



# Energy Act 2023

## 2023 CHAPTER 52

### PART 3

#### LICENSING OF HYDROGEN PIPELINE PROJECTS

##### *Modification of gas transporter licence*

#### **136 Modification of gas transporter licence by Secretary of State**

- (1) The Secretary of State may modify—
  - (a) the conditions of a designated person's gas transporter licence;
  - (b) the terms of a designated person's gas transporter licence;
  - (c) the standard conditions incorporated in gas transporter licences by virtue of section 8 of the Gas Act 1986;
  - (d) a document maintained in accordance with the conditions of licences of a relevant type or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power under [subsection \(1\)](#) only for the purpose of—
  - (a) facilitating or supporting the financing of the design, construction, commissioning or operation of a hydrogen pipeline project (or of hydrogen pipeline projects generally), or
  - (b) promoting value for money in connection with a hydrogen pipeline project (or in connection with hydrogen pipeline projects generally).
- (3) When making modifications under [subsection \(1\)\(a\)](#) or [\(b\)](#), the Secretary of State must have regard to—
  - (a) the duties in sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets);
  - (b) the interests of existing and future consumers of gas conveyed through pipes, including their interests in relation to the cost and security of supply of gas;
  - (c) costs, expenditure or liabilities of any description that the designated person may reasonably be expected to incur in carrying out its activities;

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Cross Heading: Modification of gas transporter licence. (See end of Document for details)*

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- (d) the need to secure that the designated person is able to finance its activities;
- (e) the need to secure that the designated person has appropriate incentives in relation to the carrying on of its activities;
- (f) such other matters as the Secretary of State considers appropriate.

In paragraph (b), “gas” has the same meaning as in Part 1 of the Gas Act 1986 (see section 48(1) of that Act).

- (4) The Secretary of State may modify the conditions or terms of a gas transporter licence held by a person who is or was a designated person in connection with the revocation of the person’s designation in relation to a hydrogen pipeline project.
- (5) For the purposes of [subsection \(1\)](#), each of the following is a relevant type of licence—
  - (a) a gas transporter licence;
  - (b) a licence under section 7A(1) of the Gas Act 1986 (gas supply licence);
  - (c) a licence under section 7AA of that Act (gas system planner licence);
  - (d) a licence under section 7AC of that Act (code manager licence).
- (6) References in this section to a designated person’s activities are to the person’s activities for the purposes of—
  - (a) the designated project to which the modification relates, and
  - (b) any other designated project authorised by the person’s gas transporter licence.

**Commencement Information**

**II** [S. 136](#) in force at 26.12.2023, see [s. 334\(3\)\(c\)](#)

**137 Scope of modification powers under [section 136](#)**

- (1) Modifications made under [section 136\(1\)\(a\)](#) may include, for example, provision—
  - (a) about the revenue that the designated person may receive in respect of its activities (its “allowed revenue”);
  - (b) about how the designated person’s allowed revenue is to be calculated;
  - (c) about the amounts that the designated person is entitled to receive, or is required to pay, under any hydrogen transport revenue support contract (within the meaning of Chapter 1 of Part 2) to which it is a party;
  - (d) about activities that the designated person must, may or may not carry on;
  - (e) about the management of the designated person’s activities, including the manner in which they are carried out;
  - (f) conferring functions on the GEMA, including provision enabling or requiring the designated person to refer for determination, decision or approval by the GEMA matters specified, or of a description specified, in the licence;
  - (g) for the amendment of the licence for the purpose of implementing a determination or decision of the GEMA or the Competition and Markets Authority;
  - (h) requiring the designated person to comply with any direction or instruction, or to have regard to any guidance, given by the GEMA in relation to matters specified, or of a description specified, in the licence;

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- (i) requiring the designated person to co-operate with the GEMA and to provide such information and assistance to the GEMA as it may require for the purposes of carrying out any of its functions;
  - (j) about the payment by the designated person, to the GEMA or to the Competition and Markets Authority, of such amounts as may be determined by or in accordance with the licence;
  - (k) about the disclosure or publication of information by the designated person.
- (2) Modifications made under [section 136\(1\)\(b\)](#) may include, for example, provision about the circumstances in which a licence may be revoked or suspended.
- (3) The powers under [section 136\(1\)](#) and (4) to “modify” include the power to amend, add to or remove; and references to modification in [section 136](#), this section and [section 138](#) are to be construed accordingly.
- (4) The powers conferred by [section 136\(1\)](#) and (4)—
- (a) may be exercised generally, only in relation to specified cases, or subject to exceptions (including by making provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently for different purposes or areas;
  - (c) include power to make incidental, supplementary, consequential or transitional modifications.
- (5) Provision included in a gas transporter licence, or in a document or agreement described in [section 136\(1\)\(d\)](#), by virtue of [section 136](#)—
- (a) need not relate to the activities authorised by the licence;
  - (b) may do anything authorised for gas transporter licences by section 7B(4A), (5)(a), (6) or (7) of the Gas Act 1986.
- (6) The modification under [section 136\(1\)](#) or (4) of part of a standard condition of a gas transporter licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986.
- (7) In section 81(2) of the Utilities Act 2000 (standard conditions of gas licences), after “[section 89](#)” (as inserted by section [91\(13\)](#) of this Act) insert “, [section 136\(1\)](#) or (4)”.
- (8) References in this section to a designated person’s activities are to the person’s activities for the purposes of—
- (a) the designated project to which the modification relates, and
  - (b) any other designated project authorised by the person’s gas transporter licence.

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**Commencement Information**

**I2** [S. 137](#) in force at 26.12.2023, see [s. 334\(3\)\(c\)](#)

**138 Procedure etc relating to modifications under [section 136](#)**

- (1) Before making a modification under [section 136\(1\)](#) or (4), the Secretary of State must consult—
- (a) the holder of any licence being modified,
  - (b) the GEMA, and
  - (c) such other persons as the Secretary of State considers appropriate.

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- (2) If under [section 136\(1\)](#) the Secretary of State modifies the standard conditions of a gas transporter licence, the GEMA must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in gas transporter licences granted after that time, and
  - (b) publish the modification.
- (3) The Secretary of State must publish details of any modifications made under [section 136\(1\)](#) and (4) as soon as reasonably practicable after they are made.
- (4) The Secretary of State may exclude from publication under subsection (3) any material the disclosure or publication of which the Secretary of State considers—
  - (a) would be likely to prejudice the commercial interests of any person, or
  - (b) would be contrary to the interests of national security.

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**Commencement Information**

**I3** [S. 138](#) in force at 26.12.2023, see [s. 334\(3\)\(c\)](#)

**Changes to legislation:**

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Modification of gas transporter licence.