

## **ENERGY ACT 2008**

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### **EXPLANATORY NOTES**

#### **Part 4: Provisions Relating to Oil and Gas**

##### **Third Party Access**

Commentary on Sections

##### ***Section 81: Directions under section 80: supplemental***

421. This section describes the terms of the directions for third party access that may be made by the Secretary of State in relation to an application from a third party seeking access to an oil processing facility under section 80.
422. The Secretary of State may, under *subsection (1)*, issue directions that:
- specify the terms on which the Secretary of State considers the owner of the oil processing facilities should enter into an agreement with the applicant for access to the facilities for all or any of the purposes listed in *subsection (2)* (see paragraph below for a description of this list);
  - specify the sums (or method for working out the sums) that should be paid by the applicant to the owner by way of consideration for the right to use the oil processing facilities; and
  - require the owner to enter into an agreement with the applicant if the applicant pays (or agrees to pay) the sums within a specified period. The specified period will be stated in the directions.
423. *Subsection (2)* sets out the purposes for which the Secretary of State can specify terms in directions made under *subsection (1)*:
- securing to the applicant the right of having petroleum processed at the oil processing facility;
  - securing that the applicant is not stopped from exercising that right;
  - regulating the charges which can be made for the right to access the oil processing facility;
  - securing any ancillary or incidental rights for the third party that the Secretary of State believes are necessary or expedient. For example, the right to have their pipeline connected to the oil terminal by the owner.
424. *Subsection (3)* sets out that in order to consider an application made to him for directions about third party access to an oil processing facility (under section 80(5)), the Secretary of State can issue a notice requiring the owner of the infrastructure or the applicant to supply information relevant to the application.
425. *Subsection (4)* states that this information may include financial information relevant to the owner's or applicant's activities in terms of oil processing operations.

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

426. *Subsection (5)* provides that any information obtained by the Secretary of State with respect to *subsection (3)* may not be disclosed unless either the person who provided the information has consented, or the Secretary of State is required to disclose it by, or under, an enactment.
427. *Subsections (6) and (7)* set out that the Secretary of State can enforce compliance with any directions made relating to third party access of oil processing facilities through civil proceedings: i.e. the Secretary of State can apply to the High Court or Court of Session in Scotland for an injunction (or interdict) requiring compliance with the Secretary of State's direction. The court that imposes the injunction will be responsible for the enforcement of that injunction. The reason that this section only focuses on oil processing facilities is that these are the only areas that are new on the face of the Act – all other infrastructure is (at least partially) covered in other Acts.
428. *Subsection (8)* provides definitions of terms used in the new third party access regime for oil processing facilities:
- “Oil processing operations” are defined as including:
    - the blending or other treatment of petroleum required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make delivery to a purchaser;
    - receiving or storing this stabilised crude oil and these hydrocarbon liquids piped from a facility carrying out oil processing operations (as described above) before taking them elsewhere; and
    - loading stabilised crude oil and these hydrocarbon liquids piped from a facility carrying out either of the oil processing operations described above in order to transport it elsewhere.
  - “Oil processing facility” is any facility that carries out these oil processing operations and which is situated in Great Britain, in the territorial sea adjacent to Great Britain, or in areas of the sea designated under section 1(7) of the Continental Shelf Act 1964;
  - “Owner” is defined as any person occupying or controlling an oil processing facility including a lessee.
  - “Petroleum” has the meaning given by section 1 of the Petroleum Act 1998 i.e. mineral oils, relative hydrocarbon or natural gas in its natural condition. This definition also includes petroleum which has been processed.