
STATUTORY INSTRUMENTS

2011 No. 2704

The Electricity and Gas (Internal Markets) Regulations 2011

PART 4

Gas facilities

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

15. After section 19DA of the Gas Act 1986(1) 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.

(1) 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.

(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.”