



Department
of Energy &
Climate Change

Notice under section 6A of the Gas Act 1986 - Consultation Response

Gas Transporter Licence Exemption for Onshore Production of Gas

18 July 2013



Department
of Energy &
Climate Change

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The consultation can be found on DECC's website:
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Introduction

1. The consultation notice, published on 20 February 2013 set out the proposal by the Secretary of State for the Department of Energy and Climate Change for the making of an order granting exemption from section 5(1)(a) of the Gas Act 1986 (as amended).
2. The exemption proposed was a class exemption to remove the requirement to hold a transporter licence for a person who conveys gas that is produced or extracted onshore (e.g. biomethane, unconventional and conventional) to the gas grid (pipe-line system operated by a licenced gas transporter).
3. The consultation closed on 20th March 2013.

Conducting the consultation exercise

4. Prior to and during the consultation phase, onshore producers, gas distribution networks and relevant government bodies were engaged with, through meetings and attendance at existing stakeholder forums.
5. Eight responses were received in total from a cross section bodies that are likely to be affected by the policy.

Sector	Organisations
Biomethane Producers	Anaerobic and Digestion and Biogas Association, Renewable Energy Association
Conventional & Unconventional Gas Producers	UK Onshore Operators Group, Centrica
Gas Distribution Network Operators	Energy Networks Association, National Grid, Scotia
Regulator	Ofgem

Key findings and future actions

Definition of point 'A'

6. The definition of where the length limit will begin ('point A') has been slightly revised in response to comments received from onshore gas producers throughout the consultation.
7. In the consultation document, the exemption was defined to begin at the 'gas processing facility' which carried out 'gas processing operations' defined as:
 - (a) purifying, enrichment, blending, odourising 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.

We indicated that the length limit of 16.093 km (10 miles) would begin at the initial 'gas processing operation' that took place at the gas processing facility.

8. Industry responses indicated that in some instances, gas extracted at the well head could be measured or treated for reasons other than those operations that are required for the introduction of gas in to the transporter's network. Thus, given the definition of 'gas processing operations', the length limit would begin from the well head instead of the gas processing facility that performs gas processing operations in order to make the gas suitable for conveyance in the transporter's network. We agree that the length limit should not start from gas measurement operations at the well head, but rather from the point at which the first gas processing operation is carried out which is for the purpose of introduction into the network.

Virtual Pipelines

9. A question was posed regarding whether an exemption would be required for gas conveyed from the onshore processing facility in the instance where the gas was then transported through 'virtual pipelines' (i.e. driven by road) before being injected to the grid, and thus whether the length limit would apply to this driven distance.
10. We can confirm that the length limit will not apply to 'virtual pipelines', but only to the length of physical pipeline through which the gas is conveyed.

More Than One Producer

11. A respondent to the consultation asked whether, in the instance of more than one producer using the same gas processing facility, whether the length limit would apply to each producer, or whether there would be one cumulative limit applied to each injection site.
12. As noted above, the length limit will apply from the gas processing facility at which the initial gas processing operation is undertaken for the purposes of introduction into the grid and will end at the point of introduction into the grid. It will not affect the length limit of the exemption if more than one producer feeds into this gas processing facility.

Partly Onshore Production

13. Consultation responses highlighted concerns that, as defined, this exemption will not apply in an instance where gas is drilled for onshore but the hydrocarbons are in fact extracted from outside of landward areas. However, as the Department's policy intention is to create an exemption for gas produced (and extracted) onshore only, the Department has decided not to extend the exemption to include hydrocarbons extracted from outside of landward areas.
14. In these instances the producer will be required to obtain a gas transporter licence, apply for a named exemption or subcontract the operation of the pipes to an already licenced third party.

Definition of Landward Areas

15. In the consultation document we indicated that the exemption would apply to gas produced or extracted from 'landward areas', as set out in the schedule to the Petroleum (Production) (Landward Areas) Regulations 1995 ("the Landward Areas Regulations"). One consultation response queried whether it is appropriate to refer to a schedule of another set of regulations, and specifically regulations which apply to petroleum; this response suggested that the exemption could refer simply to gas produced or extracted 'onshore'.
16. We consider that it is important to ensure that there is a specific geographical scope of this exemption, as we can envisage situations where it would not be immediately clear whether gas is produced or extracted 'onshore' (for example, in an estuary or other tidal area). The Landward Areas Regulations provide a set of co-ordinates which clearly define a geographical area, thus avoiding any such ambiguity. We have clarified the definition of 'landward areas' to make explicit that it refers to the geographical area described by those co-ordinates in the Schedule to the Landward Areas Regulations. Although it is relatively unusual to refer to a schedule of another set of regulations, we consider that this approach is justified in this case as it will provide certainty to interested parties without needlessly reproducing a lengthy schedule.

Gas (Calculation of Thermal Energy) Regulations 1996

17. There was broad agreement from all industry respondents that there is enough of a commercial incentive on producers, transporters and shippers to ensure that the gas entering the network is of an appropriate quality to meet the Calorific Value requirements of the Gas (Calculation of Thermal Energy) Regulations 1996 (“the Thermal Energy Regulations”). Furthermore, industry respondents considered that the Network Entry Agreement, applied with the legal requirements placed on the network operators, is a robust enough commercial contract and legal tool to ensure that operational measures are in place for the requirements of the regulations to be met.
18. In addition to this, industry respondents argued that were the Thermal Energy Regulations to apply to the exempt pipework, the exemption would become unworkable, as it is not until after the gas has gone through the processing operations, for example the addition of propane, that it achieves the required standards to be injected into the grid.
19. However, in its response to the consultation, Ofgem expressed concerns regarding how the governance of the Thermal Energy Regulations will be achieved. On consideration of all of these responses, the Department takes the view that the interests of consumers will be adequately protected by the requirements on licensed Gas Transporters and the Network Entry Agreements entered into in relation to the exempt pipework. We have therefore concluded that it would not be appropriate for the obligations of the Thermal Energy Regulations to apply to operators of the exempt pipework.
20. We anticipate that Ofgem will continue to work with licensed Gas Transporters in connection with the governance arrangements under the Thermal Energy Regulations as appropriate, and in particular to clarify the extent to which it may be possible for directions made under the Thermal Energy Regulations to direct a licensed Gas Transporter in respect of equipment owned by a third party (which may include equipment covered by this exemption).
21. A wider point that was raised by one respondent is that sites that inject only a small amount of gas into the grid should be completely removed from the scope of the Gas (Calculation of Thermal Energy) Regulations 1996. This proposal is outside of the scope of this exemption order, and is not therefore addressed in this response document¹.

¹ The Gas (Calculation of Thermal Energy) Regulations 1996 were made by the Director General of Gas Supply (whose functions are now transferred to the Gas and Electricity Markets Authority) under s12 Gas Act 1986 and therefore proposals in regard to these regulations should be directed for the attention of Ofgem.

Consultation Questions

Consultation Question	
1.	Do you agree that the Government should establish a class exemption in respect of all types of gas produced onshore?
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> ?
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?
4.	Do you agree that the proposed definitions ensure that the exemption will apply to all forms of onshore gas production?
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?
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?
7.	Do you have any comments on the accompanying draft Statutory Instrument?

Commencement

22. Consent was also sought and gained from the Cabinet Reducing Regulation Sub-Committee to allow the SI to deviate from the Common Commencement Date. This derogation was designed to ease the regulatory burden on two current biomethane projects who responded to the consultation. Therefore, the SI is expected to come into force on 12 August 2013.

General information

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Consultation reference: URN **13D/166**– 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 saleha.dani@decc.gsi.gov.uk.

Additional copies:

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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.

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