



Department
of Energy &
Climate Change

Notice under section 6A of the Gas Act 1986

Gas Transporter Licence Exemption for onshore production of gas

URN 13D/025 20th February 2013



Department
of Energy &
Climate Change

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The consultation can be found on DECC's website:
www.gov.uk/decc

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Introduction

DECC is committed to a proportionate and effective regulatory framework to protect the environment, while minimising regulatory burdens and providing the business certainty important for long-term investment decisions and growth. We keep our regulations under on-going review in order to identify where improvements can be made, and on this basis have structured proposals for a class exemption, which are set out in this consultation document.

The Gas Act 1986 (“the Act”) provides the statutory framework for Great Britain’s gas transmission and distribution networks and stipulates that a licence is required for the shipping, transportation and supply of gas. However, the Act also provides for exemptions in instances where the requirement to hold a licence is onerous or excessive.

Exemptions are made by the Secretary of State in the form of an order. To do this the Secretary of State must give notice that he proposes to make such an order, state the reasons why he proposes to make the order in the terms proposed, and specify the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.

This notice sets out the proposal by the Secretary of State for Energy and Climate Change for the making of an order granting exemption from section 5(1)(a) of the Act. The exemption proposed in this order is a class exemption that will exempt people who convey gas that is produced onshore from the requirement to hold a transporter licence to operate pipes from the onshore production facility to the GB gas grid (pipe-line system operated by a licensed gas transporter). It is intended that the class exemption will apply to all forms of onshore gas production. This notice sets out the exemption which it is proposed will be granted by the making of an order and the terms upon which that order will be made, setting out the extent of exemption and the conditions that will apply to it.

Representations may be made with respect to the proposal until Wednesday 20th March 2013.

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Licence Exemptions

1. The Gas Act 1986 (“the Act”) provides the statutory framework for GB’s gas transmission and distribution network. The framework is designed to ensure that there is robust regulation of relevant activities, as well as to limit the potential for anti-competitive behaviour by preventing the same company from holding a shipper (wholesale supply) or supplier (sales to consumers) licence alongside a transporter (network operator) licence. This is important to ensure that all gas shippers have non-discriminatory access to pipes to transport gas.
2. Nevertheless, section 6A of the Act does provide the Secretary of State with the power to grant exemptions from the requirement to hold licences. The purpose of exemptions is to reduce the regulatory burden for those people for whom holding a licence would be excessive or onerous.
3. There is currently a variety of exemption types:
 - Exemptions that apply in specific circumstances of a particular ‘class’. For instance, an exemption that allows the conveyance of gas to and from a storage facility to occur without the need for a transporter licence.
 - Named exemptions that apply to a number of named operators or facilities. There is currently a named transporter licence exemption that exempts the pipe-line that conveys gas to the grid from a partly onshore conventional gas production facility at Wytch Farm. Wytch Farm’s named exemption will not be repealed or replaced by this class exemption as Wytch Farm is not wholly onshore.
 - Separate to section 6A, under schedule 2A of the Act, exemptions are allowed for conveyance or supply by a landlord, for instance the conveyance of gas around a caravan site.
4. This notification sets out the intention to create a further class exemption, to remove the requirement to hold a transporter licence for people who convey gas produced onshore through pipes from the onshore production facility to the gas grid.

Creating a Class Exemption

5. Section 5(1)(a) of the Act states that it is prohibited for any person who ‘conveys gas through pipes to any premises, or to a pipe-line system operated by a gas transporter’ to do so without a transporter licence.
6. This means that people who wish to convey gas that has been produced onshore, for example: Biomethane, Shale and Coal Bed Methane sites, require a transporter licence in order to operate the pipes that connect their production facility to the gas grid.

7. This requirement has been recognised as a regulatory barrier for people who wish to convey gas that has been produced onshore to the grid¹. Therefore, it is the aim of this notification to use the 'Exemptions from prohibition' clause (section 6A of the Act) to create a class exemption to apply to all onshore gas production techniques.
8. Transporter licences are designed to ensure that networks are used in a way that is conducive to maintaining a competitive market and secure gas supply. Therefore, in order to obtain a gas transporter licence, an application to Ofgem must be made that includes information about the company's commercial arrangements and a safety case that proves an applicant's readiness to commence licensable activities. These requirements are disproportionate in the case of people who want to convey gas that has been produced onshore from the production facility to grid as they:
 - at present, are not operating pipes that are of strategic importance to the effective operation of the GB gas grid. Any loss of gas supplies due to technical or any other failures experienced by the pipes connecting the production facility to the grid could be easily resolved by other sources; and
 - are not operating pipes that supply gas directly to consumers.
9. A person who operates pipes that convey gas produced onshore from the production facility to the grid will:
 - still be subject to third party access rules that prohibit monopolistic behaviour at the network entry facility, therefore establishing a class exemption will not have negative impacts upon competition;
 - be subject to the Gas Safety (Management) Regulations 1996 (GS(M)R), safety rules that apply to gas transported in the network (whether it is operated by a person who is licensed or exempt from the requirement to be licensed). All gas that is produced onshore must be processed in some way in order to meet the standards set out in the GS(M)R or, alternatively, bespoke standards set by the Health and Safety Executive (HSE) in the case where an exemption from the GS(M)R is granted; and
 - sign a Network Entry Agreement (NEA) with the licensed transporter to which the facility will connect to. The NEA will bind this person to certain terms which ensure that the gas can be accounted for and meets required safety standards (as set out in the (GS(M)R)).
10. One available alternative to holding a gas transporter licence is that a person who produces gas onshore could contract out the operation of the relevant pipe work to an already licensed gas transporter. However, this has financial implications for the person who produces gas onshore. It may also not be desirable to expect the gas transporter to operate and maintain pipes whose location and ownership make it difficult for them to be responsible for them.

¹ For example, through the Energy Market Issues for Biomethane (EMIB) group <http://www.gasgovernance.co.uk/emib>

Onshore Gas

11. Most gas that is consumed in Great Britain is either imported (via pipeline or LNG tanker) or produced offshore on the UK Continental Shelf (UKCS). However, in the future an increasing amount of gas that is injected into the GB gas network is likely to be produced onshore.
12. Onshore gas can be produced in a variety of ways: through extraction from conventional onshore fields, shales or coal beds, to production through the treatment of organic waste. Apart from conventional onshore production, each of these production techniques for injection to grid is in early phases of deployment in the UK, therefore it is difficult to predict their commercial potential. Still, this exemption aims to remove this regulatory barrier in a way that is technology neutral. It also aims to be generic enough so that any future onshore gas production techniques (that may or may not be similar to current techniques) can be covered in the same class, without the need for further regulatory change.

Consultation Question

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|-----------|---|
| 1. | Do you agree that the Government should establish a class exemption in respect of all types of gas produced onshore? |
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Defining the exemption

13. As the aim is to cover all onshore producers in one class; a common definition of 'Point A' (where the exemption begins) and 'Point B' (where the exemption ends) are required.

Definition of Point A

14. In previously written class exemptions, Point A has been easy to define. For example, in the gas storage class exemption, the exemption begins from the 'gas storage facility'.

15. However, as onshore production techniques vary widely, a shared characteristic must be determined in order to ensure that the class exemption can remain technology neutral. Consideration has been given to the definition in order not to exclude any onshore technologies, or unintentionally include, for example, offshore gas production or gas import facilities.

16. As processing operations are a common characteristic, it is the intention to define Point A as the onshore gas processing facility.

17. We propose to define 'onshore gas processing facility' as being any facility which:

- (a) carries out gas processing operations in respect of gas extracted from or produced in a landward area only,
- (b) is operated otherwise than by a gas transporter, and
- (c) is not an LNG import or export facility.

18. We propose that 'landward' has the meaning given in article 3 of the Petroleum (Production) (Landward Areas) Regulations 1995.

Consultation Question

2.	Do you think that it is suitable to use this definition of 'landward' to ensure that this class exemption applies only in the instance of people who wish to convey gas that has been produced <i>onshore</i>?
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19. Gas Processing Operation

We propose that 'gas processing operation' should include the following operations:

- (a) purifying, enrichment, blending, odorising or compressing gas for the purpose of enabling it to be introduced into a pipe-line system operated by a public gas transporter;

(b) removing from gas for that purpose any of its constituent gases, through cleaning, scrubbing or particulate removal, 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, and “process”, in relation to gas, shall be construed accordingly.

20. This is slightly different from the definition used in section 12 of the Gas Act 1995 in respect of the acquisition of rights to use a gas processing facility for downstream purposes². We consider that in addition to those operations referred to here, given industry feedback, it is appropriate in this context to include enrichment, cleaning, scrubbing and particulate removal.

Consultation Question

3. **Do you agree that every type of onshore gas will be processed by at least one of the ‘gas processing operations’ before it meets pipes or associated infrastructure operated by a licensed transporter?**

Definition of Point B

21. As a licence is required for the conveyance of gas through pipes to any premises, or to a pipe-line system operated by a gas transporter, the appropriate point for the exemption to end is when it reaches pipes (or associated infrastructure) that are operated by the licensed transporter. This is set out in the Network Entry Agreement that the onshore producer will sign with the licensed transporter to whose network it connects.

Exemption from Section 5(1)(a) of the Act

22. Therefore, taking into consideration the definitions of Point A and B above; subject to the below conditions:

‘Exemption is granted to a person who conveys gas over a distance not exceeding 16.043 km from an onshore gas processing facility to a pipeline system operated by a gas transporter is exempt from section 5(1)(a) of the Act in relation to that conveyance.’

Consultation Question

4. **Do you agree that the proposed definitions ensure that the exemption will apply to all forms of onshore gas production?**

² And the definition used in the 2011 Exemption Order.

Conditions

Length Limit

23. It is the intention to continue the precedent set in previous transporter licence exemptions³, by permitting this exemption to apply only to pipes that do not exceed 16.093 km [10 miles] in length. This is in order to safeguard against any potential abuses of this exemption, removing the risk that onshore producers of gas will be able to operate large networks which are exempt from the requirement to hold a transporter licence. The length limit will be defined to begin at the **initial** gas processing operation that takes place at the onshore gas processing facility and will end when pipes operated by the gas transporter are reached.
24. This means that a person who operates pipes that transport gas from the production site (for example a shale gas well or an Anaerobic Digester) to the point at which the first gas processing operation occurs, will not be required to:
- hold a transporter licence;
 - be exempt from the requirement to hold a licence; and
 - be subject to the length limit.

Consultation Question

5. **Do you think that by defining the length limit in this way, this condition will act as an appropriate safeguard to ensure that the exemption is not abused?**

Supply to premises

25. The exemption will also not be valid if the person who conveys gas that has been produced onshore, conveys that gas to any premises before it reaches pipe line system operated by a gas transporter. This condition is necessary in order to only exempt the facility from the part of section 5(1)(a) that relates to the conveyance of gas to 'pipe line system operated by a gas transporter' and not exempt them in the instance of the conveyance of gas 'through pipes to any premises'.

³ The Gas (Exemptions) Order 2011

Gas (Calculation of Thermal Energy) Regulations 1996

26. The Gas (Calculation of Thermal Energy) Regulations 1996 provide the rules for the amount of energy contained within in gas to be calculated and accounted for, in order to ensure that consumers are charged appropriately. The Gas (Calculation of Thermal Energy) Regulations only apply to licensed transporters and therefore not to those who are classed as exempt.
27. As there is a condition in place to ensure that this exemption will not apply if gas is supplied directly to any premises, the onshore producer must connect to a licensed transporter before gas can reach consumers. If gas is supplied to the grid (operated by a licenced transporter) and cannot be accounted for, gas shippers are punitively capped at a large cost. There is therefore a commercial incentive on the onshore producer and the licenced transporter to ensure that the requirements of the Gas (Calculation of Thermal Energy) Regulations are met, which can be agreed through the Network Entry Agreement.

Consultation Question

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| 6. | Do you think that the Gas (Calculation of Thermal Energy) Regulations 1996 should apply to the exempt pipework, or do you consider that there is enough of a commercial incentive to ensure that gas entering the network will be accounted for? |
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Stakeholder Engagement

28. We plan to engage with stakeholders through existing forums. However, we are also happy to engage with individual stakeholders who contact us directly using the details provided in the 'General Information' section.

Commencement

29. We anticipate that the exemption will commence on the October 2013 common commencement date. The draft Statutory Instrument is published alongside this notification. Government considers that this exemption should not come to an end after a set period of time.

Consultation Question

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| 7. | Do you have any comments on the accompanying draft Statutory Instrument? |
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Next Steps

30. Responses to the consultation document will be reviewed and consultees will be responded to. Amendments to policy will be made where appropriate.

Catalogue of consultation questions

Consultation Question

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| 1. | Do you agree that the Government should establish a class exemption in respect of all types of gas produced onshore? |
|----|--|

Consultation Question

- | | |
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| 2. | Do you think that it is suitable to use this definition of 'landward' to ensure that this class exemption applies only in the instance of people who wish to convey gas that has been produced <i>onshore</i> ? |
|----|---|

Consultation Question

- | | |
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| 3. | Do you agree that every type of onshore gas will be processed by at least one of the 'gas processing operations' before it meets pipes or associated infrastructure operated by a licensed transporter? |
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Consultation Question

- | | |
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| 4. | Do you agree that the proposed definitions ensure that the exemption will apply to all forms of onshore gas production? |
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Consultation Question

- | | |
|----|---|
| 5. | Do you think that by defining the length limit in this way, this condition will act as an appropriate safeguard to ensure that the exemption is not abused? |
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Consultation Question

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| 6. | Do you think that the Gas (Calculation of Thermal Energy) Regulations 1996 should apply to the exempt pipework, or do you consider that there is enough of a commercial incentive to ensure that gas entering the network will be accounted for? |
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Consultation Question

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| 7. | Do you have any comments on the accompanying draft Statutory Instrument? |
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General information

Purpose of this consultation

Set out what Government is trying to achieve with the consultation and in particular whose views it is seeking.

Issued: Wednesday 20th February 2013

Respond by: Wednesday 20th March 2013

Enquiries to:

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Consultation reference: URN 13D/025 – Notice under section 6A of the Gas Act 1986 – Gas transporter licence exemption for onshore producers of gas.

Territorial extent:

This policy will apply to Great Britain.

How to respond:

Your response will most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Responses should be sent electronically to kate.downen@decc.gsi.gov.uk.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at www.gov.uk/decc.

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at www.gov.uk/decc This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

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