



Energy Act 2008

2008 CHAPTER 32

PART 4

PROVISIONS RELATING TO OIL AND GAS

Third party access

78 Third party access to infrastructure

- (1) In section 66(1) of the Pipe-lines Act 1962 (c. 58) (interpretation)—
- (a) in the definition of “gas processing operation”, omit “and” after paragraph (b) and after paragraph (c) insert—
 - “(d) separating, purifying, blending, odourising or compressing gas, for the purpose of—
 - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
 - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
 - (e) loading gas—
 - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
 - (ii) piped from such a facility,for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);”
 - (b) in the definition of “terminal”, omit “and” after paragraph (b) and after paragraph (c) insert “; and
 - (d) oil processing facilities (within the meaning given by section 81(8) of the Energy Act 2008);” and
 - (c) in the definition of “upstream petroleum pipe-line” after paragraph (c) insert—

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“including all apparatus, works and services associated with the operation of such a pipe-line or network.”

- (2) In section 12 of the Gas Act 1995 (c. 45) (rights to use gas processing facilities)—
- (a) in subsection (6), in the definition of “gas processing operation”, omit “and” at the end of paragraph (b) and after paragraph (c) insert—
 - “(d) separating, purifying, blending, odourising or compressing gas for the purpose of—
 - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
 - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
 - (e) loading gas—
 - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
 - (ii) piped from such a facility,
 for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);”, and
 - (b) for subsection (7) substitute—
 - “(7) For the purposes of this section “associate”, in relation to the owner of a gas processing facility, is to be construed in accordance with section 82 of the Energy Act 2008 (and for this purpose the reference in subsection (1) of that section to the owner of an oil processing facility is to be read as a reference to the owner of a gas processing facility).”
- (3) In section 26 of the Petroleum Act 1998 (c. 17) (meaning of “pipeline”)—
- (a) in subsection (1) for “any apparatus and works associated with such a pipe or system” substitute “all apparatus, works and services associated with the operation of such a pipe or system”, and
 - (b) omit subsection (2).
- (4) In section 28 of that Act (interpretation of Part 3)—
- (a) in the definition of “gas processing operation”, omit “and” after paragraph (b) and after paragraph (c) insert—
 - “(d) separating, purifying, blending, odourising or compressing gas, for the purpose of—
 - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
 - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
 - (e) loading gas—
 - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
 - (ii) piped from such a facility,
 for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);”,
 - (b) after the definition of “notice” insert—

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“oil processing facility” means any facility in Great Britain, the territorial sea adjacent to the United Kingdom or the sea in any area designated under section 1(7) of the Continental Shelf Act 1964 which carries out oil processing operations;

“oil processing operations” means any of the following operations—

- (a) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
 - (b) receiving stabilised crude oil and other hydrocarbon liquids piped from an oil processing facility carrying out operations of a kind mentioned in paragraph (a), or storing oil or other hydrocarbon liquids so received, prior to their conveyance to another place (whether inside or outside Great Britain);
 - (c) loading stabilised crude oil and other hydrocarbon liquids piped from a facility carrying out operations of a kind mentioned in paragraph (a) or (b) for conveyance to another place (whether inside or outside Great Britain);” and
- (c) in the definition of “terminal”, after paragraph (a) insert—
“(aa) oil processing facilities;”.

79 Modification of pipelines

- (1) The Pipe-lines Act 1962 (c. 58) is amended as follows.
- (2) After section 10F (reducing necessity for constructing additional pipelines) insert—

“10G Compulsory modifications of pipe-lines

- (1) In the case of an upstream petroleum pipe-line, the Secretary of State may, on the application of a person other than the owner, give a notice (a “pipe-line modification notice”) to the applicant and the owner.
- (2) The Secretary of State may give a pipe-line modification notice only if the Secretary of State is satisfied—
 - (a) that the capacity of the pipe-line can and should be increased by modifying the apparatus and works associated with the pipe-line, or
 - (b) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line.
- (3) A pipe-line modification notice must—
 - (a) specify the modifications which the Secretary of State thinks should be made,
 - (b) specify the sums, or the method of determining the sums, which the Secretary of State thinks should be paid to the owner by the applicant for the purpose of defraying the cost of the modifications,
 - (c) require the applicant to make such arrangements as the Secretary of State thinks appropriate to secure that those sums will be paid to

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- the owner if the owner carries out the modifications or satisfies the Secretary of State that they will be carried out,
- (d) specify the period within which the applicant must make the arrangements mentioned in paragraph (c),
 - (e) require the owner, if the applicant makes the arrangements mentioned in paragraph (c) within the period specified under paragraph (d), to carry out the modifications within a period specified in the notice, and
 - (f) authorise the owner to recover the sums mentioned in paragraph (b) from the applicant if the works are carried out or the Secretary of State is satisfied that they will be carried out.
- (4) Before giving a pipe-line modification notice, the Secretary of State must give the owner of the pipe-line an opportunity to be heard.
 - (5) References in this section to modifications include, in the case of apparatus and works, references to changes in, substitutions for and additions to the apparatus and works.
 - (6) This section does not apply in relation to a pipe-line if and to the extent that section 14 of the Petroleum Act 1998 applies in relation to it.

10H Enforcement

- (1) It is an offence for the owner of a pipe-line to contravene any provision of a pipe-line modification notice under section 10G in respect of the pipe-line.
- (2) A person guilty of the offence is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.
- (3) It is a defence, in any proceedings for the offence, to prove that the accused exercised due diligence to comply with the provisions of the pipe-line modification notice.
- (4) Proceedings for the offence may not be instituted in England and Wales except—
 - (a) by the Secretary of State or by a person authorised to do so by the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions.
- (5) Where the offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate.
- (7) In this section “officer”, in relation to a body corporate, means—

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- (a) any director, secretary or other similar officer of the body corporate, or
 - (b) any person who was purporting to act in any such capacity.”
- (3) In section 10E (third party access to upstream petroleum pipelines), in subsection (1) after “pipe-lines” insert “(but does not apply to a pipe-line if and to the extent that section 14 of the Petroleum Act 1998 applies in relation to it)”.
- (4) In section 10F (supplemental provision relating to third party access), after subsection (4) add—
 - “(5) Before giving a notice under section 10G(1), the Secretary of State must give the person who applied for that notice—
 - (a) particulars of the modifications which it is proposed to specify in the notice, and
 - (b) an opportunity to make applications under section 10E in respect of the pipeline;and section 10E and subsections (1) to (4) of this section have effect for this purpose as if references to a pipe-line were references to the pipe-line as it would be with those modifications.”

80 Third party access to oil processing facilities

- (1) A person (“the applicant”) who seeks a right to have petroleum processed by an oil processing facility must, before making an application to the Secretary of State under subsection (5), apply to the owner of the facility for the right.
- (2) An application under subsection (1) may be made only in respect of an oil processing facility which is situated in—
 - (a) Great Britain,
 - (b) the territorial sea adjacent to Great Britain, or
 - (c) the sea in any area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).
- (3) An application under subsection (1) is to be made by notice in writing specifying the nature of the right which is being sought.
- (4) The notice must, in particular, specify—
 - (a) the period during which the petroleum is to be processed by the facility,
 - (b) the kind of petroleum to be processed, and
 - (c) the quantities of petroleum to be processed.
- (5) If the owner and the applicant do not reach agreement on the application, the applicant may apply to the Secretary of State for directions which would secure to the applicant the right specified in the notice.
- (6) The Secretary of State may not consider an application under subsection (5) unless satisfied that the parties have had a reasonable time in which to reach agreement.
- (7) When considering an application under subsection (5) the Secretary of State must—
 - (a) decide whether the application is to be adjourned to enable further negotiations between the parties, considered further or rejected,
 - (b) give notice of that decision to the applicant, and

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- (c) in the case of a decision to consider the application further, give notice to the persons mentioned in subsection (8) and give them the opportunity to be heard in relation to the application.
- (8) Those persons are—
- (a) the owner of the oil processing facility,
 - (b) any person with a right to have petroleum processed at the facility, and
 - (c) the Health and Safety Executive.
- (9) On an application under subsection (5), the Secretary of State may give directions if satisfied that they will not prejudice—
- (a) the efficient operation of the oil processing facility,
 - (b) the processing by the facility of the quantities of petroleum which the owner or an associate of the owner requires or may reasonably be expected to require to be processed by the facility for the purposes of any business carried on by the owner or associate, or
 - (c) the processing by the facility of the quantities of petroleum which another person with a right to have petroleum processed by the facility requires to be processed in the exercise of that right.

81 Directions under section 80: supplemental

- (1) Directions under section 80 may—
- (a) specify the terms on which the Secretary of State considers that the owner of the oil processing facility should enter into an agreement with the applicant for all or any of the purposes mentioned in subsection (2);
 - (b) specify the sums, or the method of determining the sums, which the Secretary of State considers should be paid by the applicant as consideration for the right to have petroleum processed at the facility;
 - (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in the directions, to enter into an agreement with the applicant on the terms specified under paragraph (a).
- (2) The purposes mentioned in subsection (1)(a) are—
- (a) securing to the applicant the right to have petroleum, of the kind and in the quantities specified in the direction, processed at the oil processing facility;
 - (b) securing that the applicant is not prevented or impeded from exercising that right;
 - (c) regulating the charges which may be made for the processing of petroleum by virtue of that right;
 - (d) securing to the applicant such ancillary or incidental rights as the Secretary of State considers necessary or expedient, which may include the right to have a pipeline connected to the facility by the owner.
- (3) For the purpose of considering an application under section 80(5), the Secretary of State may by notice require the owner or the applicant to provide such information relevant to the application as may be specified or described in the notice.
- (4) The information mentioned in subsection (3) may, in particular, include financial information relevant to the owner's or the applicant's activities with respect to oil processing operations.

- (5) The Secretary of State may not disclose to any person any information obtained under subsection (3) unless—
- (a) the person by or on behalf of whom the information was provided consents to the disclosure, or
 - (b) the disclosure is required by virtue of an obligation imposed on the Secretary of State by or under an enactment.
- (6) Compliance with directions under section 80 is enforceable by civil proceedings by the Secretary of State for an injunction or interdict or for any other appropriate relief.
- (7) Civil proceedings under subsection (6) are to be brought—
- (a) in England and Wales, in the High Court, or
 - (b) in Scotland, in the Court of Session.
- (8) In this section and section 80—
- “oil processing facility” means any facility which carries out oil processing operations;
- “oil processing operations” means any of the following operations—
- (a) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
 - (b) receiving stabilised crude oil and other hydrocarbon liquids piped from an oil processing facility carrying out operations of a kind mentioned in paragraph (a), or storing oil or other hydrocarbon liquids so received, prior to their conveyance to another place (whether inside or outside Great Britain);
 - (c) loading stabilised crude oil and other hydrocarbon liquids piped from a facility carrying out operations of a kind mentioned in paragraph (a) or (b) for conveyance to another place (whether inside or outside Great Britain);
- “owner”, in relation to an oil processing facility, includes a lessee and any person occupying or controlling the facility;
- “petroleum” has the meaning given by section 1 of the Petroleum Act 1998 (c. 17) and includes petroleum which has undergone any processing.

82 Meaning of “associate”

- (1) For the purposes of section 80(9) a person is an associate of the owner of an oil processing facility if—
- (a) either or both of them is a body corporate, and
 - (b) one of them controls the other, or both are controlled by the same person or persons,
- and subsections (2) to (6) set out the circumstances in which one person (“A”) controls another (“B”).
- (2) Where B is a company, A controls B if A possesses or is entitled to acquire—
- (a) one half or more of the issued share capital of B,
 - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,

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- (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
 - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A controls B if A—
 - (a) holds a majority of the voting rights in B,
 - (b) is a member of B and has a right to appoint or remove a majority of other members, or
 - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (4) In subsection (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A’s wishes.
- (6) In determining whether, by virtue of subsections (2) to (5), A controls B, A shall be taken to possess—
 - (a) any rights and powers possessed by a person as nominee for it, and
 - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).