

SCHEDULE 2

Regulation 2(2)

AMENDMENTS TO GAS ACT 1986

1. In section 19A (application of section 19B to storage facilities)—
 - (a) in subsection (1) for “storage facilities other than exempt storage facilities” substitute “a storage facility unless, or except to the extent that, its capacity is exempt under this section”;
 - (b) in subsection (2) for “An owner” substitute “A person who is or expects to be an owner”;
 - (c) in subsection (2) for “for the facility or for facilities of a particular description” substitute “with respect to the facility”;
 - (d) after subsection (3)(b) insert—
 - “(c) so as to have effect—
 - (i) in the case of a facility other than a new facility, in relation to the whole of the capacity of the facility; or
 - (ii) in the case of a new facility, in relation to the whole of the capacity of the facility or any significant increase in the capacity of the facility.”;
 - (e) in subsection (4) omit “or facilities”; and
 - (f) for subsection (5) substitute—
 - “(5) The Authority shall give an exemption with respect to a facility (other than a new facility) where it is satisfied that use of the facility by other persons is not necessary for the operation of an economically efficient gas market.
 - (6) The Authority shall give an exemption with respect to a new facility where it is satisfied that either—
 - (a) use of the facility by other persons is not necessary for the operation of an economically efficient gas market; or
 - (b) the requirements of subsection (8) are met.
 - (7) In respect of a facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of subsection (6)(b) may only be given in relation to that increase in its capacity.
 - (8) The requirements of this subsection are that—
 - (a) the facility or (as the case may be) the significant increase in its capacity will promote security of supply;
 - (b) the level of risk is such that the investment to construct the facility or (as the case may be) to modify the facility to provide for a significant increase in its capacity would not be or would not have been made without the exemption;
 - (c) the facility is or is to be owned by a person other than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility;
 - (d) charges will be levied on users of the facility or (as the case may) the increase in its capacity;
 - (e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; and
 - (f) the Commission of the European Communities is or will be content with the exemption.

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(9) Subject to subsection (10), an exemption may not be given by virtue of subsection (6)(b) more than once in respect of the same facility.

(10) Subsection (9) does not prevent a further exemption being given by virtue of subsection (6)(b) in respect of a facility if—

- the facility is or is to be modified to provide for a significant increase in its capacity;
- the exemption has effect only in relation to that increase in its capacity; and
- no previous exemption has been given by virtue of subsection (6)(b) in relation to that increase in its capacity.

(11) The Authority shall publish its decision to give or refuse to give an exemption together with the reasons for its decision in such manner as it considers appropriate.”.

2. In section 19B (acquisition of rights to use storage facilities) after “gas”, in each place where it occurs, insert “or liquid gas”.

3. In section 19C (application of section 19D to LNG facilities)—

- (a) in subsection (1) for “LNG facilities other than exempt LNG facilities” substitute “an LNG import facility unless, or except to the extent that, its capacity is exempt under this section”;
- (b) in subsection (2) for “An owner of an LNG facility” substitute “A person who is or expects to be an owner of an LNG import facility”;
- (c) in subsection (2) for “for the facility or for facilities of a particular description” substitute “with respect to the facility”;
- (d) after subsection (3)(b) insert—

“(c) so as to have effect in relation to the whole of the capacity of the facility or any significant increase in the capacity of the facility.”;

- (e) in subsection (4) omit the words “or facilities”; and
- (f) for subsection (5) substitute—

“(5) The Authority shall give an exemption with respect to a facility where it is satisfied that the requirements of subsection (7) are met.

(6) In respect of a facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of subsection (5) may only be given in relation to that increase in its capacity.

(7) The requirements of this subsection are that—

- (a) the facility or (as the case may be) the significant increase in its capacity will promote security of supply;
- (b) the level of risk is such that the investment to construct the facility or (as the case may be) to modify the facility to provide for a significant increase in its capacity would not be or would not have been made without the exemption;
- (c) the facility is or is to be owned by a person other than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility;
- (d) charges will be levied on users of the facility or (as the case may be) the increase in its capacity;
- (e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; and

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- (f) the Commission of the European Communities is or will be content with the exemption.”
 - (8) Subject to subsection (9), an exemption may not be given by virtue of subsection (5) more than once in respect of the same facility.
 - (9) Subsection (8) does not prevent a further exemption being given by virtue of subsection (5) in respect of a facility if—
 - the facility is or is to be modified to provide for a significant increase in its capacity;
 - the exemption has effect only in relation to that increase in its capacity; and
 - no previous exemption has been given by virtue of subsection (5) in relation to that increase in its capacity.
 - (10) The Authority shall publish its decision to give or refuse to give an exemption together with the reasons for its decision in such manner as it considers appropriate.”
4. In section 19D (acquisition of rights to use LNG facilities)—
- (a) in subsection (1) for “The owner of an LNG facility” substitute “Subject to subsection (2A), the owner of an LNG import facility”;
 - (b) in subsection (1)(a) for “at least once in every year” substitute “prior to their entry into force”, and for “LNG” substitute “liquid gas”;
 - (c) subsection (2) shall cease to have effect;
 - (d) after subsection (2) insert—
 - “(2A) The cost or the method of determining the cost of acquiring the right to have liquid gas treated in a relevant facility and any changes thereto must be approved by the Authority prior to their publication; and such approval may be given on condition that certain modifications are made to the cost or methodology.
 - (2B) Before the owner of a relevant facility seeks approval under subsection (2A) he must carry out such consultation as the Authority may require.”;
 - (e) in subsections (3) and (4) for “LNG” substitute “liquid gas”;
 - (f) in subsection (6) paragraph (a) shall cease to have effect;
 - (g) in subsection (6)(b) and (c) for “LNG” substitute “liquid gas”;
 - (h) for subsection (7) substitute—
 - “(7) The owner shall notify the applicant of his decision giving reasons for any refusal.”;
 - (i) in subsection (8) for the words “and the applicant do not reach any such agreement” substitute “refuses the application”;
 - (j) subsection (9) shall cease to have effect;
 - (k) in subsection (10) for the words from “Where” to “shall—” substitute “Where a person applies to the Authority under subsection (8), the Authority shall—”;
 - (l) for subsection (10)(a) substitute—
 - “(a) decide whether to give directions under subsection (11), to consider the application further or to reject the application”;
 - (m) for subsection (10)(c) substitute—
 - “(c) in the case of a decision that the application is to be considered further—
 - (i) give to the owner of the facility, the Health and Safety Executive and any person who has a right to have liquid gas treated in the facility notice that

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- the application is to be so considered and an opportunity of being heard about the matter; and
- (ii) after so considering the matter, decide whether to give directions under subsection (11) or to reject the application and give notice of its decision to the applicant.”
- (n) in subsection (11) for “LNG”, in each place where it occurs, substitute “liquid gas”;
- (o) in subsection (12)(a)(i)—
- (i) omit the words “for the period specified in the directions”; and
- (ii) for “LNG” substitute “liquid gas”;
- (p) in subsection (12)(a)(iii) for “LNG” substitute “liquid gas”; and
- (q) in subsection (12)(a)(iv) omit the words from “(which” to the end.
5. After section 19D insert—

“Provision of information

19DA A person who is or expects to be the owner of an LNG import facility shall provide the Authority with such information in such manner and at such times as the Authority may reasonably require to facilitate the performance of its functions under this Act.”.

6. In section 19E (provisions supplemental to sections 19A to 19D)—
- (a) in subsection (1) for “sections 19A to 19D” substitute “sections 19A to 19DA”;
- (b) in subsection (1) omit the definition of “LNG”;
- (c) in subsection (1) for the definition of “LNG facility” substitute—
- ““LNG import facility” means a facility for the following—
- (a) the importation of liquid gas;
- (b) the regasification of liquid gas following its importation and prior to its conveyance to a pipeline system operated by a gas transporter; and
- (c) any temporary storage of liquid gas which is necessary for the operation of the facility;”;
- (d) in subsection (1) in the definition of “main commercial conditions” for paragraph (a) substitute—
- “(a) in the case of a storage facility, such information as would enable a potential applicant for a right to have gas or liquid gas stored in the facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (aa) in the case of an LNG import facility, the terms setting out the cost or the method of determining the cost of acquiring the right to have liquid gas treated in the facility;”;
- (e) in subsection (1) in paragraph (b) of the definition of “main commercial conditions” after “such a right” insert “as is mentioned in paragraph (a) or (aa)”;
- (f) in subsection (1) after the definition of “main commercial conditions” insert—
- ““new facility” means—
- (a) a storage facility the construction of which is or is to be completed after 3rd August 2003; or
- (b) a storage facility the modification of which to provide for a significant increase in capacity is or is to be completed after 3rd August 2003.”;

- (g) in subsection (1) in the definition of “owner” for “LNG facility” substitute “LNG import facility”;
- (h) in subsection (1) in the definition of “significant transaction”—
 - (i) for “gas stored in a gas storage facility” substitute “gas or liquid gas stored in a storage facility”;
 - (ii) for “treated in an LNG facility” substitute “liquid gas treated in an LNG import facility”;
- (i) in subsection (1) after the definition of “significant transaction” insert—

““storage”, in relation to liquid gas in a 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 storage facility, shall be construed accordingly;”
- (j) in subsection (1) for the definition of “storage facility” substitute—

““storage facility” means a facility in Great Britain (excluding the territorial sea adjacent to the United Kingdom) for either or both of the following—

 - (a) the storage of gas in cavities in strata or in porous strata, provided that the facility is or will be used for the storage of gas which has previously been conveyed in a pipeline system operated by a gas transporter;
 - (b) the storage of liquid gas;

but the reference in paragraph (b) to the storage of liquid gas does not include such temporary storage as is mentioned in paragraph (c) of the definition of “LNG import facility””;
- (k) in subsection (1) for the definition of “treatment” substitute—

““treatment”, in relation to liquid gas in an LNG import facility, includes importation, temporary storage and regasification, and “treat” shall be construed accordingly.”;
- (l) in subsection (5)—
 - (i) for “any kind” substitute “any kind, or liquid gas or liquid gas of any kind,”;
 - (ii) for “that kind” insert “that kind, or liquid gas or liquid gas of that kind,”; and
- (m) subsection (6) shall cease to have effect.