



Gas Act 1995

1995 CHAPTER 45

Miscellaneous

12 Acquisition of rights to use gas processing facilities^[F1] for downstream purposes].

^[F2](1) The owner of a gas processing facility ^[F3]which processes gas for a downstream purpose]—

- (a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas processed by the facility ^[F4]for such a purpose]; and
- (b) shall publish any changes to the published conditions as soon as they become effective.

^[F5](1ZA) [At least two months before publishing those conditions or any changes to them under subsection (1), the owner of the facility must—

- (a) publish a draft of the proposed conditions or changes; and
- (b) inform any person who has a right to have gas processed by the facility that the draft has been published.

(1ZB) The owner of the facility must take into account any representations received about the proposed conditions or changes before publishing them, or a modified version of them, as final conditions or changes under subsection (1).]

(1A) In subsection (1) “year” means any year ending with 9th August.

(1B) Any person who seeks a right to have gas processed ^[F6]for a downstream purpose] by a gas processing facility (“the applicant”) shall, before making an application to ^[F7]the Authority] under subsection (1F), apply to the owner of the facility for the right.

(1C) An application under subsection (1B) shall be made by giving notice in writing to the owner specifying what is being sought.

(1D) The notice shall, in particular, specify—

- (a) the period during which the gas is to be processed by the facility;
- (b) the kind of gas to be processed (which must be of, or similar to, the kind which the facility is designed to process); ^[F8] ...

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- (c) the quantities of gas to be processed^[F9]; and
 - (d) that the gas is to be processed for a downstream purpose]
- (1E) Where a person gives notice under subsection (1C), he and the owner of the gas processing facility shall negotiate in good faith and endeavour to reach agreement on the application.
- (1F) If the owner and the applicant do not reach any such agreement, the applicant may apply to ^[F7]the Authority] for directions under this section which would secure to the applicant the right specified in the notice under subsection (1C).
- (1G) ^[F7]the Authority] shall not entertain such an application unless ^[F10]it] is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (1E).]
- (2) Where an application is made under ^[F11]subsection (1F)], it shall be the duty of ^[F7]the Authority]—
- (a) to decide whether the application is to be adjourned (so as to enable ^{F12}... further negotiations to take place), considered further or rejected;
 - (b) to give notice of ^[F13]its] decision to the applicant; and
 - (c) in the case of a decision that the application is to be considered further, to give to the owner of the facility, to any person who has a right to have gas processed by the facility, and to the Health and Safety Executive, notice that the application is to be so considered and an opportunity of being heard about the matter.
- (3) Where, after further considering an application under ^[F14]subsection (1F)], ^[F7]the Authority] is satisfied that the giving of directions under this section would not prejudice the efficient operation of the facility, or the processing by the facility of—
- (a) the quantities of gas which the owner of the facility or any associate of the owner requires or may reasonably be expected to require to be processed by the facility for the purposes of any business carried on by him; and
 - (b) the quantities of gas which any person who is not such an associate and has a right to have gas processed by the facility is entitled to require to be so processed in the exercise of that right,
- ^[F7]the Authority] may give such directions to the owner of the facility.
- (4) Directions under this section may—
- (a) specify the terms on which ^[F7]the Authority] considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
 - (i) for securing to the applicant the right to have processed by the facility, during the period specified in the directions and in the quantities so specified, gas which is of a kind so specified;
 - (ii) for securing that the exercise of that right is not prevented or impeded;
 - (iii) for regulating the charges which may be made for the processing of gas by virtue of that right;
 - (iv) for securing to the applicant such ancillary or incidental rights as ^[F7]the Authority] considers necessary or expedient, which may include the right to have a pipe-line of his connected to the facility by the owner;

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- (b) specify the sums or the method of determining the sums which [^{F7}the Authority] considers should be paid by way of consideration for any such right; and
 - (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.
- [^{F15}(5) Sections 28 to 30F of the 1986 Act (enforcement of relevant requirements etc) apply in relation to the owner of a gas processing facility as if—
- (a) references to “a licence holder” were references to the owner of the facility; and
 - (b) references to a “relevant requirement” were references to a requirement imposed on the owner under this section.
- (5A) For the purposes of this section, gas is processed for “a downstream purpose” if it is processed with a view to its being put into a gas storage facility, an LNG import or export facility, a gas interconnector or a distribution system pipeline.]
- (6) In this section—
- [^{F16}“authorised transporter” has the same meaning as in Part 1 of the 1986 Act;]
 - [^{F16}“distribution system operator” has the meaning given by Article 2(6) of Directive [2009/73/ EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive [2003/55/ EC](#);]
 - [^{F16}“distribution system pipeline” means a pipeline operated by an authorised transporter who is a distribution system operator;]
 - “gas” means any substance which is or (if it were in a gaseous state) would be gas within the meaning of Part I of the 1986 Act;
 - [^{F16}“gas interconnector” has the same meaning as in Part 1 of the 1986 Act;]
 - “gas processing facility” means any facility which [^{F17}—
 - (a) carries out gas processing operations;
 - (b) is operated otherwise than by a gas transporter; and
 - (c) is not an LNG import or export facility;]
 - “gas processing operation” means any of the following operations, namely

 - (a) purifying, 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 or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain;
 - (b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water; ^{F18}...
 - (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,
 - (d) [^{F19}separating, purifying, blending, odourising or compressing gas, for the purpose of—
 - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or

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- (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
- (e) loading gas—
 - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
 - (ii) piped from such a facility, and
 for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);]

and “process”, in relation to gas, shall be construed accordingly;

[^{F16}“gas storage facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for either or both of the following—

- (a) the importation into Great Britain and regasification of liquid gas prior to its conveyance to a pipeline system operated by the holder of a licence under section 7 or section 7ZA of the 1986 Act, or the liquefaction of gas for the purpose of its export from Great Britain; and
- (b) any activity, including temporary storage of gas or liquid gas, which is necessary for that importation, regasification or liquefaction;]

[^{F16}“LNG import or export facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for—

- (a) the importation into Great Britain and regasification of liquid gas prior to its conveyance to a pipeline system operated by the holder of a licence under section 7 or section 7ZA of the 1986 Act, or the liquefaction of gas for the purpose of its export from Great Britain; and
- (b) any activity, including temporary storage of gas or liquid gas, which is necessary for that importation, regasification or liquefaction;]

[^{F20}“main commercial conditions” means—

- (a) such information as would enable a potential applicant for a right to have gas processed by a gas processing facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) the other significant terms on which such a right would be granted; and
- (c) such other information as [^{F7}the Authority] may from time to time specify by notice;]

“owner”, in relation to a gas processing facility, includes a lessee and any person occupying or having control of the facility;

“pipe-line” has the same meaning as in the ^{M1} Pipe-lines Act 1962;

“public gas transporter” has the same meaning as in Part I of the 1986 Act.

[^{F16}“storage”, in relation to liquid gas in a gas storage facility, includes any liquefaction of gas or regasification of liquid gas ancillary to the storage of liquid gas, and “stored”, in relation to liquid gas in a gas storage facility, shall be construed accordingly;]

[^{F16}“the Authority” means the Gas and Electricity Markets Authority;]

[^{F21}(6A) Subsections (1) to (3) of section 49 of the Pipe-lines Act 1962 (service of documents) shall apply for the purposes of this section as they apply for the purposes of that Act.]

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[^{F22}(7) Section 91 of the Energy Act 2011 (meaning of “associate”) applies for the purposes of subsection (3) of this section as it applies for the purposes of section 82(7)(d) and (9)(a) of that Act.]

(8) In relation to any time before the appointed day, this section shall have effect as if for the words “public gas transporter”, in each place where they occur, there were substituted the words “public gas supplier”.

Textual Amendments

- F1** Words in s. 12 heading inserted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(2)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F2** S. 12(1)-(1G) substituted (10.8.2000) for s. 12(1) by S.I. 2000/1937, reg. 2(3), **Sch. 3 para. 1**
- F3** Words in s. 12(1) inserted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(4)(a)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F4** Words in s. 12(1)(a) substituted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(4)(b)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F5** S. 12(1ZA)(1ZB) inserted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(5)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F6** Words in s. 12(1B) substituted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(6)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F7** Words in s. 12 substituted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(3)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F8** Word in s. 12(1D) omitted (21.3.2012) by virtue of Energy Act 2011 (c. 16), **ss. 92(7)(a)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F9** S. 12(1D)(d) and preceding word inserted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(7)(b)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F10** Word in s. 12(1G) substituted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(8)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F11** Words in s. 12(2) substituted (10.8.2000) by S.I. 2000/1937, reg. 2(3), **Sch. 3 para. 2(a)**
- F12** Words in s. 12(2)(a) repealed (10.8.2000) by S.I. 2000/1937, reg. 2(3), **Sch. 3 para. 2(b)**
- F13** Word in s. 12(2)(b) substituted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(9)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F14** Words in s. 12(3) substituted (10.8.2000) by S.I. 2000/1937, reg. 2(3), **Sch. 3 para. 3**
- F15** S. 12(5)(5A) substituted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(10)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F16** Words in s. 12(6) inserted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(11)(b)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F17** Words in s. 12(6) substituted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(11)(a)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)
- F18** Word in s. 12(6) repealed (6.4.2009) by Energy Act 2008 (c. 32), **ss. 78(2)(a)**, 110(2), **Sch. 6**; S.I. 2009/45, art. 4(c)(bb)(d)(ii)
- F19** Words in s. 12(6) inserted (6.4.2009) by Energy Act 2008 (c. 32), **ss. 78(2)(a)**, 110(2); S.I. 2009/45, art. 4(c)
- F20** Definition of “main commercial conditions” in s. 12(6) inserted (10.8.2000) by S.I. 2000/1937, reg. 2(3), **Sch. 3 para. 5(b)**
- F21** S. 12(6A) inserted (10.8.2000) by S.I. 2000/1937, reg. 2(3), **Sch. 3 para. 6**
- F22** S. 12(7) substituted (21.3.2012) by Energy Act 2011 (c. 16), **ss. 92(12)**, 121(1); S.I. 2012/873, art. 2(b)(ii) (with art. 4)

Marginal Citations

- M1** 1962 c. 58.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 3 para. 42(1)(a)para. 42(2)(a) repealed by [2000 c. 27 Sch. 8](#)