



Energy Act 2008

2008 CHAPTER 32

PART 1

GAS IMPORTATION AND STORAGE

CHAPTER 2

IMPORTATION AND STORAGE OF COMBUSTIBLE GAS

Activities requiring a licence

2 Prohibition on unlicensed activities

- (1) No person may carry on an activity within subsection (3) except in accordance with a licence.
- (2) But subsection (1) is subject to section 3.
- (3) The activities are—
 - (a) the use of a controlled place for the unloading of gas to an installation or pipeline;
 - (b) the use of a controlled place for the storage of gas;
 - (c) the conversion of any natural feature in a controlled place for the purpose of storing gas;
 - (d) the recovery of gas stored in a controlled place;
 - (e) the exploration of a controlled place with a view to, or in connection with, the carrying on of activities within paragraphs (a) to (d);
 - (f) the establishment or maintenance in a controlled place of an installation for the purposes of activities within this subsection.

- (4) In this section—

“controlled place” means a place in, under or over—

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- (a) the territorial sea, or
- (b) waters in a Gas Importation and Storage Zone (within the meaning of section 1(5));

“gas” means any combustible substance which is gaseous at a temperature of 15°C and a pressure of 101.325 kPa (1013.25 mb) and which consists wholly or mainly of—

- (a) methane,
- (b) ethane,
- (c) propane,
- (d) butane,
- (e) a substance designated for the purposes of this section by an order made by the Secretary of State, or
- (f) a mixture of two or more of the substances mentioned in paragraphs (a) to (e).

3 Exception for activities carried on partly on land etc

(1) This Chapter does not apply in relation to—

- (a) the use of a controlled place for the unloading of gas to an installation which is connected with land by a permanent structure providing access at all times and for all purposes;
- (b) the conversion of a natural feature of which part is in a controlled place and part under land, if the operations necessary for the conversion take place wholly or mainly on, over or under land;
- (c) the use of a place for the storage of gas, or the recovery of gas so stored, where—
 - (i) the gas was, or is to be, introduced into the store by means of a well on land, and
 - (ii) part of the place is a controlled place and part is under land;
- (d) the establishment or maintenance of an installation for the purposes of activities falling within paragraph (a).

(2) In this section—

“land” means—

- (a) land in England;
 - (b) land in Wales;
 - (c) land in Scotland landward of the low water mark;
- “well” includes a borehole.

Licensing

4 Licences

- (1) The Secretary of State may grant a person a licence in respect of one or more activities within section 2(3).
- (2) The controlled place in respect of which a licence is granted may be determined by reference to the provisions of a Crown lease which has been or may be granted.

- (3) For this purpose “Crown lease” means a lease of property forming part of the Crown Estate, or an authorisation to exercise rights forming part of that Estate (whether by virtue of section 1 or otherwise).

5 Applications

The Secretary of State may by regulations—

- (a) prescribe the persons, or classes of persons, by whom an application for a licence may be made;
- (b) prescribe requirements which must be met by, or in relation to, a person who makes an application;
- (c) prescribe the manner in which an application must be made;
- (d) prescribe the information which an application must contain and any documents which must accompany it;
- (e) require an application to be accompanied by a fee of an amount prescribed by, or determined in accordance with, the regulations.

6 Terms and conditions

- (1) A licence may be granted on such terms and subject to such conditions as the Secretary of State considers appropriate.
- (2) The provisions of a licence may be expressed by reference to provision made in a Crown lease, and, in particular, may provide—
 - (a) for the commencement of the licence to be conditional upon the commencement of a Crown lease which has been or may be granted in respect of the controlled place to which the licence relates or any part of that place;
 - (b) for the period of the licence to be determined by reference to the period of such a Crown lease.
- (3) A licence may authorise, in such circumstances and subject to such conditions as are specified, the transfer of the licence to another person (or the inclusion of another person as a joint licence holder).
- (4) The provisions of a licence may include—
 - (a) provision requiring the licence holder to obtain the prior written consent of the Secretary of State or another person for specified acts or omissions;
 - (b) provision providing that any such consent may be given subject to conditions.
- (5) The conditions imposed on a consent by virtue of subsection (4)(b) may include conditions requiring, or otherwise providing for, the modification of the licence in such manner as the Secretary of State considers appropriate.
- (6) In this section—
 - “Crown lease” has the same meaning as in section 4;
 - “specified”, in relation to a licence, means specified in, or determined in accordance with, the licence.

7 Model clauses

- (1) The Secretary of State may make regulations prescribing model clauses for licences.

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- (2) Subject to subsection (3), the model clauses, as they have effect at the time a licence is granted, are deemed to be incorporated into the licence.
- (3) The Secretary of State may decide to exclude or modify one or more of those model clauses in the case of a particular licence.

Enforcement

8 Offence to carry on unlicensed activities

- (1) It is an offence for a person to carry on an activity within section 2(3) at a controlled place unless, at the time the activity is carried on, that person—
 - (a) has a licence for the carrying on of that activity at that place, or
 - (b) is carrying on the activity on behalf of a person who has such a licence.
- (2) It is an offence for a person to cause or permit another person to commit an offence under subsection (1).
- (3) But subsections (1) and (2) are subject to section 3.
- (4) 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.

9 Offences relating to licences

- (1) An offence is committed by a licence holder if—
 - (a) a thing is done for which the licence specifies that the prior consent of the Secretary of State or any other person is required, without that consent first having been obtained;
 - (b) such a thing is done in circumstances where that consent was obtained subject to conditions and those conditions have not been satisfied;
 - (c) the licence holder fails to keep records, give a notice or make a return or report, in accordance with the provisions of the licence;
 - (d) the licence holder breaches any other provision of the licence which is specified, or of a description specified, in an order made by the Secretary of State.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence for the person to prove that due diligence was exercised to avoid committing the offence.
- (3) 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—
 - (a) a licence, or
 - (b) the consent of the Secretary of State or any other person for the purposes of any requirement imposed by virtue of section 6(4).
- (4) 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—
 - (a) a licence, or
 - (b) the consent of the Secretary of State or any other person for the purposes of any requirement imposed by virtue of section 6(4).

- (5) 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.

10 Secretary of State’s power of direction

- (1) This section applies if a licence holder fails to comply with any provision of the licence.
- (2) The Secretary of State may direct the licence holder to take steps which the Secretary of State considers necessary or appropriate to comply with the provision within a period specified in the direction.
- (3) The Secretary of State must consult the licence holder before giving a direction under subsection (2).
- (4) If the licence holder fails to comply with a direction under subsection (2), the Secretary of State may—
- (a) comply with the direction on behalf of the licence holder, 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 licence holder could have done, and
 - (b) recover from the licence holder 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 licence holder 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 in the licence with regard to the enforcement of any of its provisions.

11 Failure to comply with a direction under section 10

- (1) It is an offence for a person to fail to comply with a direction under section 10, unless the person proves that due diligence was exercised in order to avoid the failure.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

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12 Injunctions restraining breaches of section 2(1)

- (1) Where the Secretary of State considers it necessary or expedient to restrain any actual or apprehended breach of section 2(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 Chapter.
- (3) On an application under subsection (1), the court may grant such an injunction or interdict as the court thinks appropriate for the purpose of restraining the breach.
- (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.

13 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 Chapter.
- (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 Chapter;
 - (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 (c. 25) (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.

14 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 (c. 73) (restriction on prosecutions) does not apply to any proceedings for a relevant offence.
- (3) Proceedings for a relevant offence alleged to have been committed in a controlled place may not be instituted in England and Wales except—
 - (a) by the Secretary of State or a person authorised by the Secretary of State, or

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- (b) by or with the consent of the Director of Public Prosecutions.
- (4) Proceedings for a relevant offence alleged to have been committed in a controlled place may not be instituted in Northern Ireland except—
 - (a) by the Secretary of State or a person authorised by the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) In the application of subsection (3) or (4) to an offence created by regulations under section 13—
 - (a) the words “alleged to have been committed in a controlled place” are to be omitted, and
 - (b) the references to a person authorised by the Secretary of State are to be read as references to an inspector appointed under that section.
- (6) In this section “relevant offence” means an offence under this Chapter or created by regulations under section 13.

Supplementary

15 Interaction with the petroleum licensing requirements

- (1) This section applies where there is a licence for the recovery of gas stored in a controlled place.
- (2) The Secretary of State may give a direction in respect of the place or any part of it (“the relevant stratum”).
- (3) The effect of the direction is that any operations under the licence to recover gas from the relevant stratum are not to be regarded as resulting in the boring for or getting of petroleum for the purposes of Part 1 of the Petroleum Act 1998 (c. 17).
- (4) A direction may be given only if the Secretary of State is satisfied that the amount of petroleum which exists in its natural condition in the relevant stratum is so small that it ought to be disregarded for the purposes of that Part.
- (5) Where a direction has effect, if the Secretary of State ceases to be satisfied as mentioned in subsection (4), the Secretary of State must give the licence holder a notice revoking the direction and specifying a time for the purposes of subsection (6).
- (6) Where a notice is given under subsection (5), the revocation of the direction takes effect—
 - (a) if an application for a petroleum licence in respect of the relevant stratum is made by the licence holder before the specified time, immediately before the time the application is determined or withdrawn, and
 - (b) in any other case, at the specified time.
- (7) Before giving or revoking a direction, the Secretary of State must consult the licence holder.
- (8) In this section—
 - “petroleum” means petroleum to which section 3 of the Petroleum Act 1998 (c. 17) applies;

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“petroleum licence” means a licence under that section authorising a person to bore for and get petroleum.

Interpretation

16 Chapter 2: interpretation

In this Chapter—

“controlled place” has the meaning given by section 2(4);

“gas” has the meaning given by section 2(4);

“installation” includes any floating structure or device maintained on a station by whatever means;

“licence”, except where the context otherwise requires, means a licence under section 4, and “licence holder” is to be construed accordingly.