



Infrastructure Act 2015

2015 CHAPTER 7

PART 6

ENERGY

Petroleum and geothermal energy in deep-level land

43 Petroleum and geothermal energy: right to use deep-level land

- (1) A person has the right to use deep-level land in any way for the purposes of exploiting petroleum or deep geothermal energy.
- (2) Land is subject to the right of use (whether for the purposes of exploiting petroleum or deep geothermal energy) only if it is—
 - (a) deep-level land, and
 - (b) within a landward area.
- (3) But that does not prevent deep-level land that is within a landward area from being used for the purposes of exploiting petroleum or deep geothermal energy outside a landward area.
- (4) Deep-level land is any land at a depth of at least 300 metres below surface level.

44 Further provision about the right of use

- (1) The ways in which the right of use may be exercised include—
 - (a) drilling, boring, fracturing or otherwise altering deep-level land;
 - (b) installing infrastructure in deep-level land;
 - (c) keeping, using or removing any infrastructure installed in deep-level land;
 - (d) passing any substance through, or putting any substance into, deep-level land or infrastructure installed in deep-level land;
 - (e) keeping, using or removing any substance put into deep-level land or into infrastructure installed in deep-level land.

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- (2) The purposes for which the right of use may be exercised include—
 - (a) searching for petroleum or deep geothermal energy;
 - (b) assessing the feasibility of exploiting petroleum or deep geothermal energy;
 - (c) preparing for exploiting petroleum or deep geothermal energy;
 - (d) decommissioning, and other activity which falls to be continued or undertaken, in consequence of activities undertaken for the purposes of exploiting petroleum or deep geothermal energy.
- (3) The right of use includes the right to leave deep-level land in a different condition from the condition it was in before an exercise of the right of use (including by leaving any infrastructure or substance in the land).
- (4) The right of use—
 - (a) does not give a person (“R”) any power which is greater than, or different from, the power which R would have had if the right had been granted by a person legally entitled to grant it; and
 - (b) does not relieve a person (“R”) from any obligation or liability to which R would have been subject if the right had been granted by a person legally entitled to grant it.
- (5) A person (“L”) who owns land (the “relevant land”) is not liable, as the owner of that land, in tort for any loss or damage which is attributable to the exercise, or proposed exercise, of the right of use by another person (whether in relation to the relevant land or any other land).
- (6) For that purpose, loss or damage is not attributable to the exercise, or proposed exercise, of the right of use (in particular) if, or to the extent that, the loss or damage is attributable to a deliberate omission by L.
- (7) There is a “deliberate omission by L” if L, as owner of the relevant land, decides—
 - (a) not to do an act, or
 - (b) not to allow another person to do an act,
 and the circumstances at the time of that decision were such that L would not have had to bear any of the costs incurred (whether by L or any other person) in doing or allowing the act.
- (8) Section 43 and this section bind the Crown.

45 Payment scheme

- (1) The Secretary of State may, by regulations, require relevant energy undertakings to make payments in respect of the proposed exercise, or exercise, of the right of use.
- (2) The regulations may require payments to be made—
 - (a) to owners of relevant land or interests in relevant land;
 - (b) to other persons for the benefit of areas in which relevant land is situated.
- (3) The regulations may—
 - (a) specify the amount or amounts of payments;
 - (b) make provision for determining the amount or amounts of payments.
- (4) The regulations may require relevant energy undertakings to provide the Secretary of State, or any other specified person, with specified information about—

- (a) the proposed exercise, or exercise, of the right of use;
 - (b) the making of payments in accordance with regulations under this section.
- (5) Before making any regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

46 Notice scheme

- (1) The Secretary of State may, by regulations, require relevant energy undertakings to give notice of the proposed exercise, or exercise, of the right of use.
- (2) The regulations may require relevant energy undertakings—
- (a) to give notice—
 - (i) to owners of relevant land or interests in relevant land;
 - (ii) to persons of other specified descriptions;
 - (b) to display notice within the area in which relevant land is situated or elsewhere;
 - (c) to publish notice (otherwise than by displaying the notice).
- (3) The regulations may make provision about the information which the notice is to contain, including provision about information relating to—
- (a) any payment scheme regulations which are in force;
 - (b) the application of any payment scheme regulations to the proposed exercise, or exercise, of the right of use;
 - (c) the method for obtaining a payment under any payment scheme regulations.
- (4) The regulations may make provision about the manner in which notice is to be given, displayed or published, including provision requiring notice to be—
- (a) displayed at specified places or places of specified descriptions;
 - (b) published in specified publications or publications of specified descriptions.
- (5) The regulations may require relevant energy undertakings to provide the Secretary of State, or any other specified person, with specified information about—
- (a) the proposed exercise, or exercise, of the right of use;
 - (b) the giving of notice in accordance with regulations under this section.
- (6) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) In this section “payment scheme regulations” means regulations under section 45.

47 Payment and notice schemes: supplementary provision

- (1) Regulations under section 45 or 46 may make provision about the enforcement of relevant requirements, including provision for the imposition of financial penalties in respect of breach of relevant requirements.
- (2) Regulations under section 45 or 46 may confer a function on—
- (a) the Secretary of State, or
 - (b) any other person, apart from the Welsh Ministers.
- (3) The functions that may be imposed include—
- (a) a duty (including a restriction or prohibition);

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- (b) a function involving the exercise of a discretion;
 - (c) a requirement to consult.
- (4) The provisions of sections 45 and 46 and this section which specify particular kinds of provision that may be made in regulations under section 45 or 46 do not limit the powers conferred by that section to make such regulations.
- (5) The Secretary of State must carry out a review of sections 45 and 46 and the preceding provisions of this section as soon as reasonably practicable after the end of the period of 5 years beginning with the day on which they come into force.
- (6) The Secretary of State must by regulations—
- (a) repeal section 45, and make any consequential amendments (including repeals) of the other provisions of this Act that the Secretary of State considers appropriate, if the relevant conditions are met in relation to the power under section 45;
 - (b) repeal section 46, and make any consequential amendments (including repeals) of the other provisions of this Act that the Secretary of State considers appropriate, if the relevant conditions are met in relation to the power under section 46.
- (7) The relevant conditions are met in relation to the power under section 45 or the power under section 46 if—
- (a) that power is not exercised within the period of 7 years beginning with the day on which that section comes into force, and
 - (b) the Secretary of State is satisfied that there is no convincing case for retaining that power.

48 Interpretation

- (1) For the purposes of deciding whether land is deep-level land—
- (a) the depth of a point in land below surface level is the distance between that point and the surface of the land vertically above that point; and
 - (b) in determining what is the surface of the land, any building or other structure on the land, and any water covering the land, must be ignored.
- (2) In sections 43 to 47 and this section—
- “deep geothermal energy” means geothermal energy in deep-level land (including in water or any other fluid in deep-level land);
 - “deep-level land” has the meaning given in section 43(4);
 - “landward area” means those parts of the landward area (within the meaning of the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014) that are in England and Wales or are beneath waters (other than waters adjacent to Scotland);
 - “petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998 (see section 1 of that Act);
 - “relevant energy undertaking” means a person who proposes to exercise, or exercises, the right of use;
 - “relevant land” means land in respect of which the right of use is proposed to be, or is, exercised;
 - “relevant requirement” means a requirement imposed by regulations under section 45 or 46;

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“right of use” means the right conferred by section 43;
“specified” means specified in regulations under section 45 or 46;
“substance” includes electricity and any other intangible thing.

- (3) The power of the Secretary of State to make regulations under section 4 of the Petroleum Act 1998 includes power to make such amendments of the definition of “landward area” in subsection (2) above as the Secretary of State considers appropriate in consequence of any other exercise of the power under section 4 of the 1998 Act.