



# 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.

#### **Commencement Information**

- II** S. 43 in force at 12.4.2015, see s. 57(7)(b)

#### **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;

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- (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.
- (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.

**Commencement Information**

**I2** S. 44 in force at 12.4.2015, see s. 57(7)(b)

**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<sup>F1</sup>—

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- (a) the right to use deep-level land in England for the purposes of exploiting petroleum, and
  - (b) the right to use deep-level land for the purposes of exploiting deep geothermal energy.]
- [<sup>F2</sup>(1A) The Welsh Ministers may, by regulations, require relevant energy undertakings to make payments in respect of the proposed exercise, or exercise, of the right to use deep-level land in Wales for the purposes of exploiting petroleum.]
- (2) [<sup>F3</sup>Regulations under subsection (1)] 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) [<sup>F3</sup>Regulations under subsection (1)] may—
- (a) specify the amount or amounts of payments;
  - (b) make provision for determining the amount or amounts of payments.
- (4) [<sup>F3</sup>Regulations under subsection (1)] 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; [<sup>F4</sup>to which the regulations relate]
  - (b) the making of payments in accordance with regulations under [<sup>F5</sup>subsection (1)].
- [<sup>F6</sup>(4A) Regulations under subsection (1A) may require relevant energy undertakings to provide the Welsh Ministers, or any other specified person, with specified information about—
- (a) the proposed exercise, or exercise, of the right of use to which the regulations relate;
  - (b) the making of payments in accordance with regulations under subsection (1A).]
- (5) Before making any regulations under [<sup>F7</sup>subsection (1)], the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- [<sup>F8</sup>(6) Before making any regulations under subsection (1A), the Welsh Ministers must consult such persons as they consider appropriate.]

#### Textual Amendments

- F1** Words in s. 45(1) substituted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), **ss. 25(2)(a)**, 71(4) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), [reg. 4\(a\)](#)
- F2** S. 45(1A) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), **ss. 25(2)(b)**, 71(4) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), [reg. 4\(a\)](#)
- F3** Words in s. 45(4) substituted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 28(2)(a)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), [reg. 4\(b\)](#)
- F4** Words in s. 45(4)(a) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 28(2)(b)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), [reg. 4\(b\)](#)
- F5** Words in s. 45(4)(b) substituted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 28(2)(c)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), [reg. 4\(b\)](#)
- F6** S. 45(4A) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 28(3)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), [reg. 4\(b\)](#)

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- F7** Words in s. 45(5) substituted (1.10.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 28\(4\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(b\)](#)
- F8** S. 45(6) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 28\(5\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(b\)](#)

**Commencement Information**

- I3** S. 45 in force at 12.4.2015, see s. 57(7)(b)

**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 <sup>F9</sup>—
- (a) the right to use deep-level land in England for the purposes of exploiting petroleum, and
  - (b) the right to use deep-level land for the purposes of exploiting deep geothermal energy.]
- <sup>F10</sup>(1A) The Welsh Ministers may, by regulations, require relevant energy undertakings to give notice of the proposed exercise, or exercise, of the right to use deep-level land in Wales for the purposes of exploiting petroleum.]
- (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; <sup>F11</sup>to which the regulations relate]
  - (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) <sup>F12</sup>Regulations under subsection (1)] 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 <sup>F13</sup>to which the regulations relate];
  - (b) the giving of notice in accordance with regulations under <sup>F14</sup>subsection (1)].
- <sup>F15</sup>(5A) Regulations under subsection (1A) may require relevant energy undertakings to provide the Welsh Ministers, or any other specified person, with specified information about—

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- (a) the proposed exercise, or exercise, of the right of use to which the regulations relate;
  - (b) the giving of notice in accordance with regulations under subsection (1A).]
- (6) Before making regulations under [<sup>F16</sup>subsection (1)], the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- [<sup>F17</sup>(6A) Before making regulations under subsection (1A), the Welsh Ministers must consult such persons as they consider appropriate.]
- (7) In this section “payment scheme regulations” means regulations under section 45.

#### Textual Amendments

- F9** Words in s. 46(1) substituted (1.10.2018) by [Wales Act 2017 \(c. 4\), ss. 25\(3\)\(a\), 71\(4\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(a\)](#)
- F10** S. 46(1A) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\), ss. 25\(3\)\(b\), 71\(4\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(a\)](#)
- F11** Words in s. 46(3)(b) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 29\(2\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(b\)](#)
- F12** Words in s. 46(5) substituted (1.10.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 29\(3\)\(a\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(b\)](#)
- F13** Words in s. 46(5)(a) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 29\(3\)\(b\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(b\)](#)
- F14** Words in s. 46(5)(b) substituted (1.10.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 29\(3\)\(c\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(b\)](#)
- F15** S. 46(5A) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 29\(4\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(b\)](#)
- F16** Words in s. 46(6) substituted (1.10.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 29\(5\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(b\)](#)
- F17** S. 46(6A) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 29\(6\)](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 4\(b\)](#)

#### Commencement Information

- I4** S. 46 in force at 12.4.2015, see s. 57(7)(b)

## 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 [<sup>F18</sup>made by the Secretary of State] 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.
- [<sup>F19</sup>(2A) Regulations made by the Welsh Ministers under section 45 or 46 may confer a function on—
- (a) the Welsh Ministers, or
  - (b) any other person apart from a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).]

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- (3) The functions that may be imposed include—
- (a) a duty (including a restriction or prohibition);
  - (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 [F20the Secretary of State's powers under] 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 [F2145(1)], 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 [F2145(1)];
  - (b) repeal section [F2246(1)], 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 [F2246(1)].
- (7) The relevant conditions are met in relation to the power under section [F2345(1)] or the power under section [F2446(1)] 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.

#### Textual Amendments

- F18** Words in s. 47(2) inserted (1.10.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 30(2)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 4(b)
- F19** S. 47(2A) inserted (1.10.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 30(3)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 4(b)
- F20** Words in s. 47(5) inserted (1.10.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 30(4)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 4(b)
- F21** Word in s. 47(6)(a) substituted (1.10.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 30(5)(a)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 4(b)
- F22** Word in s. 47(6)(b) substituted (1.10.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 30(5)(b)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 4(b)
- F23** Word in s. 47(7) substituted (1.10.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 30(6)(a)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 4(b)
- F24** Word in s. 47(7) substituted (1.10.2018) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 30(6)(b)** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 4(b)

#### Commencement Information

- I5** S. 47 in force at 12.4.2015, see s. 57(7)(b)

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## 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.

[<sup>F25</sup>(1A) The Secretary of State may make regulations setting out the definition of “landward area” as it applies in relation to—

- (a) the right to use deep-level land in England for the purposes of exploiting petroleum, and
- (b) the right to use deep-level land for the purposes of exploiting deep geothermal energy.

(1B) The Welsh Ministers may make regulations setting out the definition of “landward area” as it applies in relation to the right to use deep-level land in Wales for the purposes of exploiting petroleum within the Welsh onshore area.

(1C) Until regulations are made under subsection (1A) or (1B), “landward area” means those parts of the landward area, within the meaning of the 2014 Regulations, that are in England and Wales.]

(2) In sections 43 to 47 and this section—

[<sup>F26</sup>“the 2014 Regulations” means the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (S.I. 2014/1686), as in force on the day on which subsections (1A) to (1C) come into force;]

“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);

[<sup>F27</sup>“England” includes the sea adjacent to England out as far as—

- ((a)) the seaward boundary of the territorial sea, or
- ((b)) if nearer to the land, any boundary between waters that are treated as part of the sea adjacent to Wales and those that are not, as determined by an order made under section 158(3) of the Government of Wales Act 2006;]

<sup>F28</sup>  
...

“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;

“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;

[<sup>F29</sup>“Wales” has the same meaning as in the Government of Wales Act 2006 (see section 158(1) and (3) of that Act);

“Welsh onshore area” has the same meaning as in Section D2 in Part 2 of Schedule 7A to the Government of Wales Act 2006.]

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F30(3) .....

#### Textual Amendments

- F25** S. 48(1A)-(1C) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 31(2)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), reg. 4(b)
- F26** Words in s. 48(2) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 31(3)(a)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), reg. 4(b)
- F27** Words in s. 48(2) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 31(3)(b)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), reg. 4(b)
- F28** Words in s. 48(2) omitted (1.10.2018) by virtue of [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 31(3)(c)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), reg. 4(b)
- F29** Words in s. 48(2) inserted (1.10.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 31(3)(d)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), reg. 4(b)
- F30** S. 48(3) omitted (1.10.2018) by virtue of [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 31(4)** (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), reg. 4(b)

#### Commencement Information

- I6** S. 48 in force at 12.4.2015, see s. 57(7)(b)



**Status:**

Point in time view as at 01/10/2018.

**Changes to legislation:**

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