

ENERGY ACT 2008

EXPLANATORY NOTES

Part 3: Decommissioning of Energy Installations

Chapter 4: Wells

Commentary on Sections

Section 75: Information about decommissioning of wells

356. This section inserts a new section 45A at the beginning of Part 5 of the 1998 Act.

New section 45A: Abandoned wells

357. *Section 45A* gives the Secretary of State a power to require a person who has drilled or started drilling a well to provide information about that person's financial affairs within a specified period of time. The section also allows the Secretary of State, under certain circumstances defined below, to require the person to take specified action. The relevant wells are those drilled pursuant to a petroleum licence (defined in *subsection (10)* as a licence under section 2 of the Petroleum (Production) Act 1934, or section 3 of the Petroleum Act 1998) or a licence under section 4 of the Act (gas storage and unloading licences).
358. *Subsection (2)* gives the Secretary of State a power to issue a notice requiring a person to provide specified information or documents relating to their financial affairs. *Subsection (3)* provides that this notice must specify the time allowed for this information to be provided.
359. *Subsection (4)* sets out the circumstances in which a further notice can be given under *subsection (5)*; that is where:
- having received the information or documents requested in the original notice (the notice given under *subsection (2)*), the Secretary of State is not satisfied that the person will be capable of plugging and abandoning a well; or
 - a person has failed to provide the information or documents requested in the original notice, within the specified period.
360. *Subsection (5)* provides a power for the Secretary of State, after consulting the Treasury, to give a person a notice setting out the action that person must take within the specified period. By implication, such action may include the provision of financial security for the purpose of ensuring that a person will be capable of plugging and abandoning a well when required to do so by the terms of a licence.
361. Before giving a notice to a person under *subsection (5)*, *subsection (6)* requires that the Secretary of State gives that person an opportunity to make written representations as to whether such a notice should be given.

*These notes refer to the Energy Act 2008 (c.32)
which received Royal Assent on 26 November 2008*

362. *Subsection (7)* makes it an offence for a person to fail to comply with a notice issued under either *subsection (2)* or *subsection (5)*, unless that person can prove he exercised due diligence to avoid the failure.
363. *Subsection (8)* provides that a person found guilty of this offence is liable:
- on summary conviction, to a fine not exceeding the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland); and
 - on conviction on indictment, to an unlimited fine, or a maximum of two years imprisonment, or both.
364. *Subsection (9)* applies section 41 of the 1998 Act (apart from *subsection (5)*) in relation to prosecutions for offences under this section. Section 41 of the 1998 Act provides that:
- in England and Wales, proceedings may only be instituted by the Secretary of State (or a person authorised by the Secretary of State) or by the Director of Public Prosecutions (or with the consent of the Director of Public Prosecutions); and in Northern Ireland, proceedings cannot be instituted except by the Secretary of State (or by a person authorised by the Secretary of State) or by the Director of Public Prosecutions for Northern Ireland (or with the consent of the Director of Public Prosecutions for Northern Ireland);
 - where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the body corporate (or any person purporting to act in any such capacity) that person will also be liable to be prosecuted and punished accordingly; and
 - where the affairs of a body corporate are managed by its members, and an offence committed by such a body corporate is proved to have been committed with the consent or connivance of, or is attributable to any neglect on behalf of, such a member in connection with that member's functions of management, such a member will be liable to be prosecuted and punished as if the member were the director of the body corporate.