations 34 and 35 insert new sections 4D and 3F into the 1986 and 1989 Acts respectively, for the purpose of imposing new duties on the Authority to consult and cooperate with the Agency and the designated regulatory authorities of other Member States; provide the Agency with information; and consult specified national authorities, when carrying out its functions as regulatory authority for Great Britain.

Regulation 36 makes an amendment to section 105 (general restrictions on disclosure of information) of, and inserts new section 105A into, the 2000 Act. This has the combined effect of

imposing a new duty of confidentiality on the Authority in respect of any information provided to it by the regulatory authority of another Member State or of Northern Ireland, and describing the relationship between that new duty and the general restrictions under section 105.

In Part 8, regulations 37 to 40 make amendments to the 1986 and 1989 Acts, and to the Electricity and Gas (Determination of Penalties) Order 2002 (S.I. 2002/1111) (“the 2002 Order”) for the purpose of enabling the Authority to enforce requirements under certain provisions (“relevant requirements”) against regulated persons through civil proceedings under sections 28 to 30 of the 1986 Act and sections 25 to 27 of the 1989 Act. Regulation 37 inserts a definition of a regulated person for gas purposes in, and inserts the Schedule at Schedule 3 (which sets out the obligations enforceable as relevant requirements) into, the 1986 Act. Regulation 38 makes saving provision in respect of proceedings commenced under section 22 of the 1986 Act prior to the entry into force of these Regulations. Regulation 39 inserts a definition of a regulated person for electricity purposes in, and inserts the Schedule at Schedule 4 (which sets out the obligations enforceable as relevant requirements) into, the 1989 Act. Regulation 40 amends the 2002 Order in order to ensure that the provisions contained in the Order extend to all persons covered by the enforcement regimes in the 1986 and 1989 Acts, as amended by the Regulations.

Part 9 of the Regulations amends the existing powers of the Authority to modify the licence conditions of gas and electricity licensees. The Regulations replace the existing powers and procedures in the 1986 and 1989 Acts, and provide a right of appeal for specified parties to appeal to the Competition Commission following a decision by the Authority to modify the conditions of a gas or electricity licence.

Regulation 41(3) to (5) modifies section 23 of the 1986 Act (modification of conditions of licences). In particular, the Authority may modify the standard and special conditions of a gas licence issued under section 7, 7ZA or 7A(1) or (2) of that Act, including by making consequential amendments to any such licence, following consultation on the proposed amendments, and having considered any responses to that consultation duly made.

Regulation 41(6) inserts a new section 23A into the 1986 Act, making supplementary provision to section 23. In particular, where a standard condition is modified, the Authority is under a duty to make, and publish, that modification in the standard conditions of future licences. Such modifications have effect subject to the giving of a direction by the Competition Commission under paragraph 2 of new Schedule 4A to the Act (directing the suspension of a modification decision by the Authority pending the determination of an appeal in relation to that modification decision).

Regulation 41(7) inserts new sections 23B to 23G, into the 1986 Act. These sections specify the procedure for parties to appeal to the Competition Commission against a decision of the Authority to amend the conditions of a licence under section 23.

Regulation 41(8) inserts new Schedule 4A into the 1986 Act (procedure on appeal under section 23B). Schedule 5 of the Regulations incorporates this new Schedule. Schedule 4A provides the procedure for making an application for permission to appeal, including the process for any application for the suspension of a decision to modify licence conditions prior to the determination of an appeal, and the powers of the Competition Commission, including powers to require evidence under oath and require the production of specified documentation.

Regulation 41(9) repeals sections 24 to 26A of the 1986 Act (powers available on a reference to the Competition Commission).

Regulation 42 makes transitional provision in relation to existing references, consultation commenced by the Authority under section 23 of the 1986 Act and membership of the Competition Commission in relation to such references.

Regulation 43(2) repeals section 11 of the 1989 Act (modification by agreement).

Regulation 43(4) to (6) amends section 11A of the 1989 Act (modification of conditions of licences). In particular, the Authority may modify the standard and special conditions of an electricity licence issued under section 6 of that Act, including by making consequential

amendments to any such licence, following consultation on the proposed amendments, and having considered any responses to that consultation duly made.

Regulation 43(7) inserts new section 11B into the 1989 Act, making supplementary provision to section 11A. In particular, where a standard condition is modified, the Authority is under a duty to make and publish that modification in the standard conditions of future licences. Such modifications have effect subject to the giving of the direction by the Competition Commission under paragraph 2 of new Schedule 5A to the Act (directing the suspension of a modification decision by the Authority pending the determination of an appeal in relation to that modification decision).

Regulation 43(8) inserts new sections 11C to 11H, into the 1989 Act. These sections specify the procedure for parties to appeal to the Competition Commission against a decision of the Authority to amend the conditions of a licence under section 11A of the Act.

Regulation 43(9) inserts the new Schedule 5A (procedure on appeal under section 11C) into the 1989 Act. Schedule 6 of the Regulations incorporates this new Schedule. Schedule 5A provides the procedure for making an application for permission to appeal, including any application for the suspension of a decision to modify licence conditions prior to the determination of an appeal, and the powers of the Competition Commission, including powers to require evidence under oath and require the production of specified documentation.

Regulation 43(10) repeals sections 12 to 14A of the 1989 Act (powers available on a reference to the Competition Commission).

Regulation 44 makes transitional provision in relation to modification of licence conditions, and references to the Competition Commission under the 1989 Act and Competition Commission membership on such references.

Regulation 45 makes minor and consequential amendments arising from Part 9 of these Regulations.

In Part 10, Regulations 46 to 48 insert new definitions into the 1986 and 1989 Acts. The terms defined relate to the amendments to the Acts made by Parts 2 to 9. The amendments to the 1986 Act include, in particular, amendments which ensure that the requirements in that Act apply to any gas storage and LNG facilities located offshore.

Regulations 49 and 50 give effect to Schedules 7 and 8 respectively, and amend sections 33 and 81 of the 2000 Act, and sections 137, 146 and 150 of the Energy Act 2004. The amendments ensure that the standard conditions of gas and electricity licences, amended by Schedules 7 and 8 respectively, continue to have effect, in modified form, as standard conditions in relation to licences granted under the 1986 and 1989 Acts.

Regulation 51 requires the Secretary of State to review the operation and effect of these Regulations and lay a report before Parliament within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An impact assessment relating to the changes made by the Regulations, and supplementary impact assessments relating specifically to the provisions contained in Parts 6 and 9 of the Regulations, are available. A transposition note setting out how the main elements of the Third Package are transposed, into the law of Great Britain is also available. These documents can be obtained from the Energy Regulatory Framework Team, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW. Copies of the regulatory impact assessments and the transposition note have been placed in the libraries of both Houses of Parliament.

