



Energy Act 2008

2008 CHAPTER 32

PART 3

DECOMMISSIONING OF ENERGY INSTALLATIONS

CHAPTER 3

OIL AND GAS INSTALLATIONS

72 Persons who may be required to submit abandonment programmes

- (1) Section 30 of the Petroleum Act 1998 (c. 17) (persons who may be required to submit programmes) is amended as follows.
- (2) In subsection (1)—
 - (a) after paragraph (b) insert—
 - “(ba) a person to whom subsection (5)(a) and (b) applied in relation to the installation, but who—
 - (i) transferred the right mentioned in that subsection to another person, and
 - (ii) has not obtained a consent required under the licence in relation to the transfer;”, and
 - (b) in paragraph (e) for “company” in each place substitute “ body corporate ”.
- (3) In subsection (2)(c) for “company” in each place substitute “ body corporate ”.
- (4) For subsection (5)(b) substitute—
 - “(b) either—
 - (i) any activity mentioned in subsection (6) is carried on from, by means of or on the installation, or
 - (ii) the person intends to carry on an activity mentioned in that subsection from, by means of or on the installation.”.

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(5) For subsection (8) substitute—

“(8) For the purposes of this section, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them; and subsections (8A) to (8D) set out the circumstances in which one body corporate (“A”) controls another (“B”).

(8A) Where B is a company, A controls B if A possesses or is entitled to acquire—

- (a) one half or more of the issued share capital of B,
- (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
- (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
- (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.

(8B) Where B is a limited liability partnership, A controls B if A—

- (a) holds a majority of the voting rights in B,
- (b) is a member of B and has a right to appoint or remove a majority of other members, or
- (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.

(8C) In subsection (8B)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.

(8D) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.”

(6) In subsection (9)—

- (a) for “subsection (8)” substitute “ subsections (8) to (8D) ”, and
- (b) for “company” in each place substitute “ body corporate ”.

(7) In section 31 of that Act (notices: supplementary provision), before subsection (1) insert—

“(A1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a person (“P”) who, in relation to the installation, falls within paragraph (b) or (c) of section 30(1), if—

- (a) P is not entitled to derive, and never has been entitled to derive, any financial or other benefit from any activity within section 30(6)—
 - (i) which has been or is carried on (or is intended to be carried on) from, by means of or on the installation, and
 - (ii) is an activity to which subsection (B1) applies, and
- (b) P is not, and never has been, a person within section 30(1)(a), (ba), (d) or (e) in relation to the installation.

(B1) This subsection applies to an activity if—

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- (a) where the activity is the exploitation or exploration of mineral resources, it relates to an oil field for which the installation is or is to be established or maintained;
- (b) where the activity is the conveyance of minerals, the minerals are got, or to be got, from such an oil field;
- (c) where the activity is the unloading, storage or recovery of gas, it relates to a controlled place (within the meaning of Chapter 2 or 3 of Part 1 of the Energy Act 2008) for which the installation is or is to be established or maintained;
- (d) where the activity is the conveyance of gas being stored or recovered, the storage or recovery of the gas relates to such a controlled place;
- (e) where the activity is within section 30(6)(c)—
 - (i) the installation is in an oil field in respect of which P has an interest, or
 - (ii) the installation is in a controlled place in respect of which P has a licence under Part 1 of the Energy Act 2008.

(C1) For the purposes of subsection (B1)—

- (a) “oil field” means an area which the appropriate authority (within the meaning of paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975) has determined to be an oil field for the purposes of Part 1 of that Act,
- (b) P has an interest in an oil field if P is entitled to derive, or has at any time been entitled to derive, any financial or other benefit from activities within section 30(6) (other than paragraph (c)) carried on in the field.

(D1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a body corporate if—

- (a) the body corporate falls within paragraph (e) of section 30(1) (and no other paragraph of that section), and
- (b) the body corporate falls within that paragraph by reason only that it is associated (within the meaning given by section 30(8)) with a person to whom the Secretary of State may not give a notice in relation to the installation by virtue of subsection (A1).”

(8) In section 34 of that Act (revision of programmes), after subsection (3) insert—

“(3A) A proposal that a person who is or has been within paragraph (b) or (c) of section 30(1) is to have a duty to secure that a programme is carried out may not be made if the Secretary of State would be prevented from giving a notice under section 29(1) to the person by virtue of section 31(A1) if the programme had not already been approved under this section.”

Commencement Information

II S. 72 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(b\)\(i\)](#)

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Chapter 3. (See end of Document for details)

73 Financial resources etc

(1) Section 38 of the Petroleum Act 1998 (c. 17) (information and notices) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Secretary of State may, for a purpose specified in subsection (1A), give a notice to a person within subsection (1B) requiring the person, within a time specified in the notice—

- (a) to provide specified information relating to the person's financial affairs;
- (b) to supply copies of specified documents, or documents of a specified description, relating to those affairs.

(1A) Those purposes are—

- (a) determining whether to give a notice under section 29 to a person in respect of an installation or pipeline;
- (b) determining whether to make a proposal under section 34(1) to impose a duty on a person under section 36;
- (c) where a person has made such a proposal, determining whether to impose the duty on the person proposed.

(1B) A person falls within this subsection if—

- (a) a notice under section 29(1) may be given to the person,
- (b) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering proposing, in accordance with section 34(1)(b), that the person should have a duty under section 36, or
- (c) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering whether to impose a duty on the person under section 36 in accordance with a proposal made under section 34(1)(b).”

(3) In subsection (2)—

- (a) for the words from “who has” to “that duty” substitute “ falling within subsection (2A) will be capable of carrying out any abandonment programme which has been submitted (whether or not it is approved) or may be submitted in relation to an installation or pipeline ”, and
- (b) in paragraph (a) after “information” insert “ (which may relate to the estimated costs of abandonment of the installation or pipeline or to any other financial or other matter) ”.

(4) After that subsection insert—

“(2A) A person falls within this subsection if—

- (a) a notice under section 29(1) has been given to the person, or
- (b) the person has a duty under section 36 to secure that an abandonment programme is carried out.”

(5) For subsection (4) substitute—

“(4) The Secretary of State may, after consulting the Treasury, give written notice to a person to whom subsection (4A) applies, requiring the person to take

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such action as may be specified in the notice within such time as may be so specified.

- (4A) This subsection applies to a person if—
- (a) the person falls within subsection (2A), and
 - (b) the Secretary of State is not satisfied that the person will be capable of carrying out any duty which has been, or is likely to be, imposed on the person by section 36.”

- (6) After subsection (6) add—

- “(7) It is an offence for a person to disclose information obtained by virtue of a notice under subsection (1) or (2) unless the disclosure—
- (a) is made with the consent of the person by or on behalf of whom the information was provided,
 - (b) is for the purpose of the exercise of the Secretary of State's functions under this Part, Chapter 3 of Part 2 of the Energy Act 2004 or Part 1 of the Energy Act 2008, or
 - (c) is required by or under an enactment.”

Commencement Information

I2 S. 73 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(b\)\(i\)](#)

74 Protection of abandonment funds from creditors

- (1) After section 38 of the Petroleum Act 1998 (c. 17) insert—

“38A Protection of funds set aside for the purposes of abandonment programme

- (1) This section applies where any security for the performance of obligations under an approved abandonment programme has been provided by a person (“the security provider”) by way of a trust or other arrangements.
- (2) Subsection (1) applies whether the security is provided before or after the programme is approved.
- (3) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.
- (4) In this section “security” includes—
 - (a) a charge over a bank account or any other asset;
 - (b) a deposit of money;
 - (c) a performance bond or guarantee;
 - (d) an insurance policy;
 - (e) a letter of credit.
- (5) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.

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- (6) For the purposes of subsection (5), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
- (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
 - (b) prevent or restrict their enforcement for the purposes of being so applied.
- (7) In subsection (6) “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation.

38B Directions to provide information about protected assets

- (1) The Secretary of State may direct a security provider to publish specified information about the protected assets.
- (2) A direction under this section may specify—
 - (a) the time when the information must be published, and
 - (b) the manner of publication.
- (3) If a security provider fails to comply with a direction, the Secretary of State, or a creditor of the security provider, may make an application to the court under this section.
- (4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security provider to take such steps as the court directs for securing that the direction is complied with.
- (5) In this section—

“court”—

 - (a) in relation to an application in England and Wales or Northern Ireland, means the High Court, and
 - (b) in relation to an application in Scotland, means the Court of Session;

“security provider” means a person who has provided security in relation to which section 38A applies;

“the protected assets”, in relation to a security provider, means the security, and any property or rights in which it consists.”
- (2) This section has effect in relation to a trust or other arrangements established on or after 1st December 2007.

Commencement Information

I3 S. 74 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(b\)\(i\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Energy Act 2008, Chapter 3.