

A guide to regulation 13A of the Pipelines Safety Regulations 1996

Preface

1 Regulation 13A of the Pipelines Safety Regulations 1996 (SI 1996/825) was enacted by the Pipelines Safety (Amendment) Regulations 2003 (SI 2003/2563) and came into force on 3 November 2003. The guidance is aimed at operators of iron pipes conveying natural gas and should be read in conjunction with *A guide to the Pipeline Safety Regulations 1996* (ISBN 0 7176 11825).

Introduction

2 Natural gas is distributed through a network of around 275 000 km of pipes made mainly of cast iron, ductile iron, steel and polyethylene. Iron pipes (which include cast iron, spun iron and ductile iron) fail through fracture and corrosion and have resulted in serious gas explosions. Iron mains within 30 m of buildings present the greatest hazard and are referred to as 'at-risk' pipelines. Therefore, because of the extent and condition of the network, in 2002 the Health and Safety Executive (HSE) published an enforcement policy, aimed at the major gas distribution network operators, requiring all 'at-risk' iron mains in Great Britain to be replaced ('decommissioned') with pipes made of safer materials (usually polyethylene) within 30 years. At that time there were approximately 110 000 km of iron mains and the timeframe for replacing them was that which could practicably be achieved given the length of mains involved. The policy consisted of an agreed rate of replacement each year such that the remaining pipes could be replaced within 30 years.

3 Regulation 13A allows each operator to prepare a programme, usually annually, setting out the length of pipe that will be decommissioned in that year. In certain circumstances, the programme may cover longer periods. The programme will not identify specific locations of lengths of pipeline, but will agree the arrangements for prioritising which mains will be decommissioned in that particular programme. Where the length of the pipeline covers an extensive area of the country, the programme will also be broken down into geographical areas.

4 There are some pipeline operators with relatively small amounts of at-risk iron pipelines. In these cases, it will be practicable to decommission these networks in a much shorter time-scale than 30 years.

5 If HSE is satisfied that a programme is suitable and sufficient for the period it relates to, it must approve it. The operator then has a duty to comply with the approved programme so far as is practicable. Operators with approved programmes are given a defence from prosecution from regulation 13 provided the requirements of regulation 13A(6) are met. Regulation 13 of the Pipelines Safety Regulations 1996 requires operators of gas distribution networks to maintain the gas mains in an efficient state, in efficient working order and in good repair.

6 Under the Gas Safety (Management) Regulations 1996, the network operators should describe their arrangements for decommissioning iron mains in their safety case. This should include the findings of their risk assessment, a description of the methodology used to identify and prioritise mains replacement, and particulars to demonstrate that the management system is adequate to ensure compliance with the Pipelines Safety Regulations 1996, regulation 13A. Further guidance is given in HSE's Gas Safety (Management) Regulations 1996 - Safety Case Assessment Manual.

7 Regulation 13A(6) provides a defence but does not give operators complete immunity from prosecution. They still have a duty under the Health and Safety at Work Act 1974 to do everything reasonably practicable to ensure the health and safety of both their employees and non-employees (which includes the general public).

Guidance

Regulation 13A. - (1) *Subject to paragraph (3), the Executive shall approve -*

(a) with or without modification by it, a programme prepared by the operator of a pipeline; or

(b) a programme, which after approval has been modified by the operator or by itself,

if it is satisfied that the programme or modified programme is suitable and sufficient for the period to which it relates.

8 The meaning of 'programme' is set out in regulation 13A(7). The operator may prepare a programme which HSE must approve if it is satisfied that it is suitable and sufficient for the period to which it relates. A programme will usually be for one year with further programmes for subsequent years. Operators should begin discussions with HSE in good time to agree and approve future programmes.

(2) Subject to paragraph (3), the Executive may prepare and approve a programme for a period for which no suitable and sufficient programme has been prepared by the operator.

(3) The Executive shall consult the operator before it approves a programme, which it has itself modified or prepared.

9 If HSE prepares a programme itself or modifies one prepared by an operator, it must consult the operator before approving the programme. In practice, it is expected that operators will prepare programmes themselves and that HSE, if not satisfied with a programme, will discuss the necessary changes with the operator and agree them. The operator would then amend the programme and resubmit it for approval. Only in exceptional circumstances would HSE prepare or amend a programme itself.

(4) An approval under this regulation –

(a) shall be in writing;

(b) shall be notified to the operator and published in such manner as the Executive may approve; and

(c) may be withdrawn by the Executive by reasonable notice in writing at any time.

10 This sets out the administrative arrangements for approving programmes.

(5) The operator shall so far as is practicable comply with a programme approved under this regulation.

11 The operator has a duty to comply with the approved programme. However, if the operator were to be prosecuted for non-compliance, it would be a defence for him to show that he had complied with the programme 'so far as is practicable' and that his inability to comply was due to matters outside the operator's control. Such matters could include:

- (a) an extended spell of severe weather;
- (b) external events such as terrorist activity, foot and mouth epidemic, fuel crisis;
- (c) conflicting legislative requirements;
- (d) industrial action;
- (e) sites with archaeological or environmental significance.

12 That said, the approved programmes will usually have a degree of flexibility on the selection of mains for decommissioning. Operators would be expected to use this flexibility to select alternative pipes where possible in order to be able to comply with the programme. However, the operator would not be able to claim that matters within his control made compliance not practicable. For example:

- (a) availability of resources;
- (b) network complexity;
- (c) need to maintain continuity of supply;
- (d) liaison with third parties, for example landowners, pressure groups.

13 Where operators fail to comply with their approved programme, HSE will take action in line with its enforcement policy.

(6) In any proceedings for an offence for a contravention of regulation 13 it shall be a defence for the person charged to prove that at the relevant time -

(a) any pipe to which the contravention related was of a description, apart from its geographical location, to which a programme -

- (i) approved by the Executive; and*
- (ii) not then due for completion,*

applied; and

(b) where the proceedings arise from an event involving a failure of a pipe, the operator did not know and could not reasonably be expected to have known that there was a risk to safety concerning the pipe, which required immediate attention.

14 The Executive will specify in the approval of a programme the description of pipes to which it applies, the length of pipe which is to be decommissioned, and the period to which the programme applies. The approval will also be on condition that operators select pipes for decommissioning in accordance with the policy and procedures referred to in their programme submission. The approval will exclude any pipes which were due for decommissioning under earlier programmes. HSE will consider agreeing separate arrangements with the operator to ensure that overdue decommissioning takes place. Each approved programme will recognise that the major iron distribution networks will be decommissioned over several years and lower risk pipes will, quite properly, be left for future years.

15 If an operator is prosecuted for a breach of regulation 13 in connection with the failure of a pipeline then they will have a defence under regulation 13A(6) providing they can prove the following.

- (a) The pipe was 'of a description', apart from its geographical location, to which an approved programme applied. Approved programmes only apply to 'at-risk' iron pipes and will exclude any pipes that should have been decommissioned in an earlier programme. There is no defence under this regulation for pipes made of other materials such as polyethylene and steel. And there is no defence if the failure has been on an iron pipe which, for whatever reason, has not been recognised as needing replacement in this or any previous programme. For example, a pipe recorded as polyethylene on an asset register which is in reality iron, would not have formed part of an approved programme and therefore no defence applies; and
- (b) The operator did not know and could not reasonably have been expected to know that there was a risk to safety concerning the pipe that required immediate attention. HSE's mains replacement policy and the approved programmes form a long-term strategy aimed at decommissioning all of the iron mains population, prioritised on risk. However, the defence would not apply if the operator had knowledge, or should have had knowledge, which would indicate that the particular pipe was likely to fail and that immediate action should have been taken.

(7) Any reference in this regulation to a programme is a reference to a programme for the decommissioning of any description of iron pipe used in a pipeline.

16 A programme should describe the population of pipes to which it applies, the length of iron pipe to be decommissioned in the period (normally one year) and the policy and procedures used to select which pipes are to be decommissioned. Where the length of the pipeline covers an extensive area of the country, the programme should also be broken down into geographical areas, but the specific location of the pipes to be decommissioned is not required.

(8) In paragraph (7) "iron" does not include steel.

17 Iron includes cast iron, spun cast iron, and ductile iron. Pipelines made of steel are not covered by regulation 13A. However, steel and pipelines made from other materials still have to be maintained in good repair under the Pipelines Safety Regulations 1996, regulation 13.