
STATUTORY INSTRUMENTS

2011 No. 2704

The Electricity and Gas (Internal Markets) Regulations 2011

PART 4 **E+W+S**

Gas facilities

Duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments **E+W+S**

14. After section 19D of the Gas Act 1986 ^{M1} insert—

“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;

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Changes to legislation: There are currently no known outstanding effects for the The Electricity and Gas (Internal Markets) Regulations 2011, Section 14. (See end of Document for details)

- (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;
 - (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.”.

Marginal Citations

M1 Section 19DA was inserted by regulation 2(2) to, and paragraph 5 of Schedule 2 to, S.I. 2004/2043.

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