

SCHEDULE 4

Regulation 2(4)

AMENDMENTS TO THE PETROLEUM ACT 1998

1. In section 15(6), after the words “section 17(7)”, there shall be inserted “or 17G(6)”.
2. In section 16(1), after the words “section 17(8)”, there shall be inserted “or 17G(7)”.
3. After section 17(1) there shall be inserted—

“(1A) This section does not apply to controlled petroleum pipelines, and, in the case of a downstream gas pipeline to which section 17B applies, is subject to that section.”
4. After section 17 there shall be inserted—

“Application of section 17B to certain downstream gas pipelines.

17A.—(1) Section 17B applies to downstream gas pipelines, other than exempt pipelines.

(2) An owner of a downstream gas pipeline may apply in writing to the Secretary of State for an exemption for the pipeline.

(3) An exemption shall be given in writing and may be given—

(a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;

(b) unconditionally or subject to such conditions as the Secretary of State considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the pipeline concerned not less than four months before the coming into force of the revocation.

(5) The Secretary of State shall give an exemption with respect to a pipeline where he is satisfied that the requirements of section 17B(1), (3) and (6) are already met with respect to the pipeline concerned by existing market arrangements which promote competition.

Additional provisions relating to certain downstream gas pipelines.

17B.—(1) The owner of a downstream gas pipeline to which this section applies (a “relevant downstream gas pipeline”)—

(a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas conveyed in the pipeline on that person’s behalf; and

(b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9th August.

(3) The owner of a relevant downstream gas pipeline shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas conveyed in the pipeline.

(4) Any person who seeks a right to have gas conveyed on his behalf in a relevant downstream gas pipeline (“the applicant”) shall, before making an application to the Secretary of State under section 17, apply to the owner of the pipeline by giving him notice of what is being sought.

(5) Such a notice shall, in particular, specify—

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- (a) the kind of gas to be conveyed (which must be of the kind the pipeline is designed to convey); and
- (b) the quantities of gas to be conveyed.

(6) Where an applicant gives notice under subsection (4), he and the owner of the pipeline shall negotiate in good faith and endeavour to reach agreement on the application.

(7) If the owner and the applicant do not reach any such agreement, the applicant may make an application to the Secretary of State under section 17 with respect to the pipeline.

(8) The Secretary of State shall not entertain such an application under section 17 unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (6).

(9) For the purpose of considering an application under section 17 with respect to a relevant downstream gas pipeline, the Secretary of State may by notice require the owner or the applicant to provide him with such financial information relating to the owner's or applicant's activities with respect to relevant downstream gas pipelines as he may specify or describe in the notice.

(10) The Secretary of State shall not disclose to any person information obtained under subsection (9) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(11) In this section, "main commercial conditions" means—

- (a) such information as would enable a potential applicant for a right to have gas conveyed in a relevant downstream gas pipeline to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) the other significant terms on which such a right would be granted; and
- (c) such other information as the Secretary of State may from time to time specify by notice.

Application of section 17D to certain offshore gas storage facilities.

17C.—(1) Section 17D applies to offshore gas storage facilities other than exempt offshore gas storage facilities.

(2) An owner of an offshore gas storage facility may apply in writing to the Director for an exemption for the facility.

(3) An exemption shall be given in writing and may be given—

- (a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;
- (b) unconditionally or subject to such conditions as the Director considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the facility concerned not less than four months before the coming into force of the revocation.

(5) The Director shall give an exemption with respect to a facility where he is satisfied that the requirements of section 17D(1), (3) and (7) and section 17E(2) are already met with respect to the facility concerned by existing market arrangements which promote competition.

(6) In this section and sections 17D and 17E "the Director" means the Director General of Gas Supply.

Provisions relating to certain offshore gas storage facilities.

17D.—(1) The owner of an offshore gas storage facility to which this section applies (a “relevant facility”)—

- (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas stored in the facility on that person’s behalf; and
- (b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9th August.

(3) The owner of a relevant facility shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas stored in the facility.

(4) Any person who seeks a right to have gas stored on his behalf in a relevant facility (“the applicant”) shall, before making an application to the Director under subsection (8), apply to the owner of the facility for the right.

(5) An application under subsection (4) shall be made by giving notice to the owner specifying what is being sought.

(6) Such a notice shall, in particular, specify—

- (a) the period during which the gas is to be stored in the facility;
- (b) the kind of gas to be stored (which must be of, or similar to, the kind which the facility is designed to store); and
- (c) the quantities of gas to be stored.

(7) Where an applicant gives a notice under subsection (5), he and the owner of the facility shall negotiate in good faith and endeavour to reach agreement on the application.

(8) If the owner and the applicant do not reach any such agreement, the applicant may apply to the Director for a notice under subsection (11) securing to the applicant the right specified in the notice given under subsection (5).

(9) The Director shall not entertain an application under subsection (8) unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (7).

(10) Where a person applies to the Director under subsection (8) and the Director is satisfied as mentioned in subsection (9), the Director shall—

- (a) give notice to the owner of the facility and the applicant that he proposes to consider the application; and
- (b) after the expiry of 21 days beginning with the date on which notice under paragraph (a) was served, but before considering the application, give them an opportunity of being heard with respect to the application.

(11) Where the Director is satisfied that, if he served a notice under this subsection, the relevant facility in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of storing, on behalf of its owner, the quantities of gas which the owner requires or may reasonably be expected to require, the Director may serve such a notice on the owner and the applicant.

(12) A notice under subsection (11) may contain such provisions as the Director considers appropriate for any of the following purposes—

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- (a) for securing to the applicant the right to have stored in the facility, for the period specified in the notice and in the quantities so specified or determined by or under the notice, gas which is of a kind so specified;
- (b) to secure that the exercise of the right is not prevented or impeded;
- (c) to regulate the charges which may be made for the storage of gas by virtue of that right; and
- (d) to secure to the applicant such ancillary or incidental rights as may be necessary or expedient (which may, in particular, include a right to have a pipeline of his connected to the facility by the owner).

(13) A notice under subsection (11) may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in subsection (12)(a) or (d) of amounts specified in the notice or determined in accordance with the notice.

Section 17D: supplemental.

17E.—(1) For the purpose of considering an application under section 17D(8), the Director may by notice require the owner to provide him with accounting information and details of the main commercial terms of any significant transactions with associated undertakings.

(2) Owners of relevant facilities shall keep their internal accounts in such manner as will enable them to provide accounting information if required to do so by notice under subsection (1).

(3) The Director shall not disclose to any person information obtained under subsection (1) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(4) Any reference in this section to a right to have gas or gas of any kind stored in a relevant facility includes a reference to a right to introduce into, or take out of, such a facility gas or gas of that kind.

(5) In section 17D “main commercial conditions” means—

- (a) such information as would enable a potential applicant for a right to have gas stored in a relevant facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) the other significant terms on which such a right would be granted; and
- (c) such other information as the Director may from time to time specify by notice.

(6) In this section—

“accounting information” means such accounting records as would be required by section 221 of the Companies Act 1985 in respect of the storage activities undertaken by an owner of a relevant facility, if those activities were the only business undertaken by the owner and the owner were a person to whom that section applied; and

“significant transaction” means—

- (a) any transaction which relates to rights to have gas stored in a relevant facility; or
- (b) any other transaction which is of a description specified by the Director from time to time by notice.

(7) For the purposes of this section an undertaking is an associated undertaking of another undertaking if one of the undertakings has control of the other, or both undertakings are under the control of the same person or persons; and subsections (2) to (5) of section 416 of

the Income and Corporation Taxes Act 1988 shall apply with any necessary modifications for the purposes of this subsection as they apply for the purposes of Part XI of that Act.

Acquisition of rights to use controlled petroleum pipelines.

17F.—(1) This section applies to controlled petroleum pipelines.

(2) Any person who seeks a right to have things conveyed by a controlled petroleum pipeline of which he is not the owner (“the applicant”) shall, before making an application to the Secretary of State under subsection (5), apply to the owner of the pipeline for the right.

(3) An application under subsection (2) shall be made by giving notice to the owner specifying what is being sought.

(4) Such a notice shall, in particular, specify—

- (a) the kind of things to be conveyed (which must be of a kind the pipeline is designed to convey); and
- (b) the quantities to be conveyed.

(5) If the owner and the applicant do not reach agreement on the application, the applicant may apply to the Secretary of State for a notice under subsection (9) securing to the applicant the right to have conveyed by the pipeline in respect of which he has made an application to the owner under subsection (2) the quantities specified in the notice under subsection (3) of things of a kind so specified.

(6) The Secretary of State shall not entertain an application under subsection (5) unless he is satisfied that the parties have had a reasonable time in which to reach agreement between themselves on the application under subsection (2).

(7) Where a person applies to the Secretary of State under subsection (5) and the Secretary of State is satisfied as mentioned in subsection (6), the Secretary of State shall—

- (a) give notice to the owner of the pipeline and the applicant that he proposes to consider the application; and
- (b) after the expiry of 21 days beginning with the date on which notice under paragraph (a) was served, but before considering the application, give them an opportunity of being heard with respect to the application.

(8) When considering the application, the Secretary of State shall (so far as relevant) take into account—

- (a) capacity which is or can reasonably be made available in the pipeline in question;
- (b) any incompatibilities of technical specification which cannot reasonably be overcome;
- (c) difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future production of petroleum;
- (d) the owner’s reasonable needs for the transport and processing of petroleum;
- (e) the interests of all users and operators of the pipeline;
- (f) the need to maintain security and regularity of supplies of petroleum; and
- (g) the number of parties involved in the dispute.

(9) Where the Secretary of State is satisfied that, if he served a notice under this subsection, the pipeline in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of conveying, on behalf of its owner, the quantities of permitted substances which the owner requires or may reasonably be expected to require, the Secretary of State may serve such a notice on the owner and the applicant.

(10) A notice under subsection (9) may contain such provisions as the Secretary of State considers appropriate for any of the following purposes—

- (a) to secure to the applicant the right to have conveyed by the pipeline the quantities specified in the notice under subsection (3) of the things of a kind so specified;
- (b) to secure that the exercise of the right is not prevented or impeded;
- (c) to regulate the charges which may be made for the conveyance of things by virtue of the right; and
- (d) to secure to the applicant the right to have a pipeline of his connected to the pipeline by the applicant or owner.

(11) A notice under subsection (9) may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in subsection (10)(a) or (d) of amounts specified in the notice or determined in accordance with the notice.

Section 17F: supplemental.

17G.—(1) Where an application is made to the Secretary of State under section 17F(5) in respect of a pipeline which is situated partly in, under or over controlled waters and partly in a foreign sector of the continental shelf, the Secretary of State shall consult the relevant authorities in the other country with respect to the application before considering it himself.

(2) For the purpose of considering an application under section 17F(5), the Secretary of State may by notice require the owner or the applicant to provide him with such information relevant to the application as may be specified or described in the notice.

(3) The information mentioned in subsection (2) may, in particular, include financial information relevant to the owner’s or the applicant’s activities with respect to petroleum production projects and controlled petroleum pipelines.

(4) The Secretary of State shall not disclose to any person any information obtained under subsection (2) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(5) In section 17F(9), “permitted substances” means the things which may be conveyed by the pipeline in accordance with an authorisation (or, if no authorisation for the use of the pipeline is required by section 14(1), means the things which the pipeline is designed to convey).

(6) Before serving a notice under section 15(6) on a person other than the holder of the relevant authorisation, the Secretary of State shall give that person an opportunity to make applications under section 17F in respect of the proposed pipeline to which the authorisation relates; and section 17F and subsections (1) to (5) above shall have effect for this purpose as if references to a pipeline and the owner of it were references to the proposed pipeline and the proposed owner of it.

(7) Before serving a notice under section 16(1) on a person other than the owner of the relevant pipeline, the Secretary of State shall give that person particulars of the modifications which he proposes to specify in the notice and an opportunity to make applications under section 17F in respect of the pipeline; and section 17F and subsections (1) to (5) above shall have effect for this purpose as if references to a pipeline were references to the pipeline as it would be with those modifications.

(8) The use of a pipeline by any person in accordance with a right secured to him by the Secretary of State by virtue of section 17F is not a contravention of section 14(1); but a person to whom a right is so secured may not assign the right to any other person.

Enforcement of certain duties in sections 17B, 17D and 17E.

17H.—(1) The duties in section 17B(6) and section 17D(7) shall be duties owed to any person who may be affected by a failure to comply with them.

(2) Where a duty is owed by virtue of subsection (1) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(3) In any proceedings brought against a person in pursuance of subsection (2), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the duty.

(4) Compliance with the duties in sections 17B(1) and (3), 17D(1) and (3) and 17E(2) shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or other appropriate relief or remedy.”

5. In section 18(6)(b), for the words “section 16 or 17” there shall be substituted “section 16, 17 or 17F(9)”.

6. In section 19(1)(b), after the words “section 17”, there shall be inserted “or section 17F(9)”.

7. In section 21(1)(b), for the words “section 16 or 17”, there shall be substituted “section 16, 17 or 17F(9)”.

8. After section 27(1) there shall be inserted—

“(1A) For the purposes of this Part of this Act (other than section 16, section 17(1) and the first reference in section 17F(2)), in the case of downstream gas pipelines and controlled petroleum pipelines—

“owner” in relation to a pipeline includes a person in whom the pipeline is vested; and a person who has the right to use capacity in the pipeline, where such right has been acquired by that person on terms that—

- (a) he is entitled to use the capacity for a period of one year or more; and
- (b) the right is capable of being assigned or otherwise disposed of to another person; and

“proposed owner” in relation to a proposed pipeline includes a person in whom the pipeline is proposed to be vested.”

9. In section 28(1)—

(a) after the definition of “construction” there shall be inserted—

““controlled petroleum pipeline” means any controlled pipeline or one of a network of controlled pipelines operated or constructed as part of a petroleum production project or used to convey petroleum from the site of one or more such projects—

- (a) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;
- (b) directly to a place outside Great Britain;
- (c) directly to a terminal; or
- (d) indirectly to a terminal by way of one or more other terminals, whether or not such intermediate terminals are of the same kind as the final terminal;”

(b) after the definitions of “controlled pipeline” and “controlled waters” there shall be inserted—

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““downstream gas pipeline” means a controlled pipeline, other than a controlled petroleum pipeline, which is used to convey gas to or from a place outside Great Britain;”

(c) after the definition of “enactment”, there shall be inserted—

““gas” means any substance which consists wholly or mainly of—

- (a) methane, ethane, propane, butane, hydrogen or carbon monoxide;
- (b) a mixture of two or more of those gases; or
- (c) a combustible mixture of one or more of those gases and air;

“gas processing facility” means any facility in Great Britain operated otherwise than by a public gas transporter which carries out gas processing operations;

“gas processing operation” means any of the following operations, namely—

- (a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a public gas transporter or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain;
- (b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; and
- (c) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person;”

(d) after the definition of “notice” there shall be inserted—

““offshore gas storage facility” means the facility for the storage of gas known as the “Rough” facility, situated to the east of Hull in the Southern North Sea at grid reference 0° 27'E 53° 50'N;

“petroleum” has the same meaning as in Part I of this Act, and includes petroleum which has undergone any processing;

“petroleum production project” means a project carried out by virtue of a licence granted under section 3, or an equivalent project in a foreign sector of the continental shelf, and includes such a project which is used for the storage of gas;” and

(e) after the definition of “prescribed” there shall be inserted—

““public gas transporter” means a public gas transporter within the meaning of Part I of the Gas Act 1986;

“terminal” includes—

- (a) onshore facilities in the United Kingdom for such initial blending and other treatment as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
- (b) gas processing facilities; and
- (c) a facility for the reception of gas prior to its conveyance to a place outside Great Britain;”.