

2011 No. 2803

GAS

**The Gas Transporter (Modification of Licence Conditions)
Regulations 2011**

<i>Made</i>	- - - -	<i>20th November 2011</i>
<i>Laid before Parliament</i>		<i>24th November 2011</i>
<i>Coming into force</i>	- -	<i>16th December 2011</i>

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

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Gas Transporter (Modification of Licence Conditions) Regulations 2011 and come into force on 16th December 2011.

(2) These Regulations do not extend to Northern Ireland.

Interpretation

2. In these Regulations—

“gas transporter licence” means a licence granted under section 7 of the Gas Act 1986^(c);

“standard special condition”, in relation to a gas transporter licence, means any condition of that licence which is described in that licence as a standard special condition.

Modifications of standard special conditions of gas transporter licences

3. The Schedule to these Regulations (which modifies the standard special conditions of gas transporter licences) has effect.

(a) S.I. 2010/761.

(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008. Another amendment has been made that is not relevant for these purposes.

(c) 1986 c. 44. Section 7 was inserted by section 5 of the Gas Act 1995 (c. 45); there are other amending instruments but none is relevant.

Review

4.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC^(a) (certain provisions of which are implemented by means of these Regulations) is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Charles Hendry

Minister of State for Energy

Department of Energy and Climate Change

20th November 2011

SCHEDULE

Regulation 3

Modification of standard special conditions of gas transporter licences

Standard Special Conditions applicable to both NTS and DN licensees: Part A

1.—(1) The standard special conditions of a gas transporter licence set out in the licence under the heading “standard special conditions applicable to both NTS and DN licensees: Part A” are amended as follows.

(2) Omit standard special condition A1 (application and disapplication of certain licence conditions).

(3) Omit standard special condition A2 (private collective licence modification procedure in respect of certain standard special conditions).

(4) In standard special condition A3 (definitions and interpretation)—

- (a) after the definition of “designated registrar of pipes”, insert—

““the Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC;”;

(a) OJ No L 211, 14.08.2009, p. 94.

- (b) after the definitions of “quantity” and “volume”, insert—
- “the Regulation” means Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 concerning conditions for access to the national gas transmission networks and repealing Regulation 2005/1775/EC, as amended by the 2010 Amending Decision;”.
- (5) In standard special condition A5 (obligations as regard charging methodology), in paragraph 5—
- (a) in sub-paragraph (c), at the end, omit “and”;
- (b) in sub-paragraph (d), for the full stop at the end substitute “; and”;
- (c) after sub-paragraph (d), insert—
- “(e) compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.”.
- (6) In standard special condition A11 (Network Code and Uniform Network Code)—
- (a) in paragraph 1—
- (i) in sub-paragraph (e), at the end, omit “and”;
- (ii) after sub-paragraph (f), insert—
- “(g) compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators; and
- (h) in relation to:
- (i) the connection charging methodology, the relevant objectives listed in paragraph 5 of Standard Condition 4B; or
- (ii) the charging methodologies regulated by Standard Special Condition A5, the relevant objectives listed in paragraph 5 of Standard Special Condition A5.”;
- (b) after paragraph 6, insert—
- “**6A.** The licensee shall use reasonable endeavours to facilitate any improvements to the process by which responsibility for gas supply is transferred between gas suppliers.”;
- (c) in paragraph 9—
- (i) in sub-paragraph (g), at the end, omit “and”;
- (ii) in sub-paragraph (h), for the full stop at the end substitute a semicolon;
- (iii) after sub-paragraph (h), insert—
- “(i) modification proposals made by the Authority or the licensee in accordance with paragraphs 9(j), 10(a)(i) or (v), 10(ab) and 11(a)(i) or (v):
- (i) to be accepted into the network code modification procedures by the panel;
- (ii) where they are raised by the licensee, not to be withdrawn without the Authority’s prior consent;
- (iii) to proceed in accordance with any timetable(s) directed by the Authority in accordance with paragraph 9(j);
- (j) compliance by the licensee and (where applicable) the panel with any direction(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a modification which the Authority reasonably considers is necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators) for:
- (i) the licensee to raise a modification proposal; and/or
- (ii) completion of each of the procedural steps outlined in this paragraph 9, to the extent that they are relevant; and/or

- (iii) implementation of a modification; and
 - (k) each of the procedural steps outlined in this paragraph 9, to the extent that they are relevant, to be in accordance with any timetable(s) directed by the Authority under paragraph 9(j).”;
 - (d) in paragraph 10—
 - (i) in sub-paragraph (a)(iii), for “, and/or” substitute “,”;
 - (ii) in sub-paragraph (a)(iv), for “,” insert “, and/or”;
 - (iii) after sub-paragraph (a)(iv), insert—
 - “(v) the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators);”;
 - (iv) in sub-paragraph (ab), after “DN operators as appropriate”, insert “and/or the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators)”;
 - (e) in paragraph 11—
 - (i) in sub-paragraph (a)(iii), omit “and/or”;
 - (ii) in sub-paragraph (a)(iv), for “and” insert “, and/or”;
 - (iii) after sub-paragraph (a)(iv), insert—
 - “(v) the Authority (in relation only to modifications which it reasonably considers are necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators);”;
 - (f) in paragraph 15A—
 - (i) in sub-paragraph (a), omit “or”;
 - (ii) for sub-paragraph (b), substitute—
 - “(b) the modification proposal is made by the licensee in accordance with:
 - (i) paragraph 9(j); or
 - (ii) paragraphs 10(aa) and 15C; or
 - (c) the modification proposal is made by the Authority in accordance with paragraph 10(a)(v), 10(ab) or 11(a)(v).”.
- (7) In standard special condition A26 (provision of information to the Authority), in paragraph 1(a) after “under the Act”, insert “or in pursuance of any requirements of the Directive or the Regulation”.
- (8) In standard special condition A30 (regulatory accounts), after paragraph 1, insert—
- “**1A.** The licensee shall specify in its internal accounting the rules for the allocation of assets and liabilities, expenditure and income, as well as for depreciation, without prejudice to nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in paragraph (1).”.
- (9) In standard special condition A33 (restriction on use of certain information and independence of the transportation business)—
- (a) in paragraph 1, after the definition of “relevant generator”, insert—
 - ““**relevant producer**” means a person who is an affiliate or related undertaking of a licensee who conveys gas to at least 100,000 premises, and who—
 - (a) gets gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the

Petroleum Act 1998 to do so or would require such a licence if getting the gas in Great Britain; or

- (b) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a gas transporter licence;”;
 - (b) in paragraph 2, in sub-paragraph (a), after “electricity generator”, insert “, gas producer (within the meaning of section 7(10) of the Act)”;
 - (c) in each of the following paragraphs, insert “relevant producer,”—
 - (i) paragraph 2, after “relevant generator,”;
 - (ii) paragraph 6, in sub-paragraph (a), after “relevant generator,”;
 - (iii) paragraph 6, in sub-paragraph (b), after “relevant generator,”;
 - (iv) paragraph 6, in sub-paragraph (c), after “relevant generator,”;
 - (v) paragraph 6, in sub-paragraph (d), after “relevant generator,”;
 - (d) in paragraph 3, after “the generation of electricity,”, insert “the production of gas.”.
- (10) In standard special condition A34 (appointment of compliance officer), after paragraph 3, insert—

“**3A.** Where the holder of this licence is a DN operator, the licensee shall ensure that the compliance officer is sufficiently independent to comply with the requirements of Article 26(2)(d) of the Directive.”.

(11) In standard special condition A35 (prohibition of cross-subsidies), in paragraph 5, for “Article 17 of Directive 2003/55/EC of the European Parliament and of the European Council of 26 June 2003” substitute “Article 31 of the Directive”.

(12) In standard special condition A36 (restriction on activity and financial ring fencing)—

- (a) in paragraph 1, at the start, for “Save” substitute “Subject to paragraph 1A, and save”;
- (b) after paragraph 1, insert—

“**1A.** Nothing in this condition prevents the licensee from carrying out gas production if the licensee:

- (a) conveys gas to less than 100,000 premises; and
- (b) is not a transmission system operator.”;
- (c) in paragraph 4—
 - (i) in sub-paragraph (a)(i), at the end, omit “and”;
 - (ii) in sub-paragraph (a)(ii), for the full stop at the end, substitute “; and”;
 - (iii) after sub-paragraph (a)(ii), insert—
 - “(iii) gas production”;
- (d) after paragraph 5, insert—

“**5A.** For the purposes of this condition, “**gas production**” means the production of gas for the purpose of its conveyance through pipes to premises, or through a pipeline system operated by a gas transporter or a transmission system operator, including where a licence is held under section 3 of the Petroleum Act 1998 for that purpose but not where such a licence is held for a different purpose.”.

Standard Special Conditions applicable to all NTS licensees: Part B

2.—(1) The standard special conditions of a gas transporter licence set out in the licence under the heading “standard special conditions applicable to all NTS licensees: Part B” are amended as follows.

(2) Omit standard special condition B1 (application and disapplication of particular licence conditions).

(3) Omit standard special condition B2 (private collective licence modification procedure in respect of particular standard special conditions).

(4) After standard special condition B2, insert—

“Standard Special Condition B3. Cross-border capacity

1. The licensee shall build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply. The terms used in this Condition shall have the meaning given to them by the Directive.

Condition B4. Notification of changes that may affect eligibility for certification

1. Where the licensee has made or makes an application for certification under section 8D of the Act, if at any time prior to the Authority notifying the licensee of its final certification decision under section 8F(7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

3. If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.

4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 8O of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.

5. Where the licensee has been certified, by 31 July of each year following certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:

- (a) whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee’s eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
- (b) whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and
- (c) whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 8O of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if

so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 8G(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

“certified” has the same meaning as in section 8Q of the Act;

“control” has the same meaning as in section 8Q of the Act;

“person from a third country” has the same meaning as in section 8Q of the Act;

“relevant date” has the same meaning as in section 8O of the Act;

“shareholder right” has the same meaning as in section 8Q of the Act.

Condition B5. Regional Cooperation

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation pursuant to Article 7 of the Directive and Article 12 of the Regulation.

2. The compliance officer of the licensee appointed under Standard Special Condition A34 (Appointment of Compliance Officer) shall, in addition to the duties assigned to him under that condition, monitor compliance with a compliance programme which must be established and implemented by the joint undertaking to ensure that discrimination and anti-competitive conduct is excluded.

3. In this condition:

“vertically integrated undertaking” has the meaning given in Article 2 of the Directive.”.

Standard Special Conditions applicable to DN licensees: Part D

3.—(1) The standard special conditions of a gas transporter licence set out in the licence under the heading “standard special conditions applicable to all DN licensees: Part D” are amended as follows.

(2) Omit standard special condition D1 (application and disapplication of particular licence conditions).

(3) Omit standard special condition D2 (private collective licence modification procedure in respect of particular standard special conditions).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, and address matters arising out of or related to, certain requirements of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (“the Gas Directive”).

The Regulations amend the conditions of licences granted under section 7 of the Gas Act 1986 (“gas transporter licences”) which are described as standard special conditions in those licences. In particular, the amendments remove the requirement that a licence holder must consent before the Gas and Electricity Markets Authority (“the Authority”) can amend relevant conditions in its licence, and enable the Authority to propose modifications to industry codes in the circumstances mentioned in Article 41(1)(d) of the Gas Directive. The remainder of the amendments make the changes necessary to standard special conditions to implement particular obligations on licence holders required by the Gas Directive, including those relating to customer switching, independence and accounting requirements and the building of cross-border capacity.

Regulation 4 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within 5 years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or amend them.

An impact assessment relating to the changes resulting from the implementation of the Gas Directive, including the changes made by these Regulations, is available. A transposition note setting out how the amendments made in the Regulations transpose particular requirements of the Gas Directive into the law of Great Britain is also available. These documents can be obtained from the Energy Regulatory Framework Team, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW. Copies of the regulatory impact assessment and the transposition note have been placed in the libraries of both Houses of Parliament.

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