



Number 26 of 2000

GAS (AMENDMENT) ACT, 2000

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[2000.] *Gas (Amendment) Act, 2000.*

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Acts Referred to

Continental Shelf Act, 1968	1968, No. 14
Electricity Regulation Act, 1999	1999, No. 23
Gas Act, 1976	1976, No. 30
Gas Acts, 1976 to 1998	
Gas (Amendment) Act, 1993	1993, No. 7
Registration of Title Act, 1964	1964, No. 16
Taxes Consolidation Act, 1997	1997, No. 39



Number 26 of 2000

GAS (AMENDMENT) ACT, 2000

AN ACT TO PROVIDE, HAVING REGARD TO THE NEED TO SECURE AN INCREASE IN THE AMOUNT OF ELECTRICITY CAPABLE OF BEING GENERATED IN THE STATE AND THE LIMITED AMOUNT OF CAPACITY IN THE NATURAL GAS NETWORK THAT IS AVAILABLE FOR THAT PURPOSE, FOR THE ALLOCATION TO PERSONS BY THE COMMISSION FOR ELECTRICITY REGULATION OF THE USE OF A CERTAIN AMOUNT OF THAT CAPACITY FOR THE PURPOSES OF SUPPLYING NATURAL GAS IN CONNECTION WITH SUCH GENERATION, TO ENLARGE THE POWERS OF BORD GÁIS ÉIREANN UNDER THE GAS ACTS, 1976 TO 1998, TO OTHERWISE AMEND AND EXTEND THOSE ACTS, TO AMEND THE ELECTRICITY REGULATION ACT, 1999, IN CERTAIN RESPECTS AND TO PROVIDE FOR RELATED MATTERS. [10th July, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“Act of 1997” means the Taxes Consolidation Act, 1997;

“Act of 1999” means the Electricity Regulation Act, 1999;

“applicant” and “application” have the meanings assigned to them by *section 3(1)*;

“capacity” means, in relation to the natural gas network, capacity on a firm or an interruptible basis;

“Code of Operations” means the document, dated 16 July 1999, bearing that title and published by the Transmission Division of the Board, together with any amendments as may from time to time be made to it;

“Commission” means the Commission for Electricity Regulation;

S.1 “company” has the same meaning as it has in the Corporation Tax Acts;

“contract for standard service” means a contract for the transmission of natural gas whereby the Board agrees to make natural gas available at a point of delivery in accordance with the Code of Operations;

“firm capacity” means capacity of the type which is similar to the type of capacity that would be provided under a contract entered into pursuant to *section 10* if that contract were a contract for standard service;

“generate” means, in relation to electricity, to produce electricity;

“generating station” means a station for the generation of electricity, the rated generating capacity of which is more than 25 megawatts;

“grid code” has the same meaning as it has in the Act of 1999;

“interruptible capacity” means capacity which is made available by way of capacity transfer under and in accordance with the terms of the Code of Operations as those terms have effect—

(a) having regard to any modifications required to be made to the normal terms and conditions by *section 10(5)*;

(b) so as to allow capacity made available by those means to a person selected to be withdrawn for reasons other than, or in addition to, those provided in the said code for—

(i) a period or periods not exceeding 240 hours in total in any period of 12 months, or

(ii) such longer period as the Commission may specify having due regard to the physical capability of the natural gas network at the location of the generating station concerned,

in such circumstances as may be specified by the Commission for the purposes of this Act (which the Commission is hereby empowered to specify);

“Minister” means the Minister for Public Enterprise;

“natural gas network” means the network of pipelines used by the Board for the transmission of natural gas;

“normal terms and conditions” shall be construed in accordance with *section 10(2)*;

“planned generating station” shall be construed in accordance with *section 3(1)*;

“Principal Act” means the Gas Act, 1976;

“rated generating capacity”, in relation to a planned generating station, shall be construed in accordance with *section 3(1)*;

“regulations” means regulations under *section 2(2)*;

“relevant purposes” has the meaning assigned to it by *section 2(1)*;

“relevant rights” means—

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- (a) the right, by virtue of regulations, to employ, for the relevant purposes, the procedure specified in *section 10*, and
- (b) (i) (other than in *section 10*) the right, on foot of a contract which has been entered into with the Board in consequence of the employment of that procedure, to use for those purposes the amount of the capacity of the natural gas network that has been determined in respect of the holder of the right under the regulations,
- (ii) (in *section 10*) the right that will arise, on foot of such a contract when it has been entered into, to so use the said amount of such capacity;

“total available capacity” shall be construed in accordance with *section 2(7)*;

“transmission or distribution system” has the same meaning as it has in the Act of 1999;

“standard cubic metres” means cubic metres expressed at 40Mj/cubic metre calorific value.

(2) References in this Act to a person being selected shall be construed as references to the person being selected in accordance with the procedure referred to in *section 2(3)(a)* and cognate references shall be construed accordingly.

(3) References in this Act to a holder of relevant rights using, for the relevant purposes, an amount of the capacity of the natural gas network shall be construed as including references to the holder using, for those purposes, that amount through an agent (being an agent approved in writing for the purpose by the Commission before the agent makes such use of that amount on behalf of the holder).

(4) In determining, for the purposes of this Act—

- (a) whether one company is an associated company of another company, *section 432* (subject to the modification specified in *subsection (5)*) and the other relevant provisions of Part 13 of the Act of 1997 shall apply,
- (b) whether a person has control of a company, *section 432* of the said Act and the other relevant provisions of the said Part shall apply.

(5) The modification of *section 432* of the Act of 1997 mentioned in *subsection (4)(a)* is the deletion in *subsection (1)* of “or at any time within one year previously”.

(6) In this Act—

- (a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,

- S.1 (c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, extended or adapted by or under any subsequent enactment, including this Act.

Power to allocate use of certain amount of capacity of natural gas network.

2.—(1) In this section, “relevant purposes” means—

- (a) the purposes of supplying natural gas to a single generating station (constructed by or on behalf of the person who, by virtue of being selected, is entitled to use the capacity of the natural gas network in that regard) for the purpose of providing energy for the generation of electricity at that station, and
- (b) such other purposes involving the use of that capacity, being purposes which the Commission is satisfied are of a limited and special nature and approves in writing before that capacity is put to such use.

(2) The Minister may, after consultation with the Commission, make regulations providing that each of 2 or more persons who are selected in that behalf, in accordance with the regulations, shall have the right to employ, for the relevant purposes, the procedure specified in *section 10* as respects such an amount of the capacity of the natural gas network as is determined in respect of that person in accordance with the regulations.

(3) Regulations shall provide for—

- (a) a procedure whereby persons are selected by the Commission as the persons who shall each have relevant rights,
- (b) the determination by the Commission of the respective amounts of the capacity of the natural gas network, and the types of that capacity, as respects which each of the persons to be so selected shall, in any period of 12 months or less that is specified in the regulations, have relevant rights.

(4) Regulations shall provide—

- (a) that amongst the persons who may be selected there may be selected a company of which the Board has control (but not the Board itself),
- (b) that, as respects 2 or more persons who are associated companies of one another, only one of those persons may be selected (but nothing in this paragraph shall be construed as preventing 2 or more such persons from being selected as persons who shall jointly have relevant rights).

(5) Regulations shall contain a provision that any relevant right shall be enjoyed by the person concerned—

- (a) for such period as is specified in the regulations in relation to that right (not being a period that expires after 30 September 2004), and
- (b) subject to the person’s compliance with such terms and conditions as are specified in relation to that right in the regulations or by the Commission in selecting that person in accordance with the regulations.

(6) Without prejudice to *subsection (5)*, regulations may in S.2 relation to a relevant right include—

- (a) a provision that that right shall stand forfeited in relation to that person if he or she fails to comply with a specified term or condition referred to in *subsection (5)(b)* or *paragraph (c)* (not being a term or condition to which the provision referred to in *paragraph (b)* applies),
- (b) a provision enabling the Commission, where the nature of the failure to comply concerned is of such seriousness as, in the opinion of the Commission, warrants the Commission so doing, to decide that that right shall stand forfeited in relation to that person on a date specified by the Commission if the person has failed to comply with a specified term or condition referred to in *subsection (5)(b)* or *paragraph (c)* (not being a term or condition to which the provision referred to in *paragraph (a)* applies),
- (c) a provision specifying that that right shall be enjoyed subject to the person concerned complying with one or more than one condition precedent specified in the regulations or by the Commission in making the selection (including a condition precedent that specified stages in the construction of the planned generating station are completed on or before specified dates).

(7) Regulations shall specify that the aggregate of the amounts referred to in *subsection (3)(b)* shall not exceed 3.3 million standard cubic metres of natural gas per day (and that aggregate is referred to in this Act as the “total available capacity”).

(8) Regulations shall provide that the Commission, in determining the respective amounts of the capacity referred to in *subsection (3)(b)*, shall have regard to the need to ensure that as much of the total available capacity as is possible will be utilised for the generation of electricity.

(9) Regulations shall provide that a person who has been selected may, at any time after the determination referred to in *subsection (3)(b)* has been made in relation to him or her, request the Commission to vary the types of the capacity of the natural gas network, the subject of that determination in relation to him or her, by increasing the proportion of that capacity which is interruptible as distinct from firm in any particular period and that the Commission shall consider such a request and, if after consultation with the Board, it is satisfied that such an increase—

- (a) is practicable from a technical standpoint, and
- (b) will not adversely affect the relevant rights of the other persons selected or the rights of any other persons to use the capacity of the natural gas network,

shall make such a variation and, accordingly, increase the said proportion of capacity by such amount as it considers appropriate.

(10) The procedure referred to in *subsection (3)(a)* shall provide for the following matters—

- (a) a requirement that a person wishing to be selected under that procedure make an application in that behalf to the Commission,

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- (b) a requirement that such an application shall be in such form, contain such particulars and be made to the Commission before such date as the Commission determines,
 - (c) a requirement that the making of such an application shall be accompanied by the payment by the applicant to the Commission of a fee of an amount specified in the regulations (which amount shall not exceed £10,000), and
 - (d) a requirement that an applicant supply such information as the Commission may reasonably require and requests the applicant to supply to it for the purpose of its deciding whom should be selected under the procedure.

Method by which Commission shall select persons under procedure referred to in *section 2(3)(a)*.

3.—(1) In this section—

“applicant” and “application” mean, respectively, the applicant and the application referred to in *section 2(10)*;

“commissioning date” means, in relation to an application, the date estimated by the Commission as being the date referred to in *subsection (3)(b)* by which the planned generating station to which the application relates will become commissioned;

“earliest commissioning date” means the commissioning date that falls the earliest from the time that the Commission makes the selection referred to in *section 2(3)(a)*;

“planned generating station” means, in relation to an applicant, the generating station in relation to which the applicant’s relevant rights, if the applicant is selected, are to be exercised and cognate expressions shall be construed accordingly;

“rated generating capacity” means, in relation to a planned generating station, the capacity specified in the relevant application as being the station’s rated generating capacity.

(2) For the purposes of this section a planned generating station shall be regarded as having become commissioned when the following conditions are satisfied in relation to it—

- (a) the station is connected—
 - (i) to the natural gas network and is able to receive a supply of natural gas therefrom, and
 - (ii) to the transmission or distribution system,
- (b) the station—
 - (i) operates reliably to its rated generating capacity,
 - (ii) complies with the requirements of the grid code specified in the regulations, and
 - (iii) is capable of sending out an amount of electricity, up to its rated generating capacity, to the transmission or distribution system,
- (c) if the applicant concerned is not the person who has constructed the station, the construction works in respect of the station have been completed in accordance with the

construction contract concerned and the applicant has S.3
taken possession of those construction works.

(3) Regulations shall specify that the Commission shall make the selection by the following method, that is to say, by—

- (a) evaluating each of the applications,
- (b) estimating the respective dates by which it considers each of the applicants' planned generating stations will become commissioned,
- (c) ranking the applications in the following order of precedence, that is to say, the application that has the earliest commissioning date shall be ranked first, the application that has the next earliest commissioning date shall be ranked second and so on,
- (d) making such alterations in that order of precedence (if any) as are necessary by virtue of the provisions of the regulations referred to in *section 4*,

and, accordingly, selecting as the persons who shall each have relevant rights the person whose application ranks first in that order of precedence (being that order with such alterations (if any) as are made to it as aforesaid) and such of the other applicants, according as his or her application is ranked in that order of precedence, as—

- (i) the total available capacity, and
- (ii) the provision of the regulations referred to in *section 4(d)* and any determination made by the Commission thereunder,

allow.

4.—Regulations shall include the following provisions:

- (a) a provision specifying that, for the purposes of the order of precedence referred to in *section 3(3)(c)*, if 2 or more applications have the same commissioning date, the precedence in which those applications shall rank among themselves shall be as follows—

Supplementary provisions to be included in regulations with respect to method of selection.

- (i) in case there are only 2 such applications, the application whose planned generating station will have the larger rated generating capacity as against that of the other application shall rank before that other,
- (ii) in case there are more than 2 such applications—
 - (I) the application (“the first-mentioned application”) whose planned generating station will have the largest rated generating capacity as against those of the other applications shall rank before those others,
 - (II) of those other applications, the application whose planned generating station will have the larger or the largest rated generating capacity as against that or those of the other application or

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applications shall rank next after the first-mentioned application and so on,

- (b) a provision specifying that where, in the opinion of the Commission, the ranking of any particular person in the order of precedence referred to in *section 3(3)(c)* would, if the person were to be selected, result in the promotion of competition in the market for the generation and supply of electricity being adversely affected, the Commission shall, subject to the provision referred to in *paragraph (c)*, make such alteration in the ranking of the person in that order of precedence as it considers will prevent such a result or, if necessary, decide that the person shall not be amongst the persons who are selected (and, where the Commission so decides, the person, accordingly, shall not be selected),
- (c) a provision specifying that the Commission, if it is of opinion that the exercise of that power would ultimately result in demand for the supply of electricity in the State not being met, shall not exercise the power as aforesaid to alter the ranking of a person or, as the case may be, not to select a person to such extent as is necessary to ensure, so far as is practicable, that such demand is met,
- (d) a provision specifying that the Commission shall select no more than 3 persons unless, in making the evaluation referred to in *section 3(3)(a)*, it determines that there are good grounds for doing otherwise and that, in making any such determination, it shall have regard, and only have regard, to—
 - (i) the need to ensure that as much of the total available capacity as is possible will be utilised for the generation of electricity, and
 - (ii) the need to promote competition in the market for the generation and supply of electricity.

Supplementary provisions to be included in regulations with respect to forfeitures.

5.—(1) Regulations shall include a provision specifying that if the relevant rights of a person stand forfeited under the provision of the regulations referred to in *paragraph (a) or (b) of section 2(6)*, the Commission may select one or more persons as the person or persons who shall have, or who shall each have, relevant rights as respects such an amount of the capacity of the natural gas network in relation to which the first-mentioned person had relevant rights as is determined by the Commission.

(2) The provision referred to in *subsection (1)* shall provide that—

- (a) unless the Commission opts to adopt the procedures referred to in *subsection (3)*, the Commission shall select as the person or, as it may think appropriate, the persons who shall have, or who shall each have, relevant rights as aforesaid the person or persons whose application or applications was or were ranked, in the order of precedence last mentioned in *section 3(3)*, immediately after the application of the person lastly selected in accordance with the method referred to in that section,

- (b) if the selection of a person referred to in *paragraph (a)* S.5 would, in the opinion of the Commission, result in the promotion of competition in the market for the generation and supply of electricity being adversely affected, the Commission shall, subject to *paragraph (c)*, not select that person and instead shall select whichever person of the persons whose applications were ranked, in the order of precedence last mentioned in *section 3(3)*, after that other person's application whose application ranks the nearest to that other person's application and whose selection will not result in the promotion of such competition being adversely affected,
- (c) if the Commission is of opinion that the exercise of the powers referred to in *paragraph (b)* would ultimately result in demand for the supply of electricity in the State not being met, it shall select the first-mentioned person in that paragraph or, if it is not necessary that that person be selected in order to ensure, so far as is practicable, that demand as aforesaid is met, whichever person of the second-mentioned persons in that paragraph whose application ranks the nearest to that first-mentioned person's application and whose selection will ensure, so far as is practicable, that such demand is met,
- (d) such of the other provisions of the regulations as are specified in the provision shall, with any necessary modifications, apply to a person selected in accordance with the provision as they apply to a person selected in accordance with the method referred to in *section 3(3)*.

(3) Regulations shall include a provision specifying that the Commission may, instead of employing the procedure referred to in *subsection (2)* for the purposes of selecting a person or persons who shall have, or who shall each have, relevant rights as provided for by the provision referred to in *subsection (1)*, opt to employ again the provisions generally of the regulations with regard to the selection of persons and, where the Commission so opts, that those provisions shall apply, accordingly, with any necessary modifications.

6.—(1) The Commission shall, for the purposes of the method referred to in *section 3(3)*, determine and publish, in such manner as it thinks fit, the criteria to which it proposes to have regard in estimating the date on which it considers the conditions referred to in *section 3(2)* will be satisfied in relation to a planned generating station.

Criteria to be had regard to in deciding when station will become commissioned.

(2) Those criteria shall be determined and published by the Commission at least 1 month before it makes the selection.

7.—(1) The Commission may, for the purposes of—

Power to require certain information.

- (a) the making of the selection or the performance of any of its other functions under the regulations, or
- (b) the performance of any of its functions under this Act,

require the Board or the Electricity Supply Board to furnish to the Commission such information in its possession or capable of being reasonably procured by it as the Commission specifies.

S.7 (2) The Board or the Electricity Supply Board, as the case may be, shall comply with a requirement under *subsection (1)* within such period as the Commission specifies in making the requirement.

Directions to Board with regard to use of natural gas network.

8.—(1) The Commission may, in so far as it appears to the Commission to be reasonably necessary to do so for the purpose of securing the enjoyment by a person of his or her relevant rights, give directions to the Board with regard to the use or management by the Board of the natural gas network.

(2) Without prejudice to the generality of *subsection (1)*, the Commission may give a direction to the Board requiring it to take such steps as are specified in the direction for the purpose of enabling the connection to the natural gas network of the generating station in relation to which a person's relevant rights are to be exercised.

(3) The Commission shall consult with the Board before giving a direction to it under this section.

(4) The Board shall comply with any direction under this section within such period as is specified in the direction.

(5) If the Board fails to comply with a direction under this section, the Commission may, in a summary manner, apply to the High Court, on notice to the Board, for an order requiring the Board to comply with the direction and the High Court may, on the hearing of the application, if it considers it appropriate to do so, make such an order.

Prohibition on Board entering into certain contracts.

9.—(1) The Board shall not, before 30 September 2004, without the prior written consent of the Commission, enter into a contract (otherwise than pursuant to *section 10*) whereby it agrees to make available to any other person the use of an amount of the capacity of the natural gas network for the purposes of supplying natural gas to a generating station, commissioned after the passing of this Act, for the purpose of providing energy for the generation of electricity at that station.

(2) A contract which contravenes *subsection (1)* shall be void.

(3) The Minister may make an order providing that *subsections (1) and (2)* shall stand repealed on such day as is specified in the order.

(4) The Minister may only make such an order if it appears to him or her that, at the time of the making of the order, the available capacity of the natural gas network is such as will allow the Board to enter into contracts of the kind referred to in *subsection (1)* without any likelihood of prejudice to the rights or obligations of persons under any of the contracts entered into pursuant to *section 10* thereby arising.

Obligation of Board to make available use of capacity of natural gas network.

10.—(1) This section specifies the procedure referred to in *section 2(2)*.

(2) In this section—

“holder of relevant rights” means a person who has been selected as a person who shall have relevant rights;

“normal terms and conditions” has the meaning assigned to it by S.10 *subsection (5)*;

“statutory terms and conditions” means—

- (a) so much of the provision referred to in *subsection (5)* of *section 2* as relates to *paragraph (a)* of that *subsection (5)*,
- (b) the terms and conditions referred to in *subsection (5)(b)* of *section 2* in so far as they relate to the use, for the relevant purposes, of the capacity of the natural gas network, and
- (c) the provisions of the regulations referred to in *subsection (6)* of *section 2* in so far as they relate to such use.

(3) A holder of relevant rights may require the Board to enter into a contract with the holder whereby the Board makes available to the holder the use, for the relevant purposes, of the amount of the capacity of the natural gas network as respects which the holder has relevant rights.

(4) A holder of relevant rights shall make such a requirement of the Board by serving a notice on the Board in that behalf within 14 days from the date of his or her being notified by the Commission that he or she has been selected; any such requirement made of the Board otherwise than in accordance with this subsection shall be invalid.

(5) Within 21 days from the date of receipt by it of that notice, the Board shall furnish to the holder concerned a statement in writing of the terms and conditions which it considers should be specified in the contract to which the notice relates and those terms and conditions shall be—

- (a) the terms and conditions (with such modifications of them as are necessary to make them consistent with the statutory terms and conditions) which the Board would normally specify in a contract entered into by it, otherwise than pursuant to this section, to make available the use of the amount of the capacity concerned of the natural gas network (in this section referred to as “normal terms and conditions”), and
- (b) such terms and conditions as correspond to the statutory terms and conditions.

(6) Such a statement shall indicate in what respects the terms and conditions specified in it and falling within *paragraph (a)* of *subsection (5)* have been modified to make them consistent with the statutory terms and conditions.

(7) Subject to *subsections (8) to (10)*, the Board shall enter into the contract to which the notice served under *subsection (4)* relates within 10 days from the date of furnishing to the holder concerned the statement referred to in *subsection (5)* and the terms and conditions specified in that contract shall be the terms and conditions specified in that statement (or those terms and conditions with such modifications of them as may, by way of resolution of a dispute referred to in *subsection (8)*, be agreed between the Board and the holder concerned).

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(8) If a dispute arises between the holder concerned and the Board—

(a) as to whether—

(i) the terms and conditions specified in the statement concerned referred to in *subsection (5)* and falling within *paragraph (a)* of that subsection are, apart from any modification of them of the kind referred to in that paragraph, normal terms and conditions, or

(ii) any modification of those terms and conditions as provided for in that statement complies with that *paragraph (a)* or whether any modification of those terms and conditions that has not been provided for in that statement ought, for the purposes of that *paragraph (a)*, to have been so provided for,

or

(b) as to whether the terms and conditions specified in the statement concerned referred to in *subsection (5)* and falling within *paragraph (b)* of that subsection correspond to the statutory terms and conditions or whether any term or condition that has not been specified in that statement ought, for the purposes of that *paragraph (b)*, to have been so specified,

and the dispute cannot be resolved between them within 10 days from the date of the dispute arising, the dispute shall be referred to the Commission.

(9) The Commission shall determine any dispute referred to it under *subsection (8)* and, for that purpose, may make such modification (whether by addition or deletion of any matter to or from the statement) of the statement concerned referred to in *subsection (5)* as it thinks fit.

(10) Within 10 days from the date of the Commission making that determination, the Board shall enter into the contract to which the notice served under *subsection (4)* relates and the terms and conditions specified in that contract shall be the terms and conditions specified in the statement concerned referred to in *subsection (5)* (with such modifications, if any, as have been made to them under *subsection (9)* by the Commission).

(11) The time specified in a provision of this section (other than *subsection (4)*) as being the time within which a thing is to be done under the provision or, in the case of *subsection (8)*, the time specified in that subsection with respect to the resolution of the dispute concerned may, if the Commission deems it proper to do so, be extended by the Commission by such number of days as it considers appropriate and specifies in writing and where the Commission so extends that time the provision concerned shall be construed and have effect accordingly.

(12) For the avoidance of doubt—

(a) nothing in this section shall prevent the inclusion in a contract entered into pursuant to this section of a term enabling the termination or rescission by the Board of the contract, before the expiry of the period specified in

the regulations as being the period for which the relevant S.10
rights of the holder concerned are to be enjoyed, in the
event that a specified term or condition of the contract
(other than a term or condition that corresponds to a
statutory term or condition) is breached by the holder or
breached by the holder in a specified manner or to a
specified extent and such a term with respect to such a
breach is a term which the Board would normally specify
in a contract entered into by it, otherwise than pursuant
to this section, to make available the use of the amount
of the capacity concerned of the natural gas network,

(b) *paragraph (a) of subsection (5)* requires to be made as one
of the modifications of the terms and conditions men-
tioned in that paragraph a modification which will have
the effect of requiring the Board to terminate, without
notice to the holder concerned or any liability on the part
of the Board for doing so, the contract entered into with
the holder as soon as may be after it is informed by the
Commission that the relevant rights of the holder stand
forfeited under the provision of the regulations referred
to in *paragraph (a) or (b) of section 2(6)*.

11.—(1) Regulations may include a provision requiring each per-
son who is selected to effect a bond (in a form approved by the
Minister) with another person providing for the payment by that
other person to the Minister of specified amounts under the bond
(not exceeding in aggregate the amount referred to in *subsection (4)*),
in the event that the planned generating station in relation to the
first-mentioned person is not capable, on the commissioning date in
relation to that person's application, of sending out an amount of
electricity, up to its rated generating capacity, to the transmission or
distribution system, being amounts related to the number of days
that elapse after that date for which the station continues not to be
so capable. Provisions with
respect to bonds,
levies, etc. under
regulations.

(2) Such a bond shall not be effected otherwise than with a person
who has been approved for the purpose by the Minister.

(3) The provision referred to in *subsection (1)*—

(a) shall provide that if the relevant rights of the person con-
cerned stand forfeited under the provision of the regu-
lations referred to in *paragraph (a) or (b) of section 2(6)*,
no amounts shall be payable under the bond referred to
in that provision on or after the date of such forfeiture,

(b) may provide that no amounts or, as the case may be, no
further amounts shall be payable under the said bond if
the reason for the generating station concerned not being
capable of doing, on the date concerned or, as the case
may be, at a time subsequent to the date concerned, the
thing referred to in *subsection (1)* is due to *force majeure*.

(4) The amount mentioned in *subsection (1)* is the amount
obtained by the following formula:

$$5 \text{ million pounds } \times \frac{C}{100 M}$$

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where—

C is the rated generating capacity of the planned generating station expressed in megawatts,

and

M is a megawatt.

(5) Regulations may include a provision enabling the Commission to impose, for the purposes referred to in *subsection (6)*, a levy of an amount specified in the regulations on each person who is selected under the regulations.

(6) The purposes mentioned in *subsection (5)* are—

(a) the purpose of defraying the expenses incurred by the Commission in performing its functions under this Act and the regulations,

(b) the purpose of recouping to the Minister the sums expended by him or her before the passing of this Act or the making of the regulations in taking steps, in anticipation of this Act's passing or the making of the regulations, to facilitate the doing by the Commission of any thing the doing of which by it is provided for by this Act or the regulations.

(7) Regulations may include such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient.

Amendment of section 11 of Act of 1999.

12.—Section 11 of the Act of 1999 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) In this section, a ‘person to whom this section applies’ means the Board, a holder of a licence or an authorisation or Bord Gáis Éireann.”,

and

(b) by the insertion in subsection (4), after “under this Act” of “or the *Gas (Amendment) Act, 2000*”.

Amendment of section 12 of Act of 1999.

13.—Section 12 of the Act of 1999 is amended by the insertion after “licence or an authorisation” of “or that the Board or Bord Gáis Éireann has failed to comply with a requirement under *section 7(1)* of the *Gas (Amendment) Act, 2000*”.

Amendment of section 13 of Act of 1999.

14.—Section 13 of the Act of 1999 is amended by the insertion of the following subsection after subsection (1):

“(1A) In subsection (1), ‘duties’ means duties falling to be performed in the course of the performance by the Commission of its functions under this Act or the *Gas (Amendment) Act, 2000*.”.

15.—Section 32 of the Act of 1999 is amended by the substitution of the following subsections for subsections (1) and (2):

Amendment of section 32 of Act of 1999.

“(1) Without prejudice to any right under this Act to appeal to an Appeal Panel, a person shall not question in any legal proceedings—

- (a) the validity of a decision of the Commission on an application made to it for the grant of a licence or an authorisation or for the modification of a licence or an authorisation,
- (b) a modification by the Commission of a licence or an authorisation,
- (c) a decision of an Appeal Panel under section 30, or
- (d) any decision (whether described as a decision, selection or determination or otherwise) made by the Commission under the *Gas (Amendment) Act, 2000*, or under regulations made under that Act,

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (hereafter in this section referred to as ‘the Order’).

(2) An application for leave to apply for judicial review in respect of any matter referred to in subsection (1) shall—

- (a) subject to subsection (2A), be made within the period of two months commencing on the date on which the decision is given, and
- (b) be made by motion on notice to—
 - (i) the Commission,
 - (ii) if the application relates to a decision concerning a matter referred to in paragraph (a), (b) or (c) of subsection (1) and the applicant for leave is not the applicant for, or holder of, the licence or authorisation concerned, the applicant for, or holder of, that licence or authorisation,
 - (iii) if the application relates to a decision referred to in paragraph (d) of subsection (1) and the applicant for leave is not the person in respect of whom the decision was made, that person, and
 - (iv) any other person specified for that purpose by order of the High Court,

and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed, and that the applicant has a substantial interest in the matter which is the subject of the application.

(2A) The Court may extend the period referred to in subsection (2)(a) within which an application for leave to apply for judicial review under the Order may be made in relation to a

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matter referred to in that subsection if, but only if, it is satisfied that each of the following conditions is fulfilled—

- (a) the applicant—
 - (i) did not become aware until after the expiration of the period referred to in that subsection of the material facts on which the grounds for the said application for leave are based, or
 - (ii) did, before that period's expiration, become aware of those facts but only after such number of days of that period had elapsed as would not have made it reasonably practicable for the applicant to have made the said application for leave before that period's expiration,
- (b) the applicant could not with reasonable diligence have become aware of those facts until after the expiration of that period, or, as the case may be, those number of days had elapsed,
- (c) the said application for leave has been made as soon as is reasonably practicable after the applicant has become aware of those facts.”.

Indemnification of Commission.

16.—Any damages, costs or expenses that the Commission is liable to pay (whether as a result of an order of any court or otherwise) in connection with the performance of its functions under this Act, or under regulations under this Act, shall be defrayed by the Minister out of moneys provided by the Oireachtas.

Enlargement of powers of Board.

17.—(1) The Board may, with the approval of the Minister given with the consent of the Minister for Finance, engage in any business activity, whether related to the production, transmission or distribution of energy or not, either alone or in conjunction with other persons, and either within or outside the State, that it considers to be advantageous to the Board.

(2) The function referred to in *subsection (1)* is not in substitution for any other function standing conferred on the Board immediately before the passing of this Act and where, before the passing of this Act, the performance of such another function is not subject to the approval or consent of a Minister of the Government referred to in *subsection (1)* being obtained, nothing in that subsection shall be construed as making its performance so subject after that passing.

Amendment of section 23(2) of Principal Act.

18.—Section 23 of the Principal Act is amended by the substitution in subsection (2) of “£550,000,000” for “£350,000,000” (inserted by the Gas (Amendment) Act, 1993).

Amendment of sections 40 and 40A of Principal Act.

19.—(1) The following section is substituted for section 40 of the Principal Act:

“Restriction on construction and operation of pipelines by persons other than Board.

40.—(1) A person, other than the Board, shall not—

- (a) without having given previous and reasonable notice to the Minister before 27 April 2000, or

- (b) if no such notice was given before that date, without the consent of the Minister, S.19

construct or operate a pipeline on, over or under the surface of land or of any sea bed that is situate in the territorial seas of the State or a designated area (within the meaning of the Continental Shelf Act, 1968).

(2) Where notice is received by the Minister pursuant to subsection (1) of this section or the Minister gives his consent under that subsection the Minister shall, as the case may be—

- (a) require the relevant pipeline to be constructed or operated, as may be appropriate, in accordance with such conditions of the kind mentioned in section 8(8) of this Act or conditions analogous to all or any of the requirements of section 8(9) of this Act, as he considers appropriate, or

- (b) attach to the consent such conditions, with respect to the construction or operation of the relevant pipeline, of the kind mentioned in section 8(8) of this Act or analogous to all or any of the requirements of section 8(9) of this Act, as he considers appropriate.

(3) Where the Minister makes a requirement under subsection (2) of this section or attaches, under that subsection, conditions to a consent given under subsection (1) of this section, the person constructing or operating, as may be appropriate, the relevant pipeline shall comply with that requirement or those conditions.”.

(2) Section 40A of the Principal Act is amended—

- (a) by the substitution of the following paragraphs for paragraph (a) of subsection (1):

“(a) A statement of the likely effects on the environment (hereafter in this section referred to as an ‘environmental impact statement’) of a proposed pipeline of a class for the time being specified under Article 24 of the European Communities (Environmental Impact Assessment) Regulations, 1989, or under any provision amending or replacing the said Article 24—

- (i) shall be submitted with, or within a reasonable time after the making of, an application to the Minister—

(I) by the Board for his consent under section 8(7) of this Act, or

(II) by a person other than the Board for his consent under section 40(1) of this Act,

in relation to the proposed construction of such pipeline, and

- (ii) shall be submitted with a notice given to the Minister by a person other than the Board under section 40(1) of this Act in relation to the proposed construction of such pipeline.

(aa) The Minister shall not be obliged to consider an application referred to in paragraph (a) of this subsection until an environmental impact statement has been submitted in relation to the application.”,

(b) in subsection (1)(b), by the insertion after “is made by the Board” of “or another person”,

(c) in subsection (1)(c), by the insertion after “is made by the Board” of “or another person”, and

(d) in subsection (8), by the insertion after “an application by the Board” of “or another person”.

Conferral of powers of compulsory acquisition, etc. under Principal Act on certain persons.

20.—(1) In this section, “relevant person” means—

(a) save to the extent that this section has application to section 26 of the Principal Act, a person—

(i) in respect of whom the Minister has imposed a requirement under section 40(2)(a) of the Principal Act, or

(ii) who has obtained the consent of the Minister under section 40(1) of the Principal Act,

in relation to the construction or operation of a pipeline,

(b) to the extent that this section has application to the said section 26, a person who has notified the Minister in writing of his or her intention to give a notice or make an application for the Minister’s consent under section 40(1) of the Principal Act in relation to the construction or operation of a pipeline and in respect of which notification the Minister provides a certificate to the person, after having made such inquiries, if any, as the Minister thinks appropriate, stating that the notification demonstrates a *bona fide* intention on the part of that person to give such a notice or make such an application.

(2) The powers conferred by the provisions of the Principal Act referred to in *subsection (3)* shall, in addition to being exercisable by the Board, be exercisable by a relevant person and those provisions shall otherwise apply to such a person as they apply to the Board and, accordingly, on and from the passing of this Act, each reference in those provisions to the Board shall be construed as including a reference to a relevant person.

(3) The provisions of the Principal Act mentioned in *subsection (2)* are: sections 26, 27 and 31, section 32 (other than subsection (1) or subsection (1A) (inserted by this section)), section 33 and the Second Schedule.

(4) Section 26(1) of the Principal Act is amended— S.20

(a) by the substitution in paragraph (a) of “under this Act” for “for a purpose of this Act”,

(b) by the substitution in paragraph (b) of “over the land,” for “over the land.”, and

(c) by the addition of the following paragraphs:

“(c) if the purpose, or one of the purposes, for which any such land or right is being so acquired or is being considered for such acquisition, is in connection with the construction or operation of a pipeline, for carrying out thereon any investigation or examination preliminary or incidental to the making of an application for consent under section 8(7) or 40(1) of this Act or, as the case may be, the giving of previous and reasonable notice under the said section 40(1), in relation to that construction or operation, and

(d) in case the land is in the vicinity of land which, or a right over which, is being so acquired or is being considered for such acquisition and the doing of any of the things referred to in paragraph (a), (b) or (c) of this subsection in respect of that land or right cannot be accomplished without entering on the first-mentioned land in this paragraph and, as the case may be, doing thereon any thing necessary to ensure a thing as aforesaid is accomplished, for those purposes.”.

(5) Section 32 of the Principal Act is amended by the insertion of the following subsection after subsection (1):

“(1A) A relevant person (within the meaning of *section 20* of the *Gas (Amendment) Act, 2000*) may apply to the Minister for an order under this section (which order is in this Act also referred to as an ‘acquisition order’) to acquire compulsorily any land or right over land which is required by the relevant person in connection with the construction or operation of the pipeline concerned referred to in the said *section 20* and, subject to the following provisions of this section, the Minister may make an acquisition order in relation to the land or right over land.”.

21.—(1) Section 27 of the Principal Act is amended by the insertion in subsection (1) after “section 8 of this Act” of “, or, as the case may be, section 40(2) of this Act,”.

Miscellaneous amendments of Principal Act.

(2) Section 42 of the Principal Act is amended by the insertion in subsection (2)(b) after “of this Act” of “or a condition has been attached by him under that section to a consent in respect of the pipeline”.

22.—Section 72 of the Registration of Title Act, 1964, is amended by the substitution in subsection (4) (inserted by the Principal Act) of the following paragraph for paragraph (a):

Amendment of Registration of Title Act, 1964.

“(a) pursuant to an agreement in writing is granted to or by the Irish Gas Board or a relevant person (within the meaning

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of section 20 of the *Gas (Amendment) Act, 2000*), or pursuant to an acquisition order within the meaning of the Gas Act, 1976, is granted to that Board or such a person, and”.

Amendment of section 8 of Principal Act.

23.—Section 8 of the Principal Act is amended, in subsection (8) (inserted by the Gas (Amendment) Act, 1993)—

(a) by the substitution in paragraph (b) of “by the Board,” for “by the Board.”, and

(b) by the addition of the following paragraph:

“(c) a condition requiring the Board to obtain the prior approval of the Minister in respect of the price or prices to be charged for the transmission of gas through the pipeline.”.

Laying of regulations and orders before Houses of Oireachtas.

24.—Every regulation or order under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses.

25.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title, collective citations and construction.

26.—(1) This Act may be cited as the Gas (Amendment) Act, 2000.

(2) The Gas Acts, 1976 to 1998, and this Act (other than *sections 12 to 16*) may be cited together as the Gas Acts, 1976 to 2000.

(3) The Gas Acts, 1976 to 1998, and this Act (other than *sections 12 to 16*) shall be construed together as one.

(4) The Electricity Regulation Act, 1999, and *sections 12 to 16* may be cited together as the Electricity Regulation Acts, 1999 and 2000.