



Utilities Act 2000

2000 CHAPTER 27

PART V

AMENDMENT OF THE GAS ACT 1986

Gas licensing

88 Altering activities requiring gas licence

After section 41B of the 1986 Act (which is inserted by section 98 below) there is inserted—

“Alteration of activities requiring licence

41C Power to alter activities requiring licence

- (1) The Secretary of State may by order provide—
 - (a) that specified activities are to become licensable activities; or
 - (b) that specified activities are to cease to be licensable activities.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 5(1).
- (3) An order under this section may make consequential, transitional, incidental or supplementary provision including—
 - (a) amendments (or repeals) in any provision of this Act or any other enactment; and
 - (b) provision modifying any standard conditions of licences or (in the case of an order under subsection (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.

Status: This is the original version (as it was originally enacted).

- (4) An order under this section may only provide for activities to become licensable activities if they are activities connected with—
 - (a) the conveyance of gas through pipes to premises or to pipe-line systems operated by gas transporters;
 - (b) the supply to premises of gas conveyed through pipes; or
 - (c) arranging with gas transporters for gas to be introduced into, conveyed by means of or taken out of pipe-line systems operated by the gas transporters.
- (5) An order under this section providing for activities to become licensable activities may only be made on the application of the Authority made in accordance with section 41D.
- (6) An order under this section providing for activities to cease to be licensable activities may be made either—
 - (a) on the application of the Authority made in accordance with section 41G; or
 - (b) following consultation by the Secretary of State in accordance with section 41H.
- (7) An order under this section may provide that it is to remain in force only for a period specified in the order.
- (8) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

41D Application by Authority for order including new activities

- (1) If the Authority proposes to make an application for an order providing for activities to become licensable activities, it shall give notice—
 - (a) stating that it proposes to make an application for an order providing for the activities to become licensable activities;
 - (b) setting out the conditions which it would expect such an order to determine to be standard conditions for the purposes of licences authorising the undertaking of the activities and any other conditions which it would expect to be included in such licences; and
 - (c) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given by serving a copy on the Council and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of—
 - (a) persons appearing to it to be carrying on, or be intending to carry on, the activities; and
 - (b) any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities.

- (3) If an objection has been duly made (and not withdrawn) by a person who is carrying on or intends to carry on the activities, the Authority shall make a reference to the Competition Commission under section 41E before making the application.
- (4) In any other case where the Authority considers it appropriate to make a reference to the Commission under section 41E before making the application, the Authority may make such a reference.
- (5) If a reference is made to the Commission, the application shall not be made unless the Commission has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest.
- (6) The application shall set out—
 - (a) the activities which the Authority considers should become licensable activities; and
 - (b) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question and any other conditions which the Authority would expect to be included in such licences.

41E References to Competition Commission

- (1) A reference to the Competition Commission under this section shall require the Commission to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Authority may, at any time, by notice given to the Commission vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the Commission shall give effect to the variation.
- (3) The Authority shall specify in the reference, or a variation of the reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
 - (a) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities specified in the reference and any other conditions which the Authority would expect to be included in such licences; and
 - (b) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have.
- (4) As soon as practicable after making the reference, or a variation of the reference, the Authority shall serve a copy of it on the Council and publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of—
 - (a) persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it; and

Status: This is the original version (as it was originally enacted).

- (b) any other persons appearing to the Authority to be likely to be affected by it.
- (5) The Authority shall, for the purpose of assisting the Commission in carrying out the investigation on the reference, give to the Commission—
- (a) any information which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the Commission without any such request; and
 - (b) any other assistance which the Commission may require, and which it is within its power to give, in relation to any such matters,
- and the Commission shall take account of the information for the purpose of carrying out the investigation.
- (6) In determining for the purposes of this section whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the Commission shall have regard to—
- (a) the matters referred to in section 4AA;
 - (b) any social or environmental policies set out or referred to in guidance issued under section 4AB; and
 - (c) any advice given by the Health and Safety Commission under section 4A (advice about health and safety in relation to gas).
- (7) The provisions mentioned in subsection (8) are to apply in relation to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under the Fair Trading Act 1973;
 - (b) the expression “merger reference” included a reference under this section;
 - (c) in section 70 of the Fair Trading Act 1973—
 - (i) references to the Secretary of State were references to the Authority; and
 - (ii) the reference to three months were a reference to six months.
- (8) The provisions are—
- (a) sections 70 (time limit for report on merger), 85 (attendance of witnesses and production of documents) and 93B (false or misleading information) of the Fair Trading Act 1973;
 - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Commission’s general functions); and
 - (c) section 24 of the Competition Act 1980 (modification of provisions about performance of such functions).

41F Reports on references

- (1) In making a report on a reference under section 41E, the Competition Commission shall include in the report definite conclusions on whether the fact that the activities specified in the reference (or the reference as varied) are not licensable activities operates, or may be expected to operate, against the public interest.

- (2) The Commission shall also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions.
- (3) Where the Commission concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it shall specify in the report—
 - (a) the effects adverse to the public interest which that fact has or may be expected to have; and
 - (b) any modifications to the conditions specified in the reference in accordance with section 41E(3)(a) which they consider appropriate.
- (4) Section 82 of the Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the Commission on references under section 41E as it applies to reports of the Commission under that Act.
- (5) A report of the Commission on a reference under section 41E shall be made to the Authority.
- (6) On receiving the report, the Authority shall send a copy of it to the Secretary of State.
- (7) Subject to subsection (8), the Authority shall, not less than 14 days after the copy is received by the Secretary of State, send another copy to the Council and publish that other copy in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (8) If it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in subsection (7), direct the Authority to exclude that matter from the copy of the report to be sent to the Council and published under that subsection.

41G Application by Authority for order excluding activities

- (1) Before making an application for an order providing for activities to cease to be licensable activities the Authority shall give notice—
 - (a) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and
 - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,and shall consider any representations or objections duly made and not withdrawn.
- (2) The notice shall be given—
 - (a) by serving a copy on the Secretary of State, the Health and Safety Executive and the Council; and
 - (b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by such an order.
- (3) An application under this section shall set out—

Status: This is the original version (as it was originally enacted).

- (a) the activities which the Authority considers should cease to be licensable activities; and
- (b) the Authority's reasons for proposing that the order be made.

41H Consultation by Secretary of State about order excluding activities

- (1) If the Secretary of State proposes to make an order providing for activities to cease to be licensable activities (otherwise than on an application by the Authority under section 41G), he shall give notice—
 - (a) stating that he proposes to make an order providing for the activities to cease to be licensable activities; and
 - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,and shall consider any representations or objections duly made (and not withdrawn).
- (2) The notice shall be given—
 - (a) by serving a copy on the Authority, the Health and Safety Executive and the Council; and
 - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by such an order.”