

Status: Point in time view as at 10/11/2011.

Changes to legislation: Gas Act 1986, Cross Heading: Pipe-line systems, storage facilities and LNG import or export facilities: rights of use etc is up to date with all changes known to be in force on or before 24 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Gas Act 1986

1986 CHAPTER 44

PART I

GAS SUPPLY

[^{F1}Pipe-line systems, storage facilities and LNG import or export facilities: rights of use etc]

Textual Amendments

F1 S. 19 cross-heading substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(1)**

19 [^{F2}Acquisition of rights to use pipe-line systems.]

- (1) In the case of a pipe-line system operated by a [^{F3}gas transporter], any person may, after giving the transporter not less than 28 days' notice, apply to the Director for directions under this section which would secure to the applicant a right of a description specified in the application to have conveyed by the system gas which—
- (a) is of a kind so specified; and
 - (b) is of, or of a kind similar to, the kind which the system is designed to convey.
- (2) Where an application is made under subsection (1) above, it shall be the duty of the Director—
- (a) to decide whether the application is to be adjourned (so as to enable negotiations or further negotiations to take place), considered further or rejected;
 - (b) to give notice of his decision to the applicant;
 - (c) in the case of a decision that the application is to be considered further, to give to the transporter, to the Health and Safety Executive and to any person who has a right to have gas conveyed by the pipe-line system, notice that the application is to be so considered and an opportunity of being heard about the matter.

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- (3) Where, after further considering an application under subsection (1) above, the Director is satisfied that the giving of directions under this section would not prejudice the efficient operation of the pipe-line system, or the conveyance by the system of—
- (a) the quantities of gas which the [^{F3}gas transporter] requires or may reasonably be expected to require to be conveyed by the system to enable the transporter to comply with the conditions of his licence and to perform his contractual obligations;
 - (b) the quantities of gas which any person who has a right to have gas conveyed by the system is entitled to require to be so conveyed in the exercise of that right,
- the Director may give such directions to the transporter.
- (4) Directions under this section may—
- (a) specify the terms on which the Director considers the [^{F3}gas transporter] 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 conveyed by the pipe-line system, 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 conveyance 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 the right to have a pipe-line of his connected to the pipe-line system by the transporter;
 - (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 transporter, 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.
- (5) In giving any directions under this section, the Director shall apply the principle that the [^{F3}gas transporter] should be entitled to receive by way of charges for the conveyance of gas by virtue of the right—
- (a) the appropriate proportion of the costs incurred by the transporter in administering, maintaining and operating his pipe-line system; and
 - (b) a return equal to the appropriate proportion of the return received by the transporter (otherwise than by virtue of the right) on the capital value of the system (including so much of that return as is set aside to meet the need from time to time to renew the system).
- (6) In subsection (5) above “the appropriate proportion” means such proportion as properly—
- (a) reflects the use made of the [^{F3}gas transporter’s] pipe-line system by virtue of the right as compared with the use made of that system for other purposes; and
 - (b) takes into account the sums paid by way of consideration for the right and any sums paid in respect of the pipe-line system (whether by the applicant or by any other person) in pursuance of directions under section 21(1) below.

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- (7) Any reference in this section to a right to have gas of any kind conveyed by a pipe-line system includes a reference to a right to introduce into, or take out of, such a system gas of that kind.

Textual Amendments

- F2** S. 19 and preceding cross-heading substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 16**; S.I. 1996/218, **art. 2**
- F3** Words in s. 19 substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. I para. 2(1)(2)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

Modifications etc. (not altering text)

- C1** S. 19 applied (with modifications) (1.3.1996) by S.I. 1996/399, **art. 4(2)**
- C2** S. 19(2)(c) applied (with modifications) (1.3.1996) by S.I. 1996/399, **art. 4(4)(c)**

[^{F4}19A Application of section 19B to storage facilities.

[^{F5}(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.

(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.]

(2) [^{F6}A person who is or expects to be an owner] of a storage facility may apply in writing to the Director for an exemption [^{F7}under this section][^{F8}with respect to the facility] .

[An application under subsection (2) must relate to—

^{F9}(2A) (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.]

[^{F10}(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;

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- (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;
- (c) the implications of the exemption for the operation of the gas market in Great Britain.]

^{F11}(4)

^{F11}[^{F12}(5)

(6) [^{F13}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] —

- ^{F14}(a)
- (b) the requirements of subsection (8) are met.

[^{F15}(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).]

(7) In respect of a facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of subsection (6)(b) may only be given in relation to that increase in its capacity [^{F16}or part of that increase in its capacity] .

[^{F17}(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.]

(8) The requirements of this subsection are that—

- (a) the facility or (as the case may be) the [^{F18}modification] will promote security of supply;
- (b) the level of risk is such that the investment to construct the facility or (as the case may be) to modify the facility ^{F19}... would not be or would not have been made without the exemption;
- (c) the facility is or is to be owned by a person other than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility;
- (d) charges will be levied on users of the facility or (as the case may) the increase in its capacity; [^{F20}and]
- (e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; ^{F21}...

^{F21}(f)

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(9) Subject to ^{F22}subsections (9A) and (10) , an exemption may not be given by virtue of subsection (6)(b) more than once in respect of the same facility.

^{F23}(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).]

(10) Subsection (9) does not prevent a further exemption being given by virtue of subsection (6)(b) in respect of a facility if—

the facility is or is to be modified to provide for a significant increase in its capacity ^{F24}or to enable the development of new sources of gas supply] ;
the exemption has effect only in relation to ^{F25}that modification] ; and
no previous exemption has been given by virtue of subsection (6)(b) in relation to ^{F25}that modification] .

(11) The Authority shall publish its decision to give or refuse to give an exemption ^{F26}under this section, together with the reasons for its decision,] in such manner as it considers appropriate.]]

Textual Amendments

- F4** Ss. 19A-19E inserted (10.8.2000) by S.I. 2000/1937, reg. 2(2), **Sch. 2 para. 1**
- F5** Ss. 19A(1)-(1D) substituted for s. 19A(1) (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(3)**
- F6** Words in s. 19A(2) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 1(b)**
- F7** Words in s. 19A(2) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(4)**
- F8** Words in s. 19A(2) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 1(c)**
- F9** Ss. 19A(2A)-(2C) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(5)**
- F10** S. 19A(3)(3A) substituted for s. 19A(3) (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(6)**
- F11** S. 19A(4)(5) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(7)**
- F12** Ss. 19A(5)-(11) substituted for s.19(5) (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 1(f)**
- F13** Words in s. 19A(6) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(8)(a)**
- F14** S. 19A(6)(a) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(8)(b)**
- F15** S. 19A(6A) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(9)**
- F16** Words in s. 19A(7) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(10)**
- F17** S. 19A(7A) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(11)**
- F18** Word in s. 19A(8)(a) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(12)(a)**
- F19** Words in s. 19A(8)(b) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(12)(b)**

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- F20** Word in s. 19A(8)(d) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(12)(c)**
- F21** S. 19A(8)(f) and preceding word omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(12)(d)**
- F22** Words in s. 19A(9) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(13)**
- F23** S. 19A(9A) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(14)**
- F24** Words in s. 19A(10) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(15)(a)**
- F25** Words in s. 19A(10) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(15)(b)**
- F26** Words in s. 19A(11) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **8(16)**

^{F27} **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.

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- (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.]

Textual Amendments

- F27** S. 19AA inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), 9

[^{F28}19B Acquisition of rights to use storage facilities.

- (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 [^{F29}or liquid 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 [^{F29}or liquid gas] stored in the facility.

- [At least 2 months before publishing the main commercial conditions, or any changes to
- ^{F30}(3A) 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.]
- (4) Any person who seeks a right to have gas [^{F29}or liquid 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.

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- (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 [^{F29}or liquid gas] is to be stored in the facility;
 - (b) the kind of gas [^{F29}or liquid 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 [^{F29}or liquid 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 [^{F29}or liquid 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 [^{F29}or liquid 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 [^{F29}or liquid gas] which any person who has a right to have gas [^{F29}or liquid 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 [^{F29}or liquid 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 [^{F29}or liquid gas] by virtue of that right;

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- (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.]

Textual Amendments

- F28** Ss. 19A-19E inserted (10.8.2000) by [S.I. 2000/1937, reg. 2\(2\)](#), [Sch. 2 para. 1](#)
- F29** Words in s. 19B inserted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), [reg. 1](#), [Sch. 2 para. 2](#)
- F30** S. 19B(3A)(3B) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), [regs. 1\(1\)](#), [10](#)

[^{F31}19C Application of section 19D to LNG facilities.

[^{F32}(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.]

(2) [^{F33}A person who is or expects to be an owner of an [^{F34}LNG import or export facility]] may apply in writing to the Director for an exemption [^{F35}under this section][^{F36}with respect to the facility].

[An application under subsection (2) must relate to—

^{F37}(2A) (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.]

[^{F38}(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;

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- (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.]

^{F39}(4)

[^{F40}(5) The Authority shall give an exemption with respect to a facility where it is satisfied that the requirements of subsection (7) are met.

[^{F41}(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).]

(6) In respect of a facility which is or is to be modified to provide for a significant increase in its capacity, an exemption by virtue of subsection (5) may only be given in relation to that increase in its capacity [^{F42}or part of that increase in its capacity].

[^{F43}(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.]

- (7) The requirements of this subsection are that—
- (a) the facility or (as the case may be) the [^{F44}modification] will promote security of supply;
 - (b) the level of risk is such that the investment to construct the facility or (as the case may be) to modify the facility ^{F45}... would not be or would not have been made without the exemption;
 - (c) the facility is or is to be owned by a person other than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility;
 - (d) charges will be levied on users of the facility or (as the case may be) the increase in its capacity; [^{F46}and]
 - (e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; ^{F47} ...

^{F47}(f)

(8) Subject to [^{F48}subsections (8A) and (9)], an exemption may not be given by virtue of subsection (5) more than once in respect of the same facility.

[^{F49}(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).]

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- (9) Subsection (8) does not prevent a further exemption being given by virtue of subsection (5) in respect of a facility if—
- the facility is or is to be modified to provide for significant increase in its capacity [^{F50}or to enable the development of new sources of gas supply];
 - the exemption has effect only in relation to [^{F51}modification]; and
 - no previous exemption has been given by virtue of subsection (5) in relation to [^{F51}modification].
- (10) The Authority shall publish its decision to give or refuse to give an exemption [^{F52}under this section, together with the reasons for its decision,] in such manner as it considers appropriate.]]

Textual Amendments

- F31** Ss. 19A-19E inserted (10.8.2000) by S.I. 2000/1937, reg. 2(2), **Sch. 2 para. 1**
- F32** S. 19C(1)-(1B) substituted for s. 19C(1) (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(2)**
- F33** Words in s. 19C(2) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 3(b)**
- F34** Words in s. 19C(2) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(3)(a)**
- F35** Words in s. 19C(2) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(3)(b)**
- F36** Words in s. 19C(2) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 3(c)**
- F37** S. 19C(2A)-(2C) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(4)**
- F38** S. 19C(3)(3A) substituted for s. 19C(3) (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(5)**
- F39** S. 19C(4) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(6)**
- F40** S. 19C(5)-(10) substituted for s. 19C(5) (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 3(f)**
- F41** S. 19C(5A) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(7)**
- F42** Words in s. 19C(6) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(8)**
- F43** S. 19C(6A) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(9)**
- F44** Word in s. 19C(7)(a) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(10)(a)**
- F45** Words in s. 19C(7)(b) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(10)(b)**
- F46** Word in s. 19C(7)(d) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(10)(c)**
- F47** S. 19C(7)(f) and word omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(10)(d)**
- F48** Words in s. 19C(8) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(11)**
- F49** S. 19C(8A) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **11(12)**

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- F50** Words in s. 19C(9) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **11(13)(a)**
- F51** Word in s. 19C(9) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **11(13)(b)**
- F52** Words in s. 19C(10) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **11(14)**

^{F53}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;

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- (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.]

Textual Amendments

F53 S. 19CA inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **12**

[^{F54}19D Acquisition of rights to use LNG facilities.

- (1) [^{F55}Subject to subsection (2A), the owner of an [^{F56}LNG import or export facility]] to which this section applies (a “relevant facility”)—
 - (a) shall publish [^{F57}prior to their entry into force] the main commercial conditions relating to the grant to another person of a right to have [^{F58}gas or][^{F57}liquid gas] 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.
- ^{F59}(2)
- [The cost or the method of determining the cost of acquiring the right to have [^{F58}gas or]
^{F60}(2A) liquid gas treated in a relevant facility and any changes thereto must be approved by the Authority prior to their publication; and such approval may be given on condition that certain modifications are made to the cost or methodology.
- (2B) Before the owner of a relevant facility seeks approval under subsection (2A) he must carry out such consultation as the Authority may require.]
- (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 [^{F58}gas or][^{F61}liquid gas] treated in the facility.
- (4) Any person who seeks a right to have [^{F58}gas or][^{F62}liquid gas] 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—
 - ^{F63}(a)
 - (b) the kind of [^{F58}gas or][^{F64}liquid gas] to be treated (which must be of, or similar to, the kind which the facility is designed to treat); and
 - (c) the quantities of [^{F58}gas or][^{F65}liquid gas] to be treated.
- [^{F66}(7) The owner shall notify the applicant of his decision giving reasons for any refusal.]

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- (8) If the owner [^{F67}refuses the application] , 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).
- ^{F68}(9)
- (10) [^{F69}Where a person applies to the Authority under subsection (8), the Authority shall—]
- [^{F70}(a) decide whether to give directions under subsection (11), to consider the application further or to reject the application]
- (b) give notice of his decision to the applicant; and
- [^{F71}(c) in the case of a decision that the application is to be considered further—
- (i) give to the owner of the facility, the Health and Safety Executive and any person who has a right to have [^{F58}gas or] liquid gas treated in the facility notice that the application is to be so considered and an opportunity of being heard about the matter; and
- (ii) after so considering the matter, decide whether to give directions under subsection (11) or to reject the application and give notice of its decision to the applicant.]
- (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 [^{F58}gas or][^{F72}liquid gas] 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 [^{F58} gas or][^{F72}liquid gas] which any person who has a right to have [^{F58}gas or][^{F72}liquid gas] 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 [^{F73}; but this is subject to subsections (11A) and (11B)] .
- [When considering whether the giving of directions under subsection (11) in respect of
- ^{F74}(11A) 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).]
- (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—

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- (i) for securing to the applicant the right to have treated in the facility,^{F75} ... and in the quantities so specified or determined by or under the directions, [^{F58} gas or][^{F76} liquid 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 treatment of [^{F58} gas or][^{F77} liquid gas] by virtue of that right;
- (iv) for securing to the applicant such ancillary or incidental rights as the Director considers necessary or expedient^{F78} ...;
- (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.]

Textual Amendments

- F54** Ss. 19A-19E inserted (10.8.2000) by S.I. 2000/1937, reg. 2(2), **Sch. 2 para. 1**
- F55** Words in s. 19D(1) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(a)**
- F56** Words in s. 19D(1) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **13(2)**
- F57** Words in s. 19D(1)(a) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(b)**
- F58** Words in s. 19D inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **13(3)**
- F59** S. 19D(2) ceased to have effect (26.8.2004) by virtue of The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(c)**
- F60** S. 19D(2A)(2B) inserted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(d)**
- F61** Words in s. 19D(3) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(e)**
- F62** Words in s. 19D(4) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(e)**
- F63** S. 19D(6)(a) ceased to have effect (26.8.2004) by virtue of The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(f)**
- F64** Words in s. 19D(6)(b) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(g)**
- F65** Words in s. 19D(6)(c) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(g)**
- F66** S. 19D(7) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(h)**
- F67** Words in s. 19D(8) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(i)**
- F68** S. 19D(9) ceased to have effect (26.8.2004) by virtue of The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(j)**
- F69** Words in s. 19D(10) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(k)**
- F70** S. 19D(10)(a) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(l)**
- F71** S. 19D(10)(c) substituted (26.8.2004) by The Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), reg. 1, **Sch. 2 para. 4(m)**

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- F72** Words in s. 19D(11) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(n\)](#)
- F73** Words in s. 19D(11) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), [13\(4\)](#)
- F74** S. 19D(11A)(11B) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), [13\(5\)](#)
- F75** Words in s. 19D(12)(a)(i) omitted (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(o\)\(i\)](#)
- F76** Words in s. 19D(12)(a)(i) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(o\)\(ii\)](#)
- F77** Words in s. 19D(12)(a)(iii) substituted (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(p\)](#)
- F78** Words in s. 19D(12)(a)(iv) omitted (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, [Sch. 2 para. 4\(q\)](#)

[^{F79}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;

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- (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.]

Textual Amendments

F79 S. 19DZA inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), 14

^{F80} **19DA** Provision of information

.....

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Textual Amendments

F80 S. 19DA omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **7(3)**

[^{F81}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.]

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Textual Amendments

F81 S. 19DB inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **15**

[^{F82}19E Sections 19A to 19D: supplemental.

(1) In [^{F83}sections 19A to [^{F84}19D]] and this section—

“accounting information” means such accounting records as would be required by [^{F85}section 386 of the Companies Act 2006] 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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“significant transaction” means—

- (a) any transaction which relates to rights to have [^{F88}gas or liquid gas stored in a storage facility], or (as the case may be) [^{F89}treated in an LNG import or export facility]; and
- (b) any other transaction which is of a description specified from time to time by the Director by notice;

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(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).

^{F90}(4)

(5) Any reference in section 19B to a right to have gas or gas of [^{F91}any kind, or liquid gas or liquid 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 [^{F92}that kind, or liquid gas or liquid gas of that kind,].

^{F93}(6)]

Textual Amendments

F82 Ss. 19A-19E inserted (10.8.2000) by [S.I. 2000/1937](#), reg. 2(2), **Sch. 2 para. 1**

F83 Words in s. 19E(1) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(a)**

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- F84** Word in s. 19E(1) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **7(4)**
- F85** Words in s. 19E(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 98** (with arts. 6, 11, 12)
- F86** Words in s. 19E(1) omitted (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(b)**
- F87** Words in s. 19E omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **46(a)**
- F88** Words in s. 19E(1) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(h)(i)**
- F89** Words in s. 19E substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **46(b)**
- F90** S. 19E(4) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **46(c)**
- F91** Words in s. 19E(5) substituted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(l)(i)**
- F92** Words in s. 19E(5) inserted (26.8.2004) by [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(l)(ii)**
- F93** S. 19E(6) ceased to have effect (26.8.2004) by virtue of [The Gas \(Third Party Access\) Regulations 2004 \(S.I. 2004/2043\)](#), reg. 1, **Sch. 2 para. 6(m)**

F94 20

Textual Amendments

- F94** S. 20 repealed (1.3.1996) by [1995 c. 45, ss. 10\(1\), 17\(5\)](#), [Sch. 3 para. 17](#), **Sch. 6**; [S.I. 1996/218](#), **art. 2**

21 Increase of capacity etc. of pipelines.

[^{F95}(1) If in the case of a pipe-line system operated by a [^{F96}gas transporter] it appears to the Director, on the application of a person other than the transporter, that the system can and should be modified—

- (a) by installing in it a junction through which another pipe-line may be connected to the system; or
- (b) by modifying apparatus and works associated with a high pressure pipe-line so as to increase the capacity of the pipe-line,

then, subject to subsection (3) below, the Director may, after giving to the transporter an opportunity of being heard about the matter and giving to the Health and Safety Executive notice of his proposed directions, give directions to the transporter in accordance with subsection (2) below in consequence of the application.]

(2) Directions under subsection (1) above may—

- (a) specify the modifications which the Director considers should be made in consequence of the application;
- (b) specify the sums or the method of determining the sums which the Director considers should be paid to the [^{F96}gas transporter] by the applicant [^{F97}by way of consideration for] the modifications;
- (c) specify the arrangements which the Director considers should be made by the applicant, within a period specified in that behalf in the directions, for the

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purpose of securing that those sums will be paid to [F98the transporter] if he carries out the modifications;

- (d) require [F98the transporter], if the applicant makes those arrangements within the period aforesaid, to carry out the modifications within a period specified in that behalf in the directions.

- (3) Where the Director proposes to give directions under subsection (1) above, it shall be his duty before doing so to give to the applicant—

- (a) particulars of the modifications which he proposes to specify in the directions; and
(b) an opportunity of making an application under subsection (1) of section 19 above in respect of the [F99pipe-line system];

and that section shall have effect in relation to such an application made by virtue of this subsection as if for references to a [F99pipe-line system] there were substituted references to the [F99pipe-line system] as it would be with those modifications and the reference in subsection (2) to the Director deciding whether the application is to be adjourned were omitted.

- [F100(3A) In giving any directions under this section, the Director shall apply the principle that, in so far as the following, namely—

- (a) the cost of carrying out the modifications; and
(b) a reasonable element of profit,

will not be recoverable by the [F96gas transporter] from elsewhere, the transporter should be entitled to receive them by way of consideration for carrying out the modifications.]

- (4) References in this section to modifications include, in the case of modifications to any apparatus and works, references to changes in, substitutions for and additions to the apparatus and works; and the reference in subsection (1) above to apparatus and works associated with a pipe-line shall be construed in accordance with section 65(2) of the M1Pipe-lines Act 1962.

- [F101(5) In this section—

“high pressure pipe-line” means any pipe-line which has a design operating pressure exceeding 7 bar gauge;

“pipe-line” has the same meaning as in the M2Pipe-lines Act 1962.]

Textual Amendments

- F95** S. 21(1) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(1)**; S.I. 1996/218, **art. 2**
- F96** Words in s. 21 substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. 1 para. 2(1)**; S.I. 2001/3266, **arts. 1(2), 2, Sch.** (subject to transitional provisions in arts. 3-20)
- F97** Words in s. 21(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(2)(b)**; S.I. 1996/218, **art. 2**
- F98** Words in s. 21(2) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(2)(c)**; S.I. 1996/218, **art. 2**
- F99** Words in s. 21(3) substituted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(3)**; S.I. 1996/218, **art. 2**
- F100** S. 21(3A) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(4)**; S.I. 1996/218, **art. 2**
- F101** S. 21(5) inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 18(5)**; S.I. 1996/218, **art. 2**

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Marginal Citations

- M1** 1962 c. 58.
M2 1962 c.58.

22 Effect of directions.

- (1) The obligation to comply with any directions under section [F102 section 19^{F103} ... or 21(1)] above (in this section referred to as “relevant directions”) [F104: is a duty] owed to any person who may be affected by a contravention of them.
 - (2) Where a duty is owed by virtue of subsection (1) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.
 - (3) In any proceedings brought against any person in pursuance of subsection (2) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the relevant directions ^{F105}....
 - (4) Without prejudice to any right which any person may have by virtue of subsection (2) above to bring civil proceedings in respect of any contravention or apprehended contravention of any relevant directions, compliance with any such directions shall be enforceable by civil proceedings by the Director for an injunction or interdict or for any other appropriate relief.
- ^{F106}(5)

Textual Amendments

- F102** Words in s. 22(1) substituted (10.8.2000) by S.I. 2000/1937, reg. 2(2), **Sch. 2 para. 2(a)**
- F103** Words in s. 22(1) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(2)(a)(i)**
- F104** Words in s. 22(1) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(2)(a)(ii)**
- F105** Words in s. 22(3) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(2)(b)**
- F106** S. 22(5) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **37(2)(c)**

Modifications etc. (not altering text)

- C3** S. 22 applied (with modifications) (1.3.1996) by 1995 c. 45, **s. 12(5)**; S.I. 1996/218, **art. 3**
S. 22 applied (10.8.2000) by 1995 c. 45, **s. 12(5)** (as substituted (10.8.2000) by S.I. 2000/1937, reg. 2(3), **Sch. 3 para. 4**)

[F107]22A Construction of pipe-lines.

- (1) [F108]A gas transporter shall not at any time execute within 23 metres from a pipe-line of another gas transporter (the “other transporter”)] any works for the construction of a pipe-line unless—
 - (a) he has given the other transporter a notice stating that he intends to construct the pipe-line;

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- (b) he has consulted with that transporter as to exactly where ^{F109} . . . the proposed pipe-line is to be located, having regard to the location of other pipe-lines ^{F109} . . . ; ^{F110}
- (c) he has consulted with that transporter as to the manner in which—
 - (i) the safety of the pipe-line is to be secured; and
 - (ii) any escapes of gas (actual or suspected) from the pipe-line are to be dealt with ^{F111}; and.
- (d) (subject to subsection (1C)) where the existing pipe-line is a relevant main of the other transporter, that transporter has consented in writing to the construction of the proposed pipe-line, either unconditionally or subject to conditions.]

[Subsection (1) does not apply if the proposed pipe-line is required to enable a gas ^{F112}(1A) transporter to comply with any duty imposed by section 10(2).

(1B) Conditions imposed under subsection (1)(d) may relate to matters arising after the construction of the proposed pipe-line, including the use to be made of the pipe-line.

(1C) If the other transporter—

- (a) refuses or fails to give consent under subsection (1)(d); or
- (b) gives such consent subject to conditions,

consent may instead be given in writing by the Authority where it considers it appropriate to do so.

(1D) Consent under subsection (1C) may only be given unconditionally or, in a case falling within subsection (1C)(b), subject to the same conditions as were imposed by the other transporter.

(1E) A condition imposed on a gas transporter under this section shall be enforceable by civil proceedings by the other transporter for an injunction or for interdict or for any other appropriate relief.]

(2) A notice under subsection (1)(a) above shall—

- (a) specify the points between which the proposed pipe-line is to run and be accompanied by a map (drawn to an appropriate scale) on which is delineated the route which it is proposed to take;
- (b) specify the length, diameter and operating pressure of the proposed pipe-line and the kind of gas which it is designed to convey; and
- (c) contain such other particulars (if any) as may be prescribed.

(3) In this section—

“construction”, in relation to a pipe-line, includes placing;

“pipe-line” has the same meaning as in the Pipe-lines Act 1962.

^{F113}“relevant main” has the meaning given by section 10(12).]

(4) For the purposes of this section the execution of works in land for the purpose of determining whether or not it is suitable for the placing in it of a pipe-line and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line shall be deemed not to constitute the execution of works for the construction of a pipe-line.]

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Textual Amendments

- F107** S. 22A inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 20**; S.I. 1996/218, **art. 2**
- F108** Words in s. 22A(1) substituted (1.10.2001) by 2000 c. 27, **s. 78(2)(a)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F109** Words in s. 22A(1)(b) repealed (1.10.2001) by 2000 c. 27, ss. 78(2)(b), 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F110** Word in s. 22A(1)(b) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F111** S. 22A(1)(d) and word “and” immediately preceding it inserted (1.10.2001) by 2000 c. 27, **s. 78(2)(c)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in arts. 3-20)
- F112** S. 22A(1A)-(1E) inserted (1.10.2001) by 2000 c. 27, **s. 78(3)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F113** Definition of
“relevant main”
in s. 22A(3) inserted (1.10.2001) by 2000 c. 27, **s. 78(4)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Status:

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Changes to legislation:

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