
STATUTORY INSTRUMENTS

2011 No. 2704

The Electricity and Gas (Internal Markets) Regulations 2011

PART 4

Gas facilities

Independence of storage facilities

6. After section 8Q of the Gas Act 1986 ^{M1} insert—

“Storage facilities: independence

8R Independence of storage facilities

(1) This section applies to a storage facility unless a minor facility exemption is in force in respect of that facility under section 8S.

(2) The owner of a storage facility to which this section applies must, notwithstanding any licence held by the owner, refrain from producing gas in an EEA state.

(3) The owner must also, notwithstanding any licence held by the owner, refrain from carrying out any of the following activities in an EEA state except to the extent that the activity is necessary for the efficient operation of the storage facility or of another facility used by the owner to store gas—

- (a) the supply to any premises of gas which has been conveyed to those premises through pipes;
- (b) the making of an arrangement with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that gas transporter;
- (c) any other sale of gas.

(4) If an affiliate of the owner carries out in an EEA state an activity which, under subsection (2) or (3), the owner must refrain from carrying out, the owner must operate the storage facility independently of the interests of that affiliate and must, in particular, ensure that—

- (a) no senior officer or manager of the owner is a senior officer or manager of the affiliate;
- (b) if a senior officer or manager of the owner has an interest in the affiliate that conflicts, or is likely to conflict, with the interests of the storage facility, the owner maintains procedures to ensure that the storage facility is operated independently of that interest in the affiliate;
- (c) the owner is entitled to take decisions without the consent of that affiliate in respect of any assets necessary to operate, maintain or develop the storage facility; and

- (d) the owner does not take instructions from the affiliate regarding day to day operations or individual decisions concerning the construction or upgrading of the storage facility.
- (5) Subsection (4)(c) and (d) does not prevent a parent undertaking of the owner from requiring the owner—
 - (a) to obtain the parent undertaking's approval of the owner's annual financial planning;
 - (b) to comply with restrictions on the owner's overall indebtedness.
- (6) The owner must establish a programme (the “independence programme”) in relation to the owner's senior officers, other officers, managers and employees for the purpose of ensuring that they do not cause the owner to—
 - (a) discriminate against persons who are not affiliates of the owner; or
 - (b) breach any of the owner's obligations under section 11C ^{M2} regarding the disclosure or use of information.
- (7) The owner must—
 - (a) ensure that compliance with the independence programme is monitored; and
 - (b) each year, publish a report setting out the measures taken in accordance with the independence programme and send a copy to the Authority.
- (8) For the purposes of this section a person produces gas if the person—
 - (a) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain; or
 - (b) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7.
- (9) In this section—
 - “affiliate”, in relation to a person (“person A”), means—
 - (a) a person who has control of person A; or
 - (b) a person who is under the control of the same person as person A;
 - “control” has the meaning given by section 8Q(1);
 - “manager”, in relation to the owner of a storage facility or an affiliate of the owner, means a natural person who is responsible, directly or indirectly, for the day to day management of the owner or the affiliate;
 - “parent undertaking” has the meaning given by section 1162 of the Companies Act 2006 ^{M3}.
- (10) The reference in subsection (4)(b) to a conflict of interests includes a conflict of interest and duty and a conflict of duties.

8S Independence of storage facilities and duty to allow others to use them: exemptions for minor facilities

- (1) A person who is or expects to be an owner of a storage facility may apply in writing to the Authority for an exemption from the requirements of sections 8R and 19B ^{M4} in respect of that facility (a “minor facility exemption”).

(2) The Authority must give a minor facility exemption in respect of a facility where it is satisfied that use of the facility by other persons is not technically or economically necessary for the operation of an efficient gas market.

(3) A minor facility exemption—

(a) must be in writing;

(b) may be given—

(i) for an indefinite period or for a period determined under the exemption;

(ii) unconditionally or subject to such conditions as the Authority considers appropriate.

(4) The Authority must publish its decision to give or refuse to give a minor facility exemption together with the reasons for the decision.

(5) A minor facility exemption may be revoked—

(a) in accordance with provisions contained in it;

(b) at any other time, if the Authority considers that the condition in subsection (2) is no longer met.

(6) The Authority must from time to time publish a document setting out how it will determine whether the use of a facility by other persons is technically or economically necessary for the operation of an efficient gas market, including the matters it will take into account when determining this.

(7) Publication under subsection (4) or (6) must be in such manner as the Authority considers appropriate.

(8) Before publishing a document under subsection (6) the Authority must consult—

(a) the Secretary of State; and

(b) such other persons as the Authority considers appropriate.”.

Marginal Citations

M1 Section 8Q is inserted by regulation 4 of these Regulations.

M2 Inserted by regulation 7 of these Regulations.

M3 2006 c. 46. Amendments have been made that are not relevant for these purposes.

M4 1986 c. 44. Section 19B was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937. Amendments have been made that are not relevant for these purposes.

General duties of storage facility owners, LNG import or export facility owners etc

7.—(1) The Gas Act 1986 is amended as follows.

(2) After section 11^{M5} insert—

“Duties of facility owners and prospective facility owners

11A General duties of facility owners

(1) This section applies to—

(a) a storage facility;

(b) an LNG import or export facility.

(2) The owner of a facility to which this section applies must—

- (a) operate, maintain and develop the facility, so far as it is economical to do so, in a manner calculated to ensure that the facility is secure, reliable and efficient;
- (b) take any steps required by the Authority to ensure that the owner maintains sufficient financial resources to enable the owner to comply with the owner's obligations under this Act and under the Gas Regulation.

11B Duty of current and prospective LNG import or export facility owners to provide information

11B A person who is or expects to be the owner of an LNG import or export facility must 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.

11C Restrictions on disclosure of information by facility owners

(1) The owner of a storage facility or LNG import or export facility must take all reasonable steps to ensure that commercially sensitive information relating to the operation of the facility is not disclosed—

- (a) to a person in a way that discriminates against any other person or description of persons;
- (b) to an associated undertaking unless the disclosure is necessary in order to enable a transaction with that associated undertaking to take place.

(2) Information which is obtained by the owner of a storage facility or LNG import or export facility from an associated undertaking for the purpose of, or in the course of, a transaction with that undertaking must not be used by the owner for any other purpose.”.

(3) Omit section 19DA (provision of information) ^{M6}.

(4) In section 19E (sections 19A to 19D: supplemental) ^{M7}, in subsection (1) for “19DA” substitute “ 19D ”.

Marginal Citations

M5 Amendments have been made to section 11 that are not relevant for these purposes.

M6 [Section 19DA](#) was inserted by regulation 2(2) of, and paragraph 5 of Schedule 2 to, [S.I. 2004/2043](#).

M7 [Section 19E](#) was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#).

Subsection (1) was subsequently amended by regulation 2(2) of, and paragraph 6(1) of Schedule 2 to, [S.I. 2004/2043](#). Other amendments have been made that are not relevant for these purposes.

Duty to allow others to use storage facilities: exemptions for new and modified facilities

8.—(1) For the italic heading preceding section 19 of the Gas Act 1986 substitute—

“Pipe-line systems, storage facilities and LNG import or export facilities: rights of use etc”.

(2) Section 19A of the Gas Act 1986 (exemptions from duty to allow others to use storage facilities) ^{M8} is amended as follows.

(3) For subsection (1) substitute—

“(1) Section 19B applies to a storage facility, except as provided in subsections (1A) and (1B).

(1A) Section 19B does not apply to a storage facility if it is subject to a minor facility exemption under section 8S ^{M9}.

(1B) Section 19B does not apply to a storage facility if, or to the extent that, it is exempt under this section.

(1C) The Authority must maintain on its website a list of the facilities to which section 19B applies.

(1D) If only part of the capacity of a storage facility is exempt under this section, the list under subsection (1C) must specify the extent to which section 19B applies to the facility.”.

(4) In subsection (2), after “an exemption” insert “ under this section ”.

(5) After subsection (2) insert—

“(2A) An application under subsection (2) must relate to—

- (a) a storage facility (or proposed storage facility) which is not yet operational; or
- (b) a modification (or proposed modification) which falls within subsection (2B) and is not yet operational.

(2B) A modification (or proposed modification) falls within this subsection if it is—

- (a) a modification of a storage facility to provide for a significant increase in the capacity of the facility; or
- (b) a modification of a storage facility to enable the development of new sources of gas supply.

(2C) The Authority must send to the European Commission a copy of an application under subsection (2) as soon as is reasonably practicable following its receipt.”.

(6) For subsection (3) substitute—

“(3) An exemption under this section must be given in writing and on the following terms—

- (a) a term specifying the period of the exemption, or specifying how that period is to be determined;
- (b) a term as to whether the exemption applies to all of the capacity of the facility or part of that capacity only;
- (c) a term that the owner must comply with the capacity allocation mechanism approved in accordance with section 19DB ^{M10}; and
- (d) such other terms regarding non-discriminatory access to the facility or any other matter as the Authority considers appropriate.

(3A) When determining a term under subsection (3) the Authority must take into account—

- (a) the capacity of the facility or (as the case may be) the increase in capacity of the facility;
- (b) the length of time required to recover the investment in the facility or (as the case may be) the investment in the modification;
- (c) the implications of the exemption for the operation of the gas market in Great Britain.”.

(7) Omit subsections (4) and (5).

(8) In subsection (6)—

- (a) for the words from the beginning to “either” substitute “ Where the Authority receives an application under subsection (2) in relation to a facility or modification, it must give an exemption if it is satisfied that ”;
- (b) omit paragraph (a).
- (9) After subsection (6) insert—

“(6A) An exemption given in accordance with subsection (6) may apply to all of the capacity of the facility concerned or to part of that capacity only, regardless of the extent of the exemption applied for; but this is subject to subsection (7).”.
- (10) In subsection (7), at the end insert “ or part of that increase in its capacity ”.
- (11) After subsection (7) insert—

“(7A) When deciding whether the requirements of subsection (8)(a), (d) and (e) are met, the Authority must take into account the way in which capacity is to be allocated under the capacity allocation mechanism approved in accordance with section 19DB.”.
- (12) In subsection (8)—
 - (a) in paragraph (a) for “significant increase in its capacity” substitute “ modification ”;
 - (b) in paragraph (b) omit “to provide for a significant increase in its capacity”;
 - (c) in paragraph (d) after “capacity,” insert “ and ”;
 - (d) omit paragraph (f) (and the “and” preceding it).
- (13) In subsection (9), for “subsection (10)” substitute “ subsections (9A) and (10) ”.
- (14) After subsection (9) insert—

“(9A) Subsection (9) does not prevent a further exemption being given by virtue of subsection (6)(b) in respect of a facility if the previous exemption given by virtue of that provision in respect of the facility has been revoked under section 19AA(5)^{M11}.”.
- (15) In subsection (10)—
 - (a) after “a significant increase in its capacity” insert “ or to enable the development of new sources of gas supply ”;
 - (b) for “that increase in its capacity” (in each place) substitute “ that modification ”.
- (16) In subsection (11), for “together with the reasons for its decision” substitute “ under this section, together with the reasons for its decision, ”.

Marginal Citations

- M8** Section 19A was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937 and has since been amended by the Utilities Act 2000 (c. 27), section 3(2); Regulation 2(2) of, and paragraph 1 and 2 of Schedule 2 to, S.I. 2004/2043; and regulation 4 of S.I. 2009/1349.
- M9** Inserted by regulation 6 of these Regulations.
- M10** Inserted by regulation 15 of these Regulations.
- M11** Inserted by regulation 9 of these Regulations.

Duty to allow others to use storage facilities: review and revocation of exemptions

- 9. After section 19A of the Gas Act 1986 insert—

“19AA Review and revocation of exemptions under section 19A

(1) If the Authority gives, or refuses to give, an exemption under section 19A it must send the following to the European Commission as soon as is reasonably practicable—

- (a) if the exemption was given, a copy of the exemption and of the terms on which it has been given;
- (b) the Authority's reasons for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Gas Directive;
- (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—
 - (i) relevant financial information;
 - (ii) analysis of the likely effect of the exemption on competition and on the effective functioning of the EU market for natural gas;
- (d) if the exemption was given, the basis on which the Authority determined—
 - (i) the period of the exemption or how that period is to be determined; and
 - (ii) the capacity to which the exemption applies;
- (e) any contribution by the storage facility to the diversification of the supply of gas; and
- (f) any other information requested by the European Commission.

(2) If, in accordance with Article 36(9) of the Gas Directive, the European Commission requires the Authority to revoke an exemption given under section 19A, or to modify the terms on which it is given, the Authority must—

- (a) comply with that request within the period of 1 month beginning with the day on which it receives the request; and
- (b) inform the European Commission when it has done so.

(3) The Authority must revoke an exemption given under section 19A in respect of a facility—

- (a) if the construction of the facility, or (as the case may be) the making of the modification to which the exemption relates, has not been started within the 2 years beginning with the relevant date; or
- (b) if the facility, or (as the case may be) the modification to which the exemption relates, is not operational within the 5 years beginning with the relevant date.

(4) In subsection (3) “relevant date” means—

- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under subsection (1), the date of that notification;
- (b) if, in accordance with Article 36(9) of the Gas Directive, the European Commission required the Authority to modify the terms, the date of that requirement;
- (c) otherwise, the date 4 months after the Authority sent the Commission a copy of the exemption and terms under subsection (1).

(5) The Authority may at any other time revoke an exemption given under section 19A, or modify the terms on which such an exemption is given, in respect of a facility—

- (a) in accordance with the provisions of the exemption; or
- (b) by giving the owner of the facility a notice of revocation at least 4 months before the revocation takes effect.”.

Duty to allow others to use storage facilities

10. In section 19B of the Gas Act 1986 (acquisition of rights to use storage facilities) ^{M12}, after subsection (3) insert—

“(3A) At least 2 months before publishing the main commercial conditions, or any changes to the published conditions, under subsection (1), the owner of a relevant facility must—

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

(3B) When finalising conditions or changes under subsection (1), the owner of a relevant facility must take into account any representations it has received about the proposed conditions or changes.”.

Marginal Citations

M12 1986 c. 44. Section 19B was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#). Amendments have been made that are not relevant for these purposes.

Duty to allow others to use LNG import or export facilities: exemptions for new and modified facilities

11.—(1) Section 19C of the Gas Act 1986 (application of section 19D to LNG facilities) ^{M13} is amended as follows.

(2) For subsection (1) substitute—

“(1) Section 19D applies to an LNG import or export facility, except as provided in subsections (1A) and (1B).

(1A) Section 19D does not apply to an LNG import or export facility if, or to the extent that, it is exempt under this section.

(1B) Section 19D does not apply to an LNG import or export facility if it is exempt under section 19DZA.”.

(3) In subsection (2)—

- (a) for “LNG import facility” substitute “LNG import or export facility”;
- (b) after “an exemption” insert “under this section”.

(4) After subsection (2) insert—

“(2A) An application under subsection (2) must relate to—

- (a) a facility (or proposed facility) which is not yet operational; or
- (b) a modification (or proposed modification) which falls within subsection (2B) and is not yet operational.

(2B) A modification (or proposed modification) falls within this subsection if it is—

- (a) a modification of an LNG import or export facility to provide for a significant increase in the capacity of the facility; or
- (b) a modification of an LNG import or export facility to enable the development of new sources of gas supply.

(2C) The Authority must send to the European Commission a copy of an application under subsection (2) as soon as is reasonably practicable following its receipt.”.

(5) For subsection (3) substitute—

“(3) An exemption under this section must be given in writing and on the following terms—

- (a) a term specifying the period of the exemption, or specifying how that period is to be determined;
- (b) a term as to whether the exemption applies to all of the capacity of the facility or part of that capacity only;
- (c) a term that the owner must comply with the capacity allocation mechanism approved in accordance with section 19DB; and
- (d) such other terms regarding non-discriminatory access to the facility or any other matter as the Authority considers appropriate.

(3A) When determining a term under subsection (3) the Authority must take into account—

- (a) the capacity of the facility or (as the case may be) the increase in capacity of the facility;
- (b) the length of time required to recover the investment in the facility or (as the case may be) the investment in the modification; and
- (c) the implications of the exemption for the operation of the gas market in Great Britain.”.

(6) Omit subsection (4).

(7) After subsection (5) insert—

“(5A) An exemption given in accordance with subsection (5) may apply to all of the capacity of the facility concerned or to part of that capacity only, regardless of the extent of the exemption applied for; but this is subject to subsection (6).”.

(8) In subsection (6), at the end insert “ or part of that increase in its capacity ”.

(9) After subsection (6) insert—

“(6A) When deciding whether the requirements of subsection (7)(a), (d) and (e) are met, the Authority must take into account the way in which capacity is to be allocated under the capacity allocation mechanism approved in accordance with section 19DB.”.

(10) In subsection (7)—

- (a) in paragraph (a) for “significant increase in its capacity” substitute “ modification ”;
- (b) in paragraph (b) omit “to provide for a significant increase in its capacity”;
- (c) in paragraph (d) at the end insert “ and ”;
- (d) omit paragraph (f) (and the “and” preceding it).

(11) In subsection (8), for “subsection (9)” substitute “ subsections (8A) and (9) ”.

(12) After subsection (8) insert—

“(8A) Subsection (8) does not prevent a further exemption being given by virtue of subsection (5) in respect of a facility if the previous exemption given by virtue of that subsection in respect of the facility has been revoked under section 19CA(3).”.

(13) In subsection (9)—

- (a) after “a significant increase in its capacity” insert “ or to enable the development of new sources of gas supply ”;
- (b) for “that increase in its capacity” (in each place) substitute “ modification ”.

(14) In subsection (10), for “together with the reasons for its decision” substitute “ under this section, together with the reasons for its decision, ”.

Marginal Citations

M13 Section 19C was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, S.I. 2000/1937 and has since been amended by the Utilities Act 2000 (c. 27), section 3(2) and regulation 2(2) to, and paragraph 3 of Schedule 2 to S.I. 2004/2043. Other amendments have been made that are not relevant for these purposes.

Duty to allow others to use LNG import or export facilities: review and revocation of exemptions

12. After section 19C of the Gas Act 1986 insert—

“19CA Review and revocation of exemptions under section 19C

(1) If the Authority gives, or refuses to give, an exemption under section 19C it must send the following to the European Commission as soon as is reasonably practicable—

- (a) if an exemption was given, a copy of the exemption and of the terms on which it has been given;
- (b) the Authority's reasons for giving the exemption or not giving it, which must address each of the matters listed in Article 36(1) of the Gas Directive;
- (c) any supporting information held by the Authority which is relevant to the application for an exemption, including in particular any—
 - (i) relevant financial information;
 - (ii) analysis of the likely effect of the exemption on competition and on the effective functioning of the EU market for natural gas;
- (d) if an exemption was given, the basis on which the Authority determined—
 - (i) the period of the exemption or how that period is to be determined; and
 - (ii) the capacity to which the exemption applies;
- (e) any contribution by the storage facility to the diversification of gas supply; and
- (f) any other information requested by the European Commission.

(2) If, in accordance with Article 36(9) of the Gas Directive, the European Commission requires the Authority to revoke an exemption given under section 19C, or to modify the terms on which such an exemption is given, the Authority must—

- (a) comply with that request within the period of 1 month beginning with the day on which it receives the request; and
- (b) inform the European Commission when it has done so.

(3) The Authority must revoke an exemption given under section 19C in respect of a facility—

- (a) if the construction of the facility, or (as the case may be) the making of the modification to which the exemption relates, has not been started within the 2 years beginning with the relevant date; or
- (b) if the facility, or (as the case may be) the modification to which the exemption relates, is not operational within the 5 years beginning with the relevant date.

(4) In subsection (4) “relevant date” means—

- (a) if the European Commission notified the Authority that it approved the exemption and terms as copied to it under subsection (1), the date of that notification;
 - (b) if, in accordance with Article 36(9) of the Gas Directive, the European Commission required the Authority to modify the terms, the date of that requirement;
 - (c) otherwise, the date 4 months after the Authority sent the Commission a copy of the exemption and terms under subsection (1).
- (5) The Authority may at any other time revoke an exemption given under section 19C, or modify the terms on which such an exemption is given, in respect of a facility—
- (a) in accordance with the provisions of the exemption; or
 - (b) by giving the owner of the facility a notice of revocation at least 4 months before the revocation takes effect.”.

Duty to allow others to use LNG import or export facilities

13.—(1) Section 19D of the Gas Act 1986 (acquisition of rights to use LNG import or export facilities)^{M14} is amended as follows.

- (2) In subsection (1), for “LNG import facility” substitute “ LNG import or export facility ”.
- (3) Before “liquid gas” (in each place) insert “ gas or ”.
- (4) In subsection (11), at the end insert “ ; but this is subject to subsections (11A) and (11B) ”.
- (5) After subsection (11) insert—

“(11A) When considering whether the giving of directions under subsection (11) in respect of an LNG import or export facility would be prejudicial as mentioned in that subsection, the Authority must disregard any difficulties by virtue of which the owner of the facility may or must apply for an exemption under section 19DZA with respect to the facility.

(11B) The Authority must not give directions under subsection (11) in respect of an LNG import or export facility if—

- (a) such directions would prevent the owner from carrying out any public service obligation, within the meaning of paragraph (2) of Article 3 of the Gas Directive, which is imposed on the owner pursuant to that paragraph; or
- (b) an exemption is in force with respect to the facility under section 19DZA (regardless of whether that exemption was given before or after the application to the Authority under subsection (8) was made).”.

Marginal Citations

M14 Section 19D was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#). Amendments have been made that are not relevant for these purposes.

Duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments

- 14.** After section 19D of the Gas Act 1986^{M15} insert—

“19DZA Duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments

(1) The owner of an LNG import or export facility may apply to the Authority for an exemption under this section with respect to the facility if the owner—

- (a) receives an application under section 19D(4) with respect to the facility; and
- (b) considers that allowing the application would cause the owner serious financial difficulties because of take-or-pay commitments of the owner under one or more gas-purchase contracts.

(2) The owner of an LNG import or export facility must apply to the Authority for an exemption under this section with respect to the facility if—

- (a) the owner refuses an application under section 19D(4) with respect to the facility; and
- (b) the reason, or one of the reasons, given under section 19D(7) for the refusal is the consideration mentioned in subsection (1)(b).

(3) An application made by virtue of subsection (2) must be made before the end of the 7 days beginning with the day of the refusal.

(4) An application for an exemption under this section must enclose all relevant information, including in particular information in respect of—

- (a) the nature and extent of the difficulties mentioned in subsection (1)(b) which the owner considers would arise (the “difficulties”);
- (b) any steps taken by the owner to prevent the difficulties from arising; and
- (c) the period over which the owner considers the difficulties would arise.

(5) The Authority may give an exemption under this section if it considers that—

- (a) having regard to any steps taken by the owner to prevent the difficulties from arising, the only reasonably available means of prevention is an exemption under this section; and
- (b) an exemption ought to be given, having regard to—
 - (i) the objective of achieving a competitive gas market;
 - (ii) the need for the owner to comply with any relevant public service obligation, within the meaning of paragraph (2) of Article 3 of the Gas Directive, which is imposed on the owner pursuant to that paragraph;
 - (iii) the need to ensure security of the supply of gas;
 - (iv) the position of the owner of the facility in the gas market and the level of competition in the market;
 - (v) the level of seriousness of the difficulties;
 - (vi) the time when the gas-purchase contract was entered into, and the extent to which the owner could reasonably have foreseen at that time that the difficulties were likely to arise;
 - (vii) the terms of the gas-purchase contract, including the extent to which the contract allows for market changes;
 - (viii) the significance of the facility to the gas market; and
 - (ix) the overall effect of the exemption on the operation of an economically efficient gas market.

(6) An exemption under this section must be given for a limited period and in writing and must specify—

- (a) the period of the exemption; and
 - (b) any conditions the Authority considers necessary in order to ensure that the owner takes all reasonably practicable steps to ensure that, by the time the exemption expires, the difficulties would no longer arise.
- (7) If the Authority has given an exemption under this section it must send to the European Commission as soon as is reasonably practicable—
- (a) a copy of its decision to give the exemption, including the terms on which the exemption was given; and
 - (b) any other information the Authority considers relevant to the exemption or to the terms on which the exemption was given.
- (8) An exemption under this section may be modified or revoked by the Authority—
- (a) in accordance with its provisions;
 - (b) at any other time, if the Authority considers that an exemption under this section is no longer required.
- (9) The Authority must modify or revoke an exemption given under this section if required to do so by the European Commission in accordance with Article 48(2) of the Gas Directive.
- (10) In this section “take-or-pay commitment” and “gas-purchase contract” have the same meanings as in Article 48(1) of the Gas Directive.”.

Marginal Citations

M15 [Section 19DA](#) was inserted by regulation 2(2) to, and paragraph 5 of Schedule 2 to, [S.I. 2004/2043](#).

Exempt new and modified facilities: mechanisms for the allocation of capacity

15. After section 19DA of the Gas Act 1986 ^{M16} insert—

“19DB Allocation of capacity in exempt new and modified facilities

- (1) This section applies in relation to an application for an exemption—
 - (a) under section 19A(2), in respect of all or part of the capacity of a storage facility; or
 - (b) under section 19C(2), in respect of all or part of the capacity of an LNG import or export facility.
- (2) The application must specify the criteria that will be used to determine—
 - (a) who is to be granted rights to use the facility, or the part of the capacity of the facility, to which the application relates (the “exempt infrastructure”); and
 - (b) the way in which those rights may be exercised,

(the “capacity allocation mechanism”).

- (3) The Authority must not give an exemption under section 19A or 19C in response to the application unless it has—
 - (a) approved the capacity allocation mechanism specified in the application; or

- (b) approved the mechanism on condition that certain modifications are made to it.
- (4) The Authority may only approve the capacity allocation mechanism under subsection (3)(a) if it considers that the mechanism meets the following three conditions.
- (5) The first condition is that before a right to use the exempt infrastructure is granted to the owner of the facility or to any other person—
 - (a) the intention to grant a right to use the exempt infrastructure must be published in a way that the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be interested in using the infrastructure; and
 - (b) such persons must be able to register an interest in using the exempt infrastructure.
- (6) The second condition is that the mechanism must require that any unused capacity in the exempt infrastructure be made available to other users or potential users.
- (7) The third condition is that the mechanism must not prevent, and must not be capable of being used to prevent, subsequent trading of rights to use the exempt infrastructure.
- (8) The Authority may only approve the capacity allocation mechanism under subsection (3)(b) if it considers that the mechanism will meet those three conditions once the modifications on which the approval is conditional have been made.”.

Marginal Citations

M16 1986 c. 44. Section 19E was inserted by regulation 2(2) of, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#). Amendments have been made that are not relevant for these purposes.

Consequential amendments of the Petroleum Act 1998 in respect of storage facilities

- 16.**—(1) The Petroleum Act 1998 ^{M17} is amended as follows.
- (2) Omit section 17C (application of section 17D) ^{M18}.
 - (3) Omit section 17D (access to offshore gas storage facilities) ^{M19}.
 - (4) Omit section 17E (section 17D: supplemental) ^{M20}.
 - (5) In section 17H (enforcement of certain duties in relation to access to pipelines and offshore gas storage facilities) ^{M21}—
 - (a) In subsection (1)—
 - (i) omit “with any notice under section 17D(11) or”;
 - (ii) omit “and the obligation to comply with any duty in section 17B(6) or section 17D(7)”;
 - (iii) for “duties” substitute “ a duty ”;
 - (iv) for “them” substitute “ it ”;
 - (b) omit subsection (4);
 - (c) change the section title to “Enforcement of duty in section 17GA”,
 but this paragraph is subject to paragraph (7).
 - (6) In section 28(1) (interpretation) omit the definition of “offshore gas storage facility” ^{M22}.
 - (7) So far as section 17H would, but for the amendments made by paragraph (5), have effect in relation to a past breach, it continues to have effect in relation to that past breach as if those amendments had not been made.

(8) In paragraph (7) “past breach” means a failure before the coming into force of these Regulations to comply with—

- (a) a duty under section 17D(1), (3), or (7);
- (b) a notice under section 17D(11);
- (c) a duty in section 17E(2).

Marginal Citations

M17 1998 c. 17.

M18 Section 17C was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, [S.I. 2000/1937](#) and was subsequently amended by regulation 2(3) of, and paragraph 1 of Schedule 3 to, [S.I. 2004/2043](#); and regulation 4 of [S.I. 2009/1349](#).

M19 Section 17D was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, [S.I. 2000/1937](#).

M20 Section 17E was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, [S.I. 2000/1937](#) and was subsequently amended by articles 3(1)(b) and 6 of, and paragraph 206 of Part 2 of Schedule 1 to, [S.I. 2008/948](#); and the Corporation Tax Act 2010, section 1177 and paragraph 298 of Part 2 of Schedule 1.

M21 Section 17H was inserted by regulation 2(4) of, and paragraph 4 of Schedule 4 to, [S.I. 2000/1937](#) and was subsequently amended by regulation 2(3) of, and paragraph 2 of Schedule 3 to, [S.I. 2004/2043](#); and article 2 of, and paragraph 3 of the Schedule to, [S.I. 2007/290](#); and the Energy Act 2004, section 197(9) and Part 1 of Schedule 23 (the commencement date for the relevant part of Part 1 of Schedule 23 is yet to be appointed in accordance with section 198 of the Energy Act 2004).

M22 Section 28(1) was amended by regulation 2(4) of, and paragraph 9 of Schedule 4 to, [S.I. 2000/1937](#) and was subsequently amended by regulation 2(3) of, and paragraph 3 to Schedule 3 to, [S.I. 2004/2043](#). Other amendments have been made that are not relevant for these purposes.

Transitional provision in relation to exempt storage and LNG import or export facilities

17.—(1) An exemption given under—

- (a) section 19A(6)(a) of the Gas Act 1986 (duty to allow others to use storage facilities: exemptions for minor facilities) ^{M23}; or
- (b) section 17C(5A)(a) of the Petroleum Act 1998 (duty to allow others to use offshore gas storage facilities: exemptions for minor facilities),

before the date on which these Regulations come into force shall be treated as having been given under section 8S of the Gas Act 1986 (independence of storage facilities and duty to allow others to use them: exemptions for minor facilities) ^{M24}.

(2) An exemption given under section 17C(5A)(b) of the Petroleum Act 1998 (duty to allow others to use offshore gas storage facilities: exemptions for new and modified facilities) before the date on which these Regulations come into force shall be treated as having been given under section 19A(6)(b) of the Gas Act 1986 (duty to allow others to use storage facilities: exemptions for new and modified facilities).

Marginal Citations

M23 Section 19A was inserted by regulation 2(2) to, and paragraph 1 of Schedule 2 to, [S.I. 2000/1937](#).

Amendments have been made that are not relevant for these purposes.

M24 Inserted by regulation 6 of these Regulations.

Changes to legislation:

There are currently no known outstanding effects for the The Electricity and Gas (Internal Markets) Regulations 2011, PART 4.