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## STATUTORY INSTRUMENTS

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# 2011 No. 2704

## The Electricity and Gas (Internal Markets) Regulations 2011

### PART 4

#### Gas facilities

##### **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) <sup>M1</sup> 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

**M1** 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.

**Changes to legislation:**

There are currently no known outstanding effects for the The Electricity and Gas (Internal Markets) Regulations 2011, Section 11.