



Energy Act 2008

2008 CHAPTER 32

[^{F1}PART 4A

WORKS DETRIMENTAL TO NAVIGATION

Textual Amendments

- F1** Pt. 4A inserted (12.11.2009 for specified purposes, 6.4.2011 in so far as not already in force) by Marine and Coastal Access Act 2009 (c. 23), ss. 314(1), 324(1)(c), 324(1)(d); S.I. 2011/556, art. 3(2)(c)

Consent required for carrying out of certain operations

82A Restriction of works detrimental to navigation

- (1) A person must not, without the written consent of the Secretary of State, carry out in the regulated zone (see section 82Q) any operation to which this subsection applies (see subsections (2) and (3)).
- (2) Subsection (1) does not apply to an operation if a marine licence under Part 4 of the Marine and Coastal Access Act 2009 is needed to carry out the operation.
- (3) Subject to that, subsection (1) applies to an operation if—
 - (a) it causes, or is likely to result in, obstruction or danger to navigation (whether while the operation is being carried out or subsequently),
 - (b) it is of a description falling within subsection (4), and
 - (c) it may be carried out only with a permission falling within subsection (5).
- (4) The descriptions of operations are—
 - (a) the construction, alteration, improvement, dismantlement or abandonment of any works;
 - (b) the deposit of any object or materials;
 - (c) the removal of any object or materials.

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- (5) The permissions are—
- (a) a licence under section 3 of the Petroleum Act 1998 or section 2 of the Petroleum (Production) Act 1934,
 - (b) a licence under section 4 or 18 of this Act (gas storage and gas unloading, and carbon capture and storage licences),
 - (c) a works authorisation under Part 3 of the Petroleum Act 1998 (construction etc of submarine pipelines),
- and see also subsection (6).
- (6) For the purposes of this Part, the operations which may be carried out only with a permission falling within subsection (5) include operations which, by virtue of a permission falling within paragraph (a) or (b) of that subsection, may be carried out only with the consent of the Secretary of State or another person.
- (7) In the case of an authorised exploration or exploitation operation (see subsection (8))—
- (a) the reference in subsection (3) to an operation being likely to result in obstruction or danger to navigation, includes
 - (b) a reference to the operation being likely to result in obstruction or danger to navigation by reason of any use intended to be made of the works in question when constructed, altered or improved.
- (8) In this Part “ authorised exploration or exploitation operation ” means any operation—
- (a) which is of a description falling within subsection (4)(a), and
 - (b) which may be carried out only with a permission falling within subsection (5).

82B Applications for consent under section 82A

- (1) The Secretary of State may, as a condition of considering an application for consent under section 82A, require to be furnished with such plans and particulars of the proposed operation as the Secretary of State may consider necessary.
- (2) On receipt of any such application, the Secretary of State may cause to be published notice of—
 - (a) the application, and
 - (b) the time within which, and the manner in which, objections to the application may be made.
- (3) Any such notice is to be published in such a manner as to be likely to come to the attention of those likely to be interested in, or affected by, the application.
- (4) The Secretary of State may cause an inquiry to be held in connection with the determination of an application for consent.

82C Determination of applications for consent under section 82A

- (1) If the Secretary of State is of the opinion that any operation in respect of which an application is made for consent under section 82A will cause, or is likely to result in, obstruction or danger to navigation, subsection (2) applies.
- (2) In any such case, the Secretary of State must either—
 - (a) refuse to give consent, or

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- (b) give consent subject to such conditions as the Secretary of State considers appropriate.
- (3) In exercising functions under subsection (2), the Secretary of State must have regard to the nature and extent of the obstruction or danger which it appears to the Secretary of State would otherwise be caused or be likely to result.
- (4) In the case of an authorised exploration or exploitation operation—
 - (a) any reference in subsection (1) or (3) to an operation being likely to result in obstruction or danger to navigation, includes
 - (b) a reference to the operation being likely to result in obstruction or danger to navigation by reason of any use intended to be made of the works in question when constructed, altered or improved.
- (5) A consent of the Secretary of State under section 82A may be given so as to continue in force, unless renewed, only if the operation for which the consent is given is begun or completed within such period as may be specified in the consent.
- (6) Subsection (5) applies in relation to the renewal of a consent as it applies in relation to the giving of consent.

82D Authorised exploration or exploitation operations: consent conditions

- (1) This section applies where the Secretary of State has given consent for an authorised exploration or exploitation operation, but subject to a condition (a “consent condition”).
- (2) A consent condition shall either—
 - (a) remain in force for a specified period, or
 - (b) remain in force without limit of time,but this is subject to subsection (5).
- (3) A consent condition, in addition to binding the person to whom the consent is given, also binds, so far as is appropriate, any other person who for the time being owns, occupies, or enjoys any use of, the works in question.
- (4) Where—
 - (a) a consent condition relates to the taking of navigational precautions, and
 - (b) the Secretary of State considers it appropriate to vary the condition in the interests of the safety of navigation (whether or not the operation has been completed),the Secretary of State may vary the condition for the purpose of enhancing the effectiveness of the aids to navigation which are to be provided or the other measures which are to be taken.
- (5) The Secretary of State may revoke any consent condition.
- (6) In this section “taking of navigational precautions” means any of the following—
 - (a) the provision of any lights, signals or other aids to navigation;
 - (b) the stationing of guard ships in the vicinity of the works in question;
 - (c) the taking of any other measures for the purpose of, or in connection with, controlling the movements of ships in the vicinity of those works.

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Directions by the Secretary of State

82E Secretary of State's power of direction

- (1) This section applies if—
 - (a) the person to whom a consent under section 82A is given fails to comply with any provision of the consent, or
 - (b) a person who, by virtue of section 82D(3), is bound by a consent condition fails to comply with the condition.
- (2) The Secretary of State may direct that person (the “defaulter”) to take steps which the Secretary of State considers necessary or appropriate to comply with the provision or condition within a period specified in the direction.
- (3) The Secretary of State must consult the defaulter before giving a direction under subsection (2).
- (4) If the defaulter fails to comply with a direction under subsection (2), the Secretary of State may—
 - (a) comply with the direction on behalf of the defaulter, or
 - (b) make arrangements for another person to do so.
- (5) A person taking action by virtue of subsection (4) may—
 - (a) do anything which the defaulter could have done, and
 - (b) recover from the defaulter any reasonable costs incurred in taking the action.
- (6) A person (“P”) liable to pay any sum by virtue of subsection (5)(b) must also pay interest on that sum for the period beginning with the day on which the person taking action by virtue of subsection (4) notified P of the sum payable and ending with the date of payment.
- (7) The rate of interest payable in accordance with subsection (6) is a rate determined by the Secretary of State as comparable with commercial rates.
- (8) The defaulter must provide a person taking action by virtue of subsection (4) with such assistance as the Secretary of State may direct.
- (9) The power to give a direction under this section is without prejudice to any provision made—
 - (a) in the consent, with regard to the enforcement of any of its provisions, or
 - (b) in the condition, with regard to the enforcement of the condition.

Emergency safety requirements

82F Damage to, or changes in, the works: emergency safety notices

- (1) This section applies in any case where—
 - (a) the Secretary of State has given consent (“the relevant consent”) for an authorised exploration or exploitation operation, and
 - (b) at any time after the giving of that consent, the condition in subsection (2) is met.

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- (2) The condition is that it appears to the Secretary of State that any danger to navigation has arisen by reason of—
 - (a) any substantial damage to any works to which the relevant consent relates, or
 - (b) any other substantial and unforeseen change in the state or position of any such works.
- (3) If it appears to the Secretary of State necessary to do so in the interests of the safety of navigation, the Secretary of State may serve a notice (an “emergency safety notice”) on the consent holder.
- (4) By serving an emergency safety notice on the consent holder, the Secretary of State imposes on the consent holder such requirements as are prescribed in the notice with respect to any of the matters specified in subsection (5).
- (5) Those matters are—
 - (a) the provision on, or in the vicinity of, the works in question of any lights, signals or other aids to navigation, and
 - (b) the stationing of guard ships in the vicinity of those works.
- (6) An emergency safety notice may be served by the Secretary of State whether or not—
 - (a) the operation in question has been completed, or
 - (b) any condition was imposed by the Secretary of State, on giving the relevant consent, with respect to any of the matters referred to in subsection (5).

82G Emergency safety notices: supplementary provisions

- (1) If the consent holder fails to comply with an emergency safety notice within the time allowed, the Secretary of State may—
 - (a) comply with the notice on behalf of the consent holder, or
 - (b) make arrangements for another person to do so.
- (2) For the purposes of subsection (1) “the time allowed” is the period of 24 hours beginning with the time when the emergency safety notice is served on the consent holder or as soon after the end of that period as is reasonably practicable.
- (3) A person taking action by virtue of subsection (1) may—
 - (a) do anything which the consent holder could have done, and
 - (b) recover any reasonable costs incurred in taking the action from such one or more persons falling within subsection (4) as the Secretary of State considers appropriate.
- (4) The persons are—
 - (a) the consent holder;
 - (b) any other person or persons bound by a consent condition by virtue of section 82D(3).
- (5) A person (“P”) liable to pay any sum by virtue of subsection (3)(b) must also pay interest on that sum for the period beginning with the day on which the person taking action by virtue of subsection (1) notified P of the sum payable and ending with the date of payment.
- (6) The rate of interest payable in accordance with subsection (5) is a rate determined by the Secretary of State as comparable with commercial rates.

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- (7) Once an emergency safety notice has been complied with (whether by the consent holder or otherwise)—
- (a) the requirements of the notice are, subject to subsection (8), to be treated for the purposes of this Part as conditions subject to which the consent was given, but
 - (b) section 82D(2) and (5) are not to apply in the case of those requirements.
- (8) If it appears to the Secretary of State (whether on the application of any person or otherwise) that the circumstances giving rise to the urgent necessity for the imposition of the requirements no longer exist, the Secretary of State must revoke the requirements by notice served on the consent holder.
- (9) Where the Secretary of State has served an emergency safety notice in respect of any particular circumstances, subsection (7) does not preclude the Secretary of State from serving a further such notice in respect of those circumstances.

82H Failure to comply with condition: immediate action notice

- (1) This section applies where—
- (a) a consent under section 82A(1) has been given subject to conditions,
 - (b) a person falling within subsection (2) fails to comply with a condition, and
 - (c) it appears to the Secretary of State that any danger to navigation has arisen by reason of the failure to comply with the condition.
- (2) The persons are—
- (a) the consent holder;
 - (b) any person bound by the condition by virtue of section 82D(3).
- (3) If it appears to the Secretary of State necessary to do so in the interests of the safety of navigation, the Secretary of State may serve a notice (an “immediate action notice”) on the person, imposing on the person one or more specified requirements falling within subsection (4).
- (4) The requirements are—
- (a) a requirement to comply with the condition;
 - (b) a requirement to take any specified action or actions to remedy the failure to comply with the condition.
- (5) Subsections (1) to (6) of section 82G apply in relation to a person and an immediate action notice as they apply in relation to the consent holder and an emergency safety notice.
- (6) In this section “specified” means specified in the immediate action notice.

Enforcement

82I Carrying out operation without consent etc

- (1) It is an offence for a person—
- (a) to carry out an operation to which subsection (1) of section 82A applies without the written consent of the Secretary of State under that subsection, or
 - (b) to fail to comply with a condition of such a consent.

Status: Point in time view as at 12/11/2009.

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- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

82J Offences relating to consents

- (1) It is an offence for a person to make a statement which the person knows to be false, or recklessly to make a statement which is false, in order to obtain the consent of the Secretary of State under section 82A(1).
- (2) It is an offence for a person to fail to disclose information which the person knows, or ought to know, to be relevant to an application for the consent of the Secretary of State under section 82A(1).
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

82K Failure to comply with direction under section 82E

- (1) It is an offence for a person to fail to comply with a direction under section 82E, unless the person proves that due diligence was exercised in order to avoid the failure.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

82L Failure to comply with notice under section 82F or 82H

- (1) It is an offence for a person to fail to comply with—
- (a) an emergency safety notice, or
 - (b) an immediate action notice,
- within the time allowed (within the meaning of section 82G(1)).
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

82M Injunctions restraining breaches of section 82A(1)

- (1) Where the Secretary of State considers it necessary or expedient to restrain any actual or apprehended breach of section 82A(1), the Secretary of State may apply to the court for an injunction or, in Scotland, an interdict.
- (2) An application may be made whether or not the Secretary of State has exercised, or is proposing to exercise, any of the other powers under this Part.
- (3) On an application under subsection (1), the court may grant such an injunction or interdict as the court considers appropriate for the purpose of restraining the breach.

Status: Point in time view as at 12/11/2009.

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- (4) Rules of court may provide for an injunction or interdict to be issued against a person whose identity is unknown.
- (5) In this section “ the court ” means—
 - (a) the High Court, or
 - (b) in Scotland, the Court of Session.

82N Inspectors

- (1) The Secretary of State may appoint persons to act as inspectors to assist in carrying out the functions of the Secretary of State under this Part.
- (2) The Secretary of State may make payments, by way of remuneration or otherwise, to inspectors appointed under this section.
- (3) The Secretary of State may make regulations about—
 - (a) the powers and duties of inspectors appointed under this section;
 - (b) the powers and duties of any other person acting on the directions of the Secretary of State in connection with a function under this Part;
 - (c) the facilities and assistance to be accorded to persons mentioned in paragraph (a) or (b).
- (4) The powers conferred by virtue of subsection (3) may include powers of a kind specified in section 108(4) of the Environment Act 1995 (powers of entry, investigation, etc).
- (5) Any regulations under this section may provide for the creation of offences which are punishable—
 - (a) on summary conviction, by a fine not exceeding the statutory maximum or such lesser amount as is specified in the regulations, and
 - (b) on conviction on indictment, by a fine.

82O Criminal proceedings

- (1) Proceedings for a relevant offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (restriction on prosecutions) does not apply to any proceedings for a relevant offence.
- (3) In this section “ relevant offence ” means—
 - (a) an offence under this Part, or
 - (b) an offence created by regulations under section 82N.

Supplementary provisions

82P Power to extend the application of this Part

- (1) The Secretary of State may by order provide that specified provisions of this Part are to apply, subject to any specified modifications, in relation to the carrying out of specified operations, or operations of a specified description, in the Scottish inshore region.

Status: Point in time view as at 12/11/2009.

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 4A. (See end of Document for details)

- (2) The operations must be operations—
 - (a) which either fall within section 82A(4) or are carried on in the course of taking installation abandonment measures (or both),
 - (b) which cause, or are likely to result in, obstruction or danger to navigation (whether while the operation is being carried out or subsequently), and
 - (c) which the Scottish Ministers do not have power to control or regulate for the purpose of preventing such obstruction or danger.
- (3) The reference in subsection (1) to “the Scottish inshore region” includes a reference to—
 - (a) the shore adjoining that region, and
 - (b) any land in Scotland adjoining or adjacent to that shore.
- (4) If an order under this section makes provision in relation to the carrying out of an operation in the course of taking installation abandonment measures—
 - (a) section 82A(3)(c) does not apply in relation to the operation, but
 - (b) paragraph (a) is subject to any different modification or other provision to the contrary made by an order under this section.
- (5) For the purposes of this section “installation abandonment measures” are any measures taken in connection with the abandonment of—
 - (a) an offshore installation or submarine pipeline, within the meaning of Part 4 of the Petroleum Act 1998, or
 - (b) a carbon storage installation, within the meaning of section 30 of this Act, whether or not the measures are taken in pursuance of an abandonment programme.
- (6) In subsection (5) “abandonment programme” means—
 - (a) an abandonment programme under Part 4 of the Petroleum Act 1998;
 - (b) an abandonment programme under that Part, as it applies by virtue of section 30 of this Act.
- (7) In this section “specified” means specified in the order.

82Q Interpretation of this Part

In this Part—

“authorised exploration or exploitation operation” has the meaning given by section 82A(8);

“consent holder” means the person to whom a consent under section 82A is given;

“emergency safety notice” is to be read in accordance with section 82F(3);

“immediate action notice” is to be read in accordance with section 82H(3);

“regulated zone” means the area that consists of—

- (a) the area of sea within the seaward limits of the territorial sea, other than the Scottish inshore region, and
- (b) the area of sea within the limits of the UK sector of the continental shelf,

and includes the bed and subsoil of the sea within those areas, the shore adjoining, and any land adjoining or adjacent to that shore, but does not include any land in Scotland;

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“ Scottish inshore region ” has the same meaning as in the Marine and Coastal Access Act 2009 (see section 322 of that Act);

“ sea ” includes—

- (a) any tidal waters; and
- (b) any land covered with water at mean high water spring tide;

“ UK sector of the continental shelf ” means the areas for the time being designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964.]

Status:

Point in time view as at 12/11/2009.

Changes to legislation:

There are currently no known outstanding effects for the Energy Act 2008, Part 4A.