

SCHEDULE 2

Regulation 2(2)

AMENDMENTS TO THE GAS ACT 1986

1. After section 19, there shall be inserted—

“Application of section 19B to storage facilities.

19A.—(1) Section 19B applies to storage facilities other than exempt storage facilities.

(2) An owner of a storage facility may apply in writing to the Director for an exemption for the facility or for facilities of a particular description.

(3) An exemption shall be given in writing and may be given—

(a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;

(b) unconditionally or subject to such conditions as the Director considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the facility or facilities concerned not less than four months before the coming into force of the revocation.

(5) The Director shall give an exemption with respect to a facility or description of facility where he is satisfied that either—

(a) the requirements of section 19B(1), (3) and (7) and section 19E(3) are already met with respect to the facility or facilities concerned by existing market arrangements which promote competition; or

(b) use of the facility or facilities concerned by other persons is not necessary for the operation of an economically efficient gas market.

Acquisition of rights to use storage facilities.

19B.—(1) The owner of a storage facility to which this section applies (a “relevant facility”)—

(a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have gas stored in the facility on that person’s behalf; and

(b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9th August.

(3) The owner of a relevant facility shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have gas stored in the facility.

(4) Any person who seeks a right to have gas stored on his behalf in a relevant facility (“the applicant”) shall, before making an application to the Director under subsection (8), apply to the owner of the facility for the right.

(5) An application under subsection (4) shall be made by giving notice to the owner specifying what is being sought.

(6) Such a notice shall, in particular, specify—

(a) the period during which the gas is to be stored in the facility;

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- (b) the kind of gas to be stored (which must be of, or similar to, the kind which the facility is designed to store); and
- (c) the quantities of gas to be stored.

(7) Where an applicant gives notice under subsection (5), he and the owner of the facility shall negotiate in good faith and endeavour to reach agreement on the application.

(8) If the owner and the applicant do not reach any such agreement, the applicant may apply to the Director for directions under subsection (11) which would secure to the applicant the right specified in the notice under subsection (5).

(9) The Director shall not entertain an application under subsection (8) unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (7).

(10) Where a person applies to the Director under subsection (8) and the Director is satisfied as mentioned in subsection (9), the Director shall—

- (a) decide whether the application is to be adjourned (so as to enable further negotiations to take place), considered further or rejected;
- (b) give notice of his decision to the applicant; and
- (c) in the case of a decision that the application is to be considered further, give to the owner of the facility, the Health and Safety Executive and any person who has a right to have gas stored in the facility notice that the application is to be so considered and an opportunity of being heard on the matter.

(11) Where, after considering an application under subsection (8), the Director is satisfied that the giving of directions under this subsection would not prejudice the efficient operation of the facility, or the storage in the facility of—

- (a) the quantities of gas which the owner of the facility requires or may reasonably be expected to require to be stored in the facility; and
- (b) the quantities of gas which any person who has a right to have gas stored in the facility is entitled to require to be so stored in the exercise of that right;

the Director may give such directions to the owner of the facility.

(12) Directions under subsection (11) may—

- (a) specify the terms on which the Director considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
 - (i) for securing to the applicant the right to have stored in the facility, for the period specified in the directions and in the quantities so specified or determined by or under the directions, gas which is of a kind so specified;
 - (ii) for securing that the exercise of that right is not prevented or impeded;
 - (iii) for regulating the charges which may be made for the storage of gas by virtue of that right;
 - (iv) for securing to the applicant such ancillary or incidental rights as the Director considers necessary or expedient (which may include, in particular, a right to have a pipeline of his connected to the facility by the owner);
- (b) specify the sums or the method of determining the sums which the Director considers should be paid by way of consideration for any such right; and
- (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.

Application of section 19D to LNG facilities.

19C.—(1) Section 19D applies to LNG facilities other than exempt LNG facilities.

(2) An owner of an LNG facility may apply in writing to the Director for an exemption for the facility or for facilities of a particular description.

(3) An exemption shall be given in writing and may be given—

(a) so as to have effect for an indefinite period or for a period specified in, or determined under, the exemption;

(b) unconditionally or subject to such conditions as the Director considers appropriate.

(4) An exemption may be revoked in accordance with its provisions and, in any event, may be revoked by giving a notice of revocation to the owner of the facility or facilities concerned not less than four months before the coming into force of the revocation.

(5) The Director shall give an exemption with respect to a facility or description of facility where he is satisfied that the requirements of section 19D(1), (3) and (7) and section 19E(3) are already met with respect to the facility or facilities concerned by existing market arrangements which promote competition.

Acquisition of rights to use LNG facilities.

19D.—(1) The owner of an LNG facility to which this section applies (a “relevant facility”)—

(a) shall publish at least once in every year the main commercial conditions relating to the grant to another person of a right to have LNG treated in the facility on that person’s behalf; and

(b) shall publish any changes to the published conditions as soon as they become effective.

(2) In subsection (1) “year” means any year ending with 9th August.

(3) The owner of a relevant facility shall ensure that the conditions which he is required to publish under subsection (1) do not discriminate against any applicants or descriptions of applicants, or any potential applicants or descriptions of potential applicants, for a right to have LNG treated in the facility.

(4) Any person who seeks a right to have LNG treated on his behalf in a relevant facility (“the applicant”) shall, before making an application to the Director under subsection (8), apply to the owner of the facility for the right.

(5) An application under subsection (4) shall be made by giving notice to the owner specifying what is being sought.

(6) Such a notice shall, in particular, specify—

(a) the period during which LNG is to be treated in the facility;

(b) the kind of LNG to be treated (which must be of, or similar to, the kind which the facility is designed to treat); and

(c) the quantities of LNG to be treated.

(7) Where an applicant gives notice under subsection (5), he and the owner of the facility shall negotiate in good faith and endeavour to reach agreement on the application.

(8) If the owner and the applicant do not reach any such agreement, the applicant may apply to the Director for directions under subsection (11) which would secure to the applicant the right specified in the notice under subsection (5).

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(9) The Director shall not entertain an application under subsection (8) unless he is satisfied that the parties have had a reasonable time in which to fulfil their duties under subsection (7).

(10) Where a person applies to the Director under subsection (8) and the Director is satisfied as mentioned in subsection (9), the Director shall—

- (a) decide whether the application is to be adjourned (so as to enable further negotiations to take place), considered further or rejected;
- (b) give notice of his decision to the applicant; and
- (c) in the case of a decision that the application is to be considered further, give to the owner of the facility, the Health and Safety Executive and any person who has a right to have LNG treated in the facility notice that the application is to be so considered and an opportunity of being heard about the matter.

(11) Where, after considering an application under subsection (8), the Director is satisfied that the giving of directions under this subsection would not prejudice the efficient operation of the facility, or the treatment in the facility of—

- (a) the quantities of LNG which the owner of the facility requires or may reasonably be expected to require to be treated in the facility; and
- (b) the quantities of LNG which any person who has a right to have LNG treated in the facility is entitled to require to be so treated in the exercise of that right;

the Director may give such directions to the owner of the facility.

(12) Directions under subsection (11) may—

- (a) specify the terms on which the Director considers the owner of the facility should enter into an agreement with the applicant for all or any of the following purposes—
 - (i) for securing to the applicant the right to have treated in the facility, for the period specified in the directions and in the quantities so specified or determined by or under the directions, LNG which is of a kind so specified;
 - (ii) for securing that the exercise of that right is not prevented or impeded;
 - (iii) for regulating the charges which may be made for the treatment of LNG by virtue of that right;
 - (iv) for securing to the applicant such ancillary or incidental rights as the Director considers necessary or expedient (which may include, in particular, a right to have a pipeline of his connected to the facility by the owner);
- (b) specify the sums or the method of determining the sums which the Director considers should be paid by way of consideration for any such right; and
- (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in that behalf in the directions, to enter into an agreement with him on the terms so specified.

Sections 19A to 19D: supplemental.

19E.—(1) In sections 19A to 19D and this section—

“accounting information” means such accounting records as would be required by section 221 of the Companies Act 1985 in respect of each of the storage or (as the case may be) treatment activities undertaken by the owner of the facility if those activities were the only business undertaken by the owner and the owner were a person to whom that section applied;

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“LNG” means liquid gas, and gas which has been, or is to be, treated in an LNG facility;

“LNG facility” means a facility for any or all of the following: the liquefaction of gas, the storage of LNG in its liquid form and the re-gasification of liquid gas;

“main commercial conditions” means—

- (a) such information as would enable a potential applicant for a right to have gas stored or (as the case may be) treated in a relevant facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right;
- (b) the other significant terms on which such a right would be granted; and
- (c) such additional information as the Director may from time to time specify by notice;

“owner” in relation to a storage facility or an LNG facility includes any person occupying or having control of the facility;

“significant transaction” means—

- (a) any transaction which relates to rights to have gas stored in a gas storage facility, or (as the case may be) treated in an LNG facility; and
- (b) any other transaction which is of a description specified from time to time by the Director by notice;

“storage facility” means a facility in Great Britain (excluding the territorial sea adjacent to the United Kingdom) for the storage of gas in cavities in strata or in porous strata, provided that the facility is used for the storage of gas which has previously been conveyed in a pipeline system operated by a public gas transporter; and

“treatment” in relation to LNG in an LNG facility, includes liquefaction, storage in liquid form and regasification of the LNG, and “treat” shall be construed accordingly.

(2) For the purpose of considering an application under section 19B(8) or 19D(8), the Director may by notice require the owner of the relevant facility to provide him with accounting information and details of the main commercial terms of any significant transactions with associated undertakings.

(3) Owners of relevant facilities shall keep their internal accounts in such manner as will enable them to provide accounting information if required to do so by a notice under subsection (2).

(4) For the purposes of sections 19B and 19D, an undertaking is an associated undertaking of another undertaking if one of the undertakings has control of the other, or both undertakings are under the control of the same person or persons; and subsections (2) to (5) of section 416 of the Income and Corporation Taxes Act 1988 shall apply with any necessary modifications for the purposes of this subsection as they apply for the purposes of Part XI of that Act.

(5) Any reference in section 19B to a right to have gas or gas of any kind stored in a storage facility includes a reference to a right to introduce into, or take out of, such a facility gas or gas of that kind.

(6) Any reference in section 19D to a right to have LNG or LNG of any kind treated in an LNG facility includes a reference to a right to introduce into, or take out of, such a facility LNG or LNG of that kind.”

Changes to legislation: There are currently no known outstanding effects for the The Gas (Third Party Access and Accounts) Regulations 2000, SCHEDULE 2. (See end of Document for details)

Commencement Information

I1 Sch. 2 para. 1 in force at 10.8.2000, see [reg. 1](#)

2. In section 22—

- (a) in subsection (1), for the words “section 19 or 21(1) above”, there shall be substituted “section 19, 19B(11), 19D(11) or 21(1)”;
- (b) in subsection (1), for the words “is a duty”, there shall be substituted—
“and the obligation to comply with any duty in section 19B(7) and 19D(7) (in this section referred to as “relevant duties”) are duties”;
- (c) at the end of subsection (3), there shall be inserted “or relevant duties ”; and
- (d) at the end of the section, there shall be inserted—
“(5) Compliance with the duties in sections 19B(1) and (3), 19D(1) and (3) and section 19E(3) shall be enforceable by civil proceedings by the Director for an injunction or interdict or for any other appropriate relief.”

Commencement Information

I2 Sch. 2 para. 2 in force at 10.8.2000, see [reg. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Gas (Third Party Access and Accounts) Regulations 2000, SCHEDULE 2.