

Extracts from the Petroleum Act 1998 concerning gas storage

17C Application of section 17D to certain offshore gas storage facilities

- 17C.— (1) Section 17D applies to offshore gas storage facilities other than exempt offshore gas storage facilities.
- (2) An owner of an offshore gas storage facility may apply in writing to the Director for an exemption for the facility.
- (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 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 where he is satisfied that the requirements of section 17D(1), (3) and (7) and section 17E(2) are already met with respect to the facility concerned by existing market arrangements which promote competition.
- (6) In this section and sections 17D and 17E “the Director” means the Director General of Gas Supply.

17D Provisions relating to certain offshore gas storage facilities

- 17D.— (1) The owner of an offshore gas 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;
 - (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 a 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 a notice under subsection (11) securing to the applicant the right specified in the notice given 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) give notice to the owner of the facility and the applicant that he proposes to consider the application; and
 - (b) after the expiry of 21 days beginning with the date on which notice under paragraph (a) was served, but before considering the application, give them an opportunity of being heard with respect to the application.
- (11) Where the Director is satisfied that, if he served a notice under this subsection, the relevant facility in question could be operated in accordance with the notice without prejudicing its efficient operation for the purpose of storing, on behalf of its owner, the quantities of gas which the owner requires or may reasonably be expected to require, the Director may serve such a notice on the owner and the applicant.
- (12) A notice under subsection (11) may contain such provisions as the Director considers appropriate for any of the following purposes—
- (a) for securing to the applicant the right to have stored in the facility, for the period specified in the notice and in the quantities so specified or determined by or under the notice, gas which is of a kind so specified;
 - (b) to secure that the exercise of the right is not prevented or impeded;
 - (c) to regulate the charges which may be made for the storage of gas by virtue of that right; and
 - (d) to secure to the applicant such ancillary or incidental rights as may be necessary or expedient (which may, in particular, include a right to have a pipeline of his connected to the facility by the owner).
- (13) A notice under subsection (11) may also authorise the owner to recover from the applicant payments by way of consideration for any right mentioned in subsection (12)(a) or (d) of amounts specified in the notice or determined in accordance with the notice.

17E Section 17D: supplemental

- 17E.—** (1) For the purpose of considering an application under section 17D(8), the Director may by notice require the owner to provide him with accounting information and details of the main commercial terms of any significant transactions with associated undertakings.

(2) 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 notice under subsection (1).

(3) The Director shall not disclose to any person information obtained under subsection (1) without the consent of the person by or on behalf of whom it was provided, unless he is required to do so by virtue of any obligation imposed on him by or under any enactment.

(4) Any reference in this section to a right to have gas or gas of any kind stored in a relevant facility includes a reference to a right to introduce into, or take out of, such a facility gas or gas of that kind.

(5) In section 17D “main commercial conditions” means—

(a) such information as would enable a potential applicant for a right to have gas stored 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 other information as the Director may from time to time specify by notice.

(6) In this section—

“accounting information” means such accounting records as would be required by section 221 of the Companies Act 1985 in respect of the storage activities undertaken by an owner of a relevant facility, if those activities were the only business undertaken by the owner and the owner were a person to whom that section applied; and

“significant transaction” means—

(a) any transaction which relates to rights to have gas stored in a relevant facility; or

(b) any other transaction which is of a description specified by the Director from time to time by notice.

(7) For the purposes of this section 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.

17H Enforcement of certain duties in sections 17B, 17D and 17E

17H.— (1) The duties in section 17B(6) and section 17D(7) shall be duties owed to any person who may be affected by a failure to comply with them.

(2) Where a duty is owed by virtue of subsection (1) 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 a person in pursuance of subsection (2), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the duty.

(4) Compliance with the duties in sections 17B(1) and (3), 17D(1) and (3) and 17E(2) shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or other appropriate relief or remedy.