

UTILITIES ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part V: Amendment of the Gas Act 1986

Sections 74 - 88: Gas licensing

137. The commentary on *section 74* (Gas licensing conditions) and *section 75* (Exceptions from section 5 of the 1986 Act) is provided in paragraphs 50, 51 and 55 above.
138. *Section 76 (and Schedule 6, paragraphs 1 - 4 and 18): Gas transporters.* This section ends the geographic exclusivity of public gas transporters (“PGTs”) and makes consequential changes to certain procedures. Section 7(2)(a) of the 1986 Act has the effect that any given area may only be within the “authorised area” of one public gas transporter, so that only that PGT may convey gas to premises through pipes in that area. In other words, PGT licences are currently geographically mutually exclusive. The main purpose of this section is to end that exclusivity (with the intention of promoting competition and, in this respect, to comply with the EC Gas Directive (98/30/EC)). The amendments to section 7(2)(a) of the 1986 Act in subsection (3) of section 76 achieve this purpose by removing the reference to PGT licences relating to areas which are not specified in the licences of other PGTs.
139. Subsection (6) repeals section 7(7) of the 1986 Act, so that a gas transporter may, if it wishes, apply for a licence covering a large area (e.g. all of Great Britain) without being required to prove that it intends to operate in every part of that area. The change will enable transporters to apply once for a licence covering a large area, rather than having to request piecemeal extensions only when able to prove the intent to operate in each particular area. Securing a licence for a large area does not preclude other licensees from operating in and laying pipes within that area.
140. Subsection (5) removes from the face of the 1986 Act the procedures to be followed when granting an extension, thus allowing greater procedural flexibility. The procedures to be followed when first granting a licence remain on the face of the Act. Subsection (6) also repeals section 7(8) of the 1986 Act. This is discussed further under section 78 below.
141. Subsection (4), in conjunction with paragraph 6 of Schedule 6, is intended to allow the authorised area of a transportation licence to be restricted. In other words, it can be made smaller, as well as extended, as is the case with other types of licence.
142. Subsection (7), in conjunction with paragraphs 1 – 4 and 18 of Schedule 6, changes the term “public gas transporter” to “gas transporter”, to reflect the fact that the sector is open to competition.
143. *Section 77: Restriction on use of certain pipelines for providing a supply of gas.* Under the system of geographic exclusivity, it was possible for a transporter to construct a pipe outside his authorised area (and thus in the authorised area of another transporter, the “incumbent”), not for the purpose of supplying premises but in order to convey

gas through the other transporter's area. In the absence of restrictions on its use, such a "pass-through" pipe could be used for supplying premises (i.e. might be a "relevant main"), thus posing a threat to the incumbent who may not have organised his business accordingly. This section, which is a transitional measure only, provides that the consent of the incumbent transporter is required if a pass-through pipe, which was built before the abolition of geographical exclusivity, is to be used for giving a supply. If the incumbent refuses consent or fails to give it, the Authority may intervene. Once it has been declared to be a relevant main, certain rights of consumers, and rights and duties of the transporter (for example the duty to connect), arise in respect of it which should not be taken away, and so subsection (3) does not allow the incumbent's consent to be withdrawn after it has been given.

144. *Section 78: Construction of pipelines by gas transporters.* This section concerns what is known as the "23 metre rule". Currently, the authorised area of one transporter may not include areas within 23 metres of a main belonging to another transporter, unless the incumbent agrees or else certain conditions are met. When authorised areas are able to overlap completely, as provided for in section 76 above, they may include areas within 23 metres of someone else's mains. The 23 metre rule in subsection (8) of section 7 of the 1986 Act, will therefore be repealed by section 76(6). This section introduces a new version of the rule.
145. Subsection (2) contains a general prohibition on constructing pipelines within 23 metres of another gas transporter's pipeline, unless certain conditions are met. If the transporter is proposing to construct a service pipe because he needs to do so in order to comply with his duty to connect, the prohibition does not apply (and nor do the other requirements in 22A(1)). If the pipeline is to be constructed within 23 metres of an ordinary pipeline of another transporter (which, broadly, is a pipeline other than a main which is being used to give a supply to premises), the existing duties in section 22A to consult and notify the other transporter will apply. If the pipeline is to be constructed within 23 metres of another transporter's main, then in addition to those duties, the other transporter's consent to the construction will be required (except in the circumstance described in the next paragraph).
146. Under the existing 23 metre rule, if the incumbent refuses consent to another transporter's authorised area being within 23 metres of his main, the regulator can over-ride him, and give consent anyway, subject to a number of tests. Under the new rule, subsection (1C) empowers the Authority to over-rule a refusal or failure to give consent by an incumbent "where it considers it appropriate to do so". The Authority, in making a decision on any such case, must have regard to its general duties.
147. The incumbent will be able to place conditions on the construction of the new pipeline, including conditions as to the future use of the pipeline (for example, that it may not be used to give a supply). If the transporter constructing the pipeline objects to such conditions, the Authority can either accept them or over-ride them in their entirety if it feels that they are unfair, but it may not modify them. If the incumbent neither consents nor refuses to consent, then the Authority can effectively treat that as a refusal of consent and then over-ride it. These aspects are covered by subsections (1B), (1C) and (1D).
148. Subsection (1E) provides that if the two transporters agree to conditions, but then the one who has laid the pipe breaks them, then the other transporter can take civil proceedings to rectify the breach or obtain appropriate compensation. The conditions are not subject to enforcement by the Authority by way of enforcement orders and cannot give rise to financial penalties under the Act.
149. *Section 79: Duty to facilitate competition.* The principal purpose of this section is to place on gas transporters a positive duty to facilitate competition in the supply of gas. This is similar to the duty in electricity already placed on transmitters and to be placed on distributors. Under the 1986 Act, transporters are under a duty "to avoid any undue preference or undue discrimination in the connection of premises to any pipeline system operated by him or in the terms on which he undertakes the conveyance of gas by means

of such a system” but are not under a positive duty to facilitate competition in supply as introduced by this section.

150. The section extends the existing duties on a gas transporter to connect premises contained in section 9(1) and (2) of the 1986 Act. These duties currently require the transporter to comply, so far as it is economical to do so, with any reasonable request for him to connect premises to his pipeline system, and to “avoid any undue preference or undue discrimination” in the terms of connection. These duties now apply equally when the request is made by another transporter, whether licensed or exempt, who wishes to connect a system to the existing system.
151. *Section 80: Gas transporters’ duty to make a connection.* The provisions in this section clarify that when pipes laid by the owner of premises (“self-lay” pipes) vest in a transporter on connection to the latter’s system, the responsibility for maintaining the reinstatement of the ground containing the pipe, and any other liabilities, also vest in him (see subsections (4) and (5) which amend section 10 of the 1986 Act). Subsection (2) inserts a new subsection 3(A) into section 10 which allows the transporter to protect himself if, for example, the owner has not sought the necessary permissions. The subsection gives the transporter the right to require self-layers to accept terms indemnifying him in respect of such liabilities in connection with the laying of the pipe which it is reasonable in all the circumstances for the self-layer to be required to accept. Subsection (3) clarifies that transporters can charge for making connections between their systems and self-lay pipes.
152. The commentary on *section 81*: (Standard conditions of gas licences); *section 82* (Modification of standard conditions of gas licences); *section 83*: (Modification of licence conditions following Competition Commission report); *section 85*: (Transfer of gas licences); *section 86*: (Exemptions from gas licensing); *section 87* (Reasons for decisions); and *section 88*: (Altering activities requiring gas licence) is provided in the ‘Electricity licensing’ section (paragraphs 48 – 78 above).
153. The commentary on *section 84* (The gas code) is provided in the ‘Electricity licence holders’ section (paragraphs 99 - 100 above).

Sections 89 - 94: Gas performance standards

154. The commentary on these sections is provided alongside the equivalent provisions for electricity (paragraphs 103 – 108 above).

Sections 95 - 96: Enforcement of obligations of gas licence holders

155. The commentary on these sections is provided above alongside the equivalent provisions for electricity (paragraphs 109 – 116 above).

Section 97: Remuneration and service standards

156. The commentary on this section is provided alongside the equivalent provisions for electricity (paragraphs 117 – 121 above).

Sections 98 - 102: Miscellaneous

157. The commentary on sections 98 - 99 is provided alongside the equivalent provisions for electricity (paragraphs 127 – 128 above).
158. *Section 100: Exercise of power to make regulations.* This section amends the 1986 Act so that regulations made by the Authority under Part I of that Act are not subject to Parliamentary approval. This is in line with the principle of arm's length regulation by the regulatory authority and aligns the procedure with that which currently applies in the 1989 Act.

*These notes refer to the Utilities Act 2000 (c.27)
which received Royal Assent on 28th July 2000*

159. *Section 101: Standards of gas quality.* The present regulatory regime does not provide for the regulation of gas quality issues which do not have a significant safety aspect but which may nevertheless have a substantial impact on consumers. This section addresses the gap by conferring on the Authority a power to make regulations regulating the quality of gas which may be conveyed by gas transporters to premises or to pipeline systems operated by other gas transporters in relation to pressure and purity, and other standards with respect to the properties, condition and composition of gas so conveyed.
160. The Authority's exercise of this power will be subject to the consent of the Secretary of State. The Authority is to be required to consult such persons and organisations as it considers appropriate before making any regulations.
161. The Health and Safety Executive has, and will retain, a power to regulate gas quality insofar as safety may be affected. The new power for the Authority will ensure that there is no regulatory gap in relation to non-safety issues of gas quality. The duty on the Authority to consult the Health and Safety Executive on safety matters should ensure that, where a gas quality issue has both safety and non-safety aspects, the issue is identified and addressed by the appropriate body.
162. The commentary on *section 102* is provided alongside the equivalent section for electricity (paragraphs 134 – 136 above).