



# Energy Act 2011

## 2011 CHAPTER 16

### PART 2

#### SECURITY OF ENERGY SUPPLIES

### CHAPTER 3

#### UPSTREAM PETROLEUM INFRASTRUCTURE

## **82 Acquisition of rights to use upstream petroleum infrastructure**

(1) This section applies where—

- (a) a person makes an application to the owner of a relevant upstream petroleum pipeline for a right to have things of a kind specified in the application conveyed by the pipeline during such period as is so specified and in such quantities as are so specified;
- (b) a person makes an application to the owner of a relevant oil processing facility for a right to have petroleum of a kind specified in the application processed by the facility during such period as is so specified and in such quantities as are so specified; or
- (c) a person makes an application to the owner of a relevant gas processing facility for a right to have piped gas of a kind specified in the application processed by the facility during such period as is so specified and in such quantities as are so specified.

And references in this section to “the access application” are to the application made to the owner of the pipeline or facility.

- (2) This section does not apply by virtue of subsection (1)(c) where a person makes an application to the owner of a gas processing facility for a right to have gas processed by the facility for a downstream purpose (as to which, see section 12 of the Gas Act 1995).

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- (3) For the purposes of subsection (1) an upstream petroleum pipeline, an oil processing facility or a gas processing facility is “relevant” if and in so far as it is situated—
- (a) in Great Britain;
  - (b) in the territorial sea adjacent to Great Britain; or
  - (c) in the sea in any area designated under section 1(7) of the Continental Shelf Act 1964;
- but an upstream petroleum pipeline which is so situated is not “relevant” if it is a pipeline to which section 17GA of the Petroleum Act 1998 applies (petroleum pipelines subject to Norwegian access system).
- (4) If the applicant and the owner do not reach agreement on the access application, the applicant may apply to the Secretary of State for a notice under subsection (11) which would secure to the applicant the right sought in the access application.
- (5) The Secretary of State may not consider an application under subsection (4) unless satisfied that the applicant and the owner have had a reasonable time in which to reach agreement.
- (6) When considering an application under subsection (4) the Secretary of State must—
- (a) decide whether the application is to be—
    - (i) rejected,
    - (ii) adjourned to enable further negotiation between the applicant and the owner, or
    - (iii) considered further, and
  - (b) in the case of a decision to consider the application further, give an opportunity to be heard to—
    - (i) the applicant and the owner;
    - (ii) any person with a right to have anything conveyed by the pipeline or processed by the facility;
    - (iii) the Health and Safety Executive;
    - (iv) such other persons as the Secretary of State considers appropriate.
- (7) When giving further consideration to an application under subsection (4) the Secretary of State must (so far as relevant) take into account—
- (a) capacity which is or can reasonably be made available in the pipeline or at the facility;
  - (b) any incompatibilities of technical specification which cannot reasonably be overcome;
  - (c) difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future production of petroleum;
  - (d) the reasonable needs of the owner and any associate of the owner for the conveying and processing of petroleum;
  - (e) the interests of all users and operators of the pipeline or facility;
  - (f) the need to maintain security and regularity of supplies of petroleum; and
  - (g) the number of parties involved in the dispute.
- (8) The Secretary of State may give a notice under subsection (11) only if the condition in subsection (9) or (10) is met.
- (9) The condition in this subsection is that the Secretary of State is satisfied that the notice will not prejudice—

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- (a) the conveying by the pipeline, or the processing by the facility, of the quantities of substances which the owner or an associate of the owner requires or may reasonably be expected to require;
  - (b) the conveying by the pipeline, or the processing by the facility, of the quantities of substances which another person with a right to have things so conveyed or processed requires to be conveyed or processed in exercise of that right.
- (10) The condition in this subsection is that the notice contains provision for the purpose of ensuring that if the notice does prejudice any of the matters mentioned in subsection (9) any person who suffers loss as a result may recover from the applicant payments by way of compensation, of such amounts as are determined in accordance with the notice.
- (11) A notice under this subsection may contain such provisions as the Secretary of State considers appropriate for any of the following purposes—
  - (a) to secure to the applicant the right sought in the access application;
  - (b) to secure that the exercise of the right is not prevented or impeded;
  - (c) to secure 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 of the applicant's connected to the pipeline or facility by the applicant or the owner;
  - (d) to regulate the charges which may be made for the exercise of any right secured by the notice.
- (12) A notice under subsection (11) may also contain such provisions as the Secretary of State considers appropriate for the purpose of ensuring that no person suffers a loss by reason of the mixing together of—
  - (a) substances conveyed by the pipeline or processed by the facility on behalf of the applicant in exercise of a right secured by the notice; and
  - (b) substances conveyed by the pipeline or processed by the facility by or on behalf of any other person.
- (13) A notice under subsection (11) may also—
  - (a) contain provision authorising the owner to recover from the applicant payments by way of consideration for any right secured by the notice of amounts specified in the notice or determined in accordance with the notice;
  - (b) contain provision permitting a right secured or a duty imposed by the notice to be assigned.
- (14) A notice under subsection (11) is to be given to the owner and the applicant.
- (15) If a notice under subsection (11) contains provision of a sort mentioned in subsection (10) or (12) the Secretary of State must give a copy of the notice to every person who has a right to have anything conveyed by the pipeline or processed by the facility.
- (16) Before giving a copy of a notice under subsection (15) the Secretary of State must—
  - (a) remove from the copy any provision included in the notice by virtue of subsection (11)(d) or (13)(a); and
  - (b) after giving the owner and the applicant an opportunity to be heard, remove from the copy any other provision included in the notice which the Secretary

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of State considers may prejudice the commercial interests of the owner or the applicant if not removed.

- (17) A notice under subsection (11) does not come into force unless and until the applicant indicates acceptance of the terms of the notice in such manner and within such period as is specified in the notice.
- (18) For the purposes of subsection (3)(b) and (c) a pipeline is to be treated as being situated in the sea in any area if it is situated in, under or over the sea in that area.
- (19) In this section and section 83 “owner”, in relation to an upstream petroleum pipeline, an oil processing facility or a gas processing facility, means any of the following—
  - (a) a person in whom the pipeline or facility is vested;
  - (b) a lessee and any person occupying or controlling the pipeline or facility; and
  - (c) a person who has the right to have things conveyed by the pipeline or processed by the facility, where such right has been acquired by that person on terms that—
    - (i) the person is entitled to exercise the right for a period of one year or more; and
    - (ii) the right is capable of being assigned or otherwise disposed of to another person.