

Draft Order in Council laid before Parliament under section 192(3) of the Energy Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No. 0000

PETROLEUM

The Petroleum Act 1998 (Third Party Access) Order 2007

Made - - - - **** 2007*
Coming into force - - **** 2007*

At the Court at Buckingham Palace, the *** day of *** 2007

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred on Her Majesty by section 189 of the Energy Act 2004(1).

A draft of this Order has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 192(3) of the Energy Act 2004.

Her Majesty, by and with the advice of Her Privy Council, orders as follows:

Citation and commencement

1. This Order may be cited as the Petroleum Act 1998 (Third Party Access) Order 2007 and shall come into force on the day after the day on which it is made.

Amendment of the Petroleum Act 1998

2. The Petroleum Act 1998(2) is amended as set out in the Schedule to this Order.

Date

Clerk of the Privy Council

(1) 2004 c. 20.
(2) 1998 c. 17.

SCHEDULE

Article 2

AMENDMENTS TO THE PETROLEUM ACT 1998

1. In section 17F(3) (acquisition of rights to use controlled petroleum pipelines), at the end of subsection (1) insert “, other than pipelines to which section 17GA applies”.

2. After section 17G(4) insert—

“Controlled petroleum pipeline subject to Norwegian access system

17GA.—(1) This section applies to any controlled petroleum pipeline which, under the terms of the Framework Agreement, is subject to a system whereby any terms or conditions on which persons who are not the owner of the pipeline are entitled to have things conveyed by it are determined according to the law of, or by the relevant authority of, the Kingdom of Norway.

(2) Where—

- (a) under the terms of the Framework Agreement, any term or condition on which a person who is not the owner of a pipeline is entitled to have conveyed by the pipeline any petroleum originating wholly or partly from an area designated under section 1(7) of the Continental Shelf Act 1964(5) has been determined according to the law of, or by the relevant authority of, the Kingdom of Norway, and
- (b) a dispute has arisen between the person mentioned in paragraph (a) and the owner as to whether the owner has complied with any term or condition so determined,

the person mentioned in paragraph (a) may apply to the Secretary of State for a determination under subsection (6).

(3) An application under subsection (2) shall specify the terms and conditions in dispute and the applicant’s reasons for considering that the owner has failed to comply with them.

(4) The applicant shall give notice of the application to the owner of the pipeline.

(5) Where a person applies to the Secretary of State under subsection (2), the Secretary of State shall—

- (a) give notice to the owner of the pipeline 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.

(6) The Secretary of State shall determine whether or not the owner has complied with the terms and conditions in question, and shall give notice of that determination to the owner and the applicant.

(7) Where the Secretary of State determines that the owner has not so complied, the notice shall state what the owner is required to do (or as the case may be, to refrain from doing) in order to comply with the terms and conditions in question.

(8) Where he is obliged to do so under the Framework Agreement, the Secretary of State shall make his determination and issue the notice under subsection (6) jointly with the relevant authority of the Kingdom of Norway.

(3) Section 17F was inserted by the Gas (Third Party Access and Accounts) Regulations 2000 (S.I.2000/1937), regulation 2(4), Schedule 4, paragraph 4.

(4) Section 17G was inserted by the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937), regulation 2(4), Schedule 4, paragraph 4.

(5) 1964 c. 29.

(9) In this section and section 17GB “the Framework Agreement” means the Framework Agreement concerning cross-boundary petroleum co-operation dated 4th April 2005 and made between the government of the United Kingdom and the government of the Kingdom of Norway(6).

Section 17GA: supplemental

17GB.—(1) For the purpose of considering an application under section 17GA(2), the Secretary of State may by notice require the owner or the applicant to provide him with such information relevant to the application as may be specified or described in the notice.

(2) The Secretary of State shall not disclose to any person any 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 the Framework Agreement or by or under any enactment.”.

3. In section 17H(7) (enforcement of certain duties), in subsection (1), after “section 17D(11)” insert “or with a notice given under subsection (6) of section 17GA in a case falling within subsection (7) of that section”.

4. In section 27 (meaning of “owner”), in subsection (1A)(8), for “and the first reference in section 17F(2)” substitute “, the first reference in section 17F(2) and the reference in 17GA(2)(a)”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Petroleum Act 1998 so as to implement articles 2.4(6), 2.7(1)(a) and 2.7(2) of the Framework Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Norway concerning cross-boundary petroleum co-operation signed at Oslo on 4th April 2005 (Command No. 6792) (“the Framework Agreement”).

Article 2 of the Order amends the Petroleum Act 1998 as set out in the Schedule to the Order.

Paragraph 1 of the Schedule amends section 17F of the Petroleum Act 1998 by providing that it shall not apply to pipelines to which section 17GA (which is inserted by the Order) applies. This is intended to give effect to article 2.4(6) of the Framework Agreement, which provides that third party access to certain pipelines shall be governed by the Norwegian regulated access system.

Paragraph 2 of the Schedule amends the Petroleum Act 1998 by inserting two new sections, 17GA and 17GB.

Subsection (1) of the new section 17GA provides that the section shall apply to certain pipelines (in effect, those which, under the Framework Agreement, are subject to the Norwegian legal system for determining third party access).

(6) Command No. 6792.

(7) Section 17H was inserted by the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937), regulation 2(4), Schedule 4, paragraph 4. Subsection (1) was amended by the Gas (Third Party Access) Regulations 2004 (S.I. 2004/2043), regulation 2(3), Schedule 3, paragraph 2.

(8) Section 27(1A) was inserted by the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937), regulation 2(4), Schedule 4, paragraph 8.

Subsection (2) of section 17GA provides that where there is a dispute about whether a pipeline owner has complied with the terms of an award of access to a third party made under the Norwegian system, the person who was awarded access under the Norwegian system may apply to the Secretary of State for a determination under subsection (6).

Subsections (3), (4) and (5) of section 17GA make further provision regarding how applications under section 17GA are to be made and conducted.

Subsections (6) and (7) of section 17GA require the Secretary of State to determine applications made under section 17GA, to notify the parties and to state what (if anything) the pipeline owner must do in order to comply with the terms of the award of access made under the Norwegian system.

Subsection (8) of section 17GA provides that where the Framework Agreement so requires, the Secretary of State must determine applications under section 17GA jointly with the Norwegian authorities. This subsection (in conjunction with subsections (2) to (7)) is intended to give effect to article 2.7(1)(a) and (2) of the Framework Agreement.

Section 17GB makes provision supplemental to section 17GA, regarding the provision of information relating to an application under section 17GA(2) by a party to it, and the subsequent disclosure of that information by the Secretary of State where an enactment or the Framework Agreement so requires.

Paragraph 3 of the Schedule amends section 17H of the Petroleum Act 1998 so as to provide for a person who is affected by a failure to comply with a determination of the Secretary of State under section 17GA(6) to claim damages in respect of resulting loss.

Paragraph 4 of the Schedule amends section 27(1A) of the Petroleum Act 1998 (which defines “owner” in relation to a pipeline) with the effect that, for the purposes of section 17GA(2)(a) an “owner” does not include a person who is defined as such in section 27(1A).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.