

SCHEDULE 1

Regulation 20(2)

Duties of gas distribution exemption holders and supply exemption holders

“SCHEDULE 2AA

Section 6B

Duties of distribution exemption holders

*Third party access*

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

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

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

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

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

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

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

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

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

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

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

(10) Those conditions are—

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

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

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

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

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

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

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

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

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

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

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

#### *Charges for use of system*

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

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

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

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

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

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

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

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

(3) In sub-paragraph (2)—

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

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

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

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

### *Connection*

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Closed distribution systems*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Interpretation*

#### 16.—(1) In this Schedule—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SCHEDULE 2AB

Section 6C

### Duties of supply exemption holders

#### *Change of supplier*

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

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

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

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



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

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

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

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

#### *Customer contracts*

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

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

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

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

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

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

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

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

#### *Customer information*

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

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

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

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

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

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

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

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

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

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

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

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

(a) to the customer, or

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

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

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

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

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

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

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

(b) with each bill inform each household customer—

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

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

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

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

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

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

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

(5) In this paragraph—

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

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

#### *Determination of disputes*

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

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

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

#### *Interpretation*

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

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

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

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

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