
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.

Changes to legislation:

There are currently no known outstanding effects for the The Electricity and Gas (Internal Markets) Regulations 2011, Section 6.