



# Energy Act 2011

## 2011 CHAPTER 16

### PART 2

#### SECURITY OF ENERGY SUPPLIES

VALID FROM 21/03/2012

### 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

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by the facility for a downstream purpose (as to which, see section 12 of the Gas Act 1995).

- (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.

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- (9) The condition in this subsection is that the Secretary of State is satisfied that the notice will not prejudice—
- (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

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- (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 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.

**83 Power of Secretary of State to give a notice under section 82(11) on own initiative**

- (1) This section applies where—
  - (a) a person has made an application of a kind mentioned in subsection (1) of section 82 to the owner of a pipeline or facility, and
  - (b) the applicant and the owner have not reached agreement on the application.
- (2) The Secretary of State may on his or her own initiative give a notice under subsection (11) of section 82 which would secure to the applicant the right sought in the application; but this is subject to subsection (8) of that section and subsections (3) and (4).
- (3) The Secretary of State may not exercise the power conferred by subsection (2) unless the Secretary of State is satisfied that—
  - (a) the applicant and the owner have had a reasonable time in which to reach agreement on the application; and
  - (b) there is no realistic prospect of them doing so.
- (4) In considering whether to exercise the power conferred by subsection (2) the Secretary of State must—
  - (a) take into account (so far as relevant) the matters mentioned in paragraphs (a) to (g) of subsection (7) of section 82;
  - (b) give the persons mentioned in subsection (5) an opportunity to be heard.
- (5) Those persons are—
  - (a) the applicant and the owner;
  - (b) any person with a right to have anything conveyed by the pipeline or processed by the facility;

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- (c) the Health and Safety Executive; and
- (d) such other persons as the Secretary of State considers appropriate.

#### **84 Compulsory modification of upstream petroleum infrastructure**

- (1) This section applies where—
  - (a) a person has made an application of a kind mentioned in subsection (1) of section 82, and
  - (b) the Secretary of State is considering whether to give a notice under subsection (11) of that section which would secure to the applicant the right sought in the application.
- (2) If it appears to the Secretary of State—
  - (a) that the pipeline or facility that is the subject of the application can and should be modified so as to increase its capacity; or
  - (b) that the pipeline or facility that is the subject of the application can and should be modified by installing in it a junction or other apparatus through which a pipeline of the applicant's may be connected,then the Secretary of State may give the applicant and the owner of the pipeline or facility a notice in accordance with subsections (3) and (4).
- (3) A notice under subsection (2) must—
  - (a) specify the modifications which the Secretary of State considers should be made to the pipeline or facility;
  - (b) specify the sums or the method for determining the sums which the Secretary of State considers should be paid to the owner by the applicant for the purpose of defraying the cost of the modifications;
  - (c) require the applicant to make, within the period specified for the purpose in the notice, arrangements which the Secretary of State considers appropriate to secure that those sums will be paid to the owner if the owner carries out the modifications or satisfies the Secretary of State that they will be carried out;
  - (d) require the owner, if the applicant makes those arrangements within that period, to carry out the modifications within a period specified for the purpose in the notice; and
  - (e) authorise the owner, if the Secretary of State is satisfied that the owner has carried out or will carry out the modifications, to recover those sums from the applicant.
- (4) A notice under subsection (2) may also contain provision for the purpose of ensuring that if the carrying out of the modifications prejudices any of the matters mentioned in subsection (9) of section 82 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.
- (5) If a notice under subsection (2) contains provision by virtue of subsection (4) 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.
- (6) Before giving a copy of a notice under subsection (5) the Secretary of State must—
  - (a) remove from the copy any provision included in the notice by virtue of subsection (3)(b); and

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- (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 of State considers may prejudice the commercial interests of the owner or the applicant if not removed.
- (7) In considering whether to give a notice under subsection (2) the Secretary of State must—
- (a) take into account (so far as relevant) the matters mentioned in paragraphs (a) to (g) of subsection (7) of section 82;
  - (b) give the persons mentioned in subsection (8) an opportunity to be heard.
- (8) Those persons are—
- (a) the applicant and the owner;
  - (b) any person with a right to have anything conveyed by the pipeline or processed by the facility;
  - (c) the Health and Safety Executive; and
  - (d) such other persons as the Secretary of State considers appropriate.
- (9) If the Secretary of State gives a notice under subsection (2), section 82 has effect in relation to the pipeline or facility concerned as if references to the pipeline or facility were references to the pipeline or facility as it would be with the modifications specified in the notice.
- (10) In this section “owner”, in relation to a pipeline or facility, means any of the following—
- (a) a person in whom the pipeline or facility is vested; and
  - (b) a lessee and any person occupying or controlling the pipeline or facility.

## **85 Variation of notices under sections 82 and 84**

- (1) The persons to whom a notice is given under subsection (11) of section 82 or subsection (2) of section 84 may agree to vary or set aside the notice.
- (2) The Secretary of State may vary a notice under subsection (11) of section 82 or subsection (2) of section 84 on the application of one of the persons to whom the notice was given.
- (3) But the Secretary of State may do so only if satisfied that the variation is necessary to resolve a dispute that has arisen in connection with the notice between the persons to whom it was given.
- (4) In considering whether to vary a notice the Secretary of State must give an opportunity to be heard to—
  - (a) the persons to whom the notice was given;
  - (b) any person with a right to have anything conveyed by the pipeline concerned or processed by the facility concerned;
  - (c) the Health and Safety Executive; and
  - (d) such other persons as the Secretary of State considers appropriate.
- (5) For the purposes of this section and section 86, a person is to be treated as having been given a notice if the person has had assigned to him or her a right which is secured by the notice or a duty which is imposed by the notice.

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## **86 Publication of notices and variations**

- (1) Where the Secretary of State gives a notice under subsection (11) of section 82 or subsection (2) of section 84, the Secretary of State may—
  - (a) publish the notice or any part of it;
  - (b) publish a summary of the effect of the notice or any part of it.
- (2) Where the Secretary of State varies a notice in exercise of the power conferred by subsection (2) of section 85, the Secretary of State may—
  - (a) publish the variation;
  - (b) publish the notice, or any part of it, as varied;
  - (c) publish a summary of the effect of the variation.
- (3) Before publishing anything under this section the Secretary of State must give an opportunity to be heard to the persons to whom the notice was given and to such other persons as the Secretary of State considers appropriate.

## **87 Powers of Secretary of State to require information**

- (1) Where the Secretary of State has reason to believe that a person has made or received an application of a kind mentioned in subsection (1) of section 82, the Secretary of State may by notice require the person to confirm whether or not that is the case.
- (2) The Secretary of State may by notice require a person who has made or received an application of a kind mentioned in subsection (1) of section 82 to provide the Secretary of State with specified information for the purpose of enabling the Secretary of State to decide—
  - (a) whether to exercise any function conferred on the Secretary of State by section 82, 83, or 84; and
  - (b) if so, how to exercise the function.
- (3) Where a person has applied to the Secretary of State under section 85 for a notice to be varied, the Secretary of State may by notice require any person within subsection (4) to provide the Secretary of State with specified information for the purpose of enabling the Secretary of State to decide—
  - (a) whether to vary the notice; and
  - (b) if so, how to vary the notice.
- (4) Those persons are—
  - (a) the person who applied for the notice to be varied;
  - (b) the other person to whom the notice was given;
  - (c) any person who has had assigned to him or her a right which is secured by the notice or a duty which is imposed by the notice.
- (5) The information that may be required under subsection (2) and (3) includes financial information.
- (6) The Secretary of State may not disclose any information obtained under this section unless—
  - (a) the person by or on behalf of whom the information was provided consents to the disclosure, or
  - (b) the disclosure is required by virtue of an obligation imposed on the Secretary of State by or under an enactment.

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(7) In this section “specified” means specified in a notice under subsection (2) or (3).

## 88 Enforcement

- (1) A person is guilty of an offence if, in circumstances falling within subsection (2), the person provides false information to the Secretary of State for the purpose of—
  - (a) inducing the Secretary of State to exercise or not to exercise any of the functions conferred on the Secretary of State by sections 82 to 85; or
  - (b) inducing the Secretary of State to exercise any of those functions in a particular way.
- (2) Those circumstances are that, at the time the information is provided, the person—
  - (a) knows or believes the information to be false; or
  - (b) is reckless as to whether or not it is false.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level five on the standard scale.
- (4) Proceedings for an offence under subsection (1) may not be instituted in England and Wales except—
  - (a) by the Secretary of State or by a person authorised to do so by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (5) Where an offence under subsection (1) is committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (6) Where an offence under subsection (1) is committed by a Scottish partnership and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner of the partnership, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (7) The duty of a person to comply with a notice under subsection (11) of section 82 or subsection (2) of section 84 is a duty owed to any person who may be affected by a failure to comply with it.
- (8) Where a duty is owed by virtue of subsection (7) to any person, the duty may be enforced as if it were contained in a contract between that person and the person who owes the duty.
- (9) The duty of a person to comply with a notice under section 87 is enforceable by civil proceedings by the Secretary of State—
  - (a) for an injunction or interdict;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
  - (c) for any other appropriate relief or remedy.
- (10) Civil proceedings under subsection (9) are to be brought—
  - (a) in England and Wales, in the High Court, or



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(b) in Scotland, in the Court of Session.

(11) In this section—

“officer”, in relation to a body corporate, means—

(a) any director, manager, secretary or other similar officer of the body corporate, or

(b) any person purporting to act in any such capacity;

“partner”, in relation to a Scottish partnership, includes any person who was purporting to act as a partner in the partnership.

(12) In subsection (11) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

## **89 Minor, consequential and supplemental provision**

(1) Schedule 2 contains minor and consequential amendments relating to this Chapter.

(2) Before exercising any power conferred by sections 82 to 85 in respect of an upstream petroleum pipeline that is situated partly in a foreign sector of the continental shelf, the Secretary of State must consult the relevant authorities in the other country.

(3) The use of a pipeline by any person in accordance with a right secured by a notice under subsection (11) of section 82 is not a contravention of section 14(1) of the Petroleum Act 1998.

(4) Subsection (5) applies where—

(a) an authorisation has been issued under section 14 of the Petroleum Act 1998 (construction and use of controlled pipelines) for works for the construction of a pipeline;

(b) the authorisation contains a term of a kind mentioned in section 15(5) of that Act; and

(c) the proposed pipeline is to be a relevant upstream petroleum pipeline.

(5) Before serving a notice under section 15(6) of the Petroleum Act 1998 on a person other than the holder of the authorisation, the Secretary of State must give that person an opportunity to make with respect to the proposed pipeline—

(a) an application of a kind mentioned in subsection (1)(a) of section 82 of this Act, and

(b) if applicable, an application under subsection (4) of that section;

and for the purposes of any such application the provisions of this Chapter have effect with the modifications in subsection (6).

(6) The modification are that—

(a) references to a pipeline are to the proposed pipeline as it would be once constructed in accordance with the terms of the authorisation;

(b) references to the owner of a pipeline are to the proposed owner of the proposed pipeline;

(c) section 84 is omitted.

(7) In subsection (4)(c) “relevant upstream petroleum pipeline” means an upstream petroleum pipeline that is “relevant” for the purposes of subsection (1) of section 82.

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## 90 Interpretation

(1) In this Chapter—

“foreign sector of the continental shelf” means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;

“gas” means any substance which is or, if it were in a gaseous state, would be gas within the meaning of Part 1 of the Gas Act 1986;

“gas processing facility” means any facility which—

- (a) carries out gas processing operations in relation to piped gas;
- (b) is operated otherwise than by a gas transporter; and
- (c) is not an LNG import or export facility (within the meaning of section 12 of the Gas Act 1995);

“oil processing facility” means any facility which carries out oil processing operations;

“payments” means payments in money or money's worth;

“petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998, and includes petroleum that has undergone any processing;

“piped gas” means gas which—

- (a) originated from a petroleum production project; and
- (b) has been conveyed only by means of pipes;

“pipeline” means a pipe or system of pipes for the conveyance of any thing;

“upstream petroleum pipeline” means a pipeline or one of a network of pipelines—

- (a) which is operated or constructed as part of a petroleum production project and is not a carbon dioxide pipeline;
- (b) which is used to convey petroleum from the site of one or more such projects—
  - (i) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;
  - (ii) directly to a place outside Great Britain;
  - (iii) directly to a terminal; or
  - (iv) indirectly to a terminal by way of one or more other terminals, whether or not such intermediate terminals are of the same kind as the final terminal; or
- (c) which is used to convey gas directly from a terminal to a pipeline system operated by a gas transporter or to any premises.

(2) For the purposes of this section—

“carbon dioxide pipeline” means—

- (a) a pipeline used to convey carbon dioxide to a carbon dioxide storage site; or
- (b) a pipeline which is not being used for any purpose but which is intended to be used to convey carbon dioxide to such a site;

“carbon dioxide storage site” means a facility—

- (a) for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal); and

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(b) in respect of the use of which a person is required to have a licence under section 18 of the Energy Act 2008;

“gas processing operation” means any of the following operations—

(a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a gas transporter or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain;

(b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water;

(c) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person,

(d) separating, purifying, blending, odourising or compressing gas for the purpose of—

(i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or

(ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and

(e) loading gas—

(i) at a facility which carries out operations of a kind mentioned in paragraph (d), or

(ii) piped from such a facility,

for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);

“gas transporter” has the meaning given by section 7(1) of the Gas Act 1986;

“oil processing operations” means any of the following operations—

(a) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;

(b) receiving stabilised crude oil and other hydrocarbon liquids piped from an oil processing facility carrying out operations of a kind mentioned in paragraph (a), or storing oil or other hydrocarbon liquids so received, prior to their conveyance to another place (whether inside or outside Great Britain);

(c) loading stabilised crude oil and other hydrocarbon liquids piped from a facility carrying out operations of a kind mentioned in paragraph (a) or (b) for conveyance to another place (whether inside or outside Great Britain);

“petroleum production project” means a project carried out by virtue of a licence granted under section 3 of the Petroleum Act 1998 or section 2 of the Petroleum (Production) Act 1934, or an equivalent project in a foreign sector of the continental shelf, and includes such a project which is used for the storage of gas;

“terminal” includes—

(a) facilities for such initial blending and other treatment as may be required to produce stabilised crude oil and other hydrocarbon liquids

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to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;

- (b) oil processing facilities;
- (c) gas processing facilities; and
- (d) a facility for the reception of gas prior to its conveyance to a place outside Great Britain.

## 91 Meaning of “associate” for the purposes of section 82

- (1) For the purposes of section 82(7)(d) and (9)(a) a person is an associate of another if—
- (a) either or both of them is a body corporate, and
  - (b) one of them controls the other, or both are controlled by the same person or persons,
- and subsections (2) to (6) set out the circumstances in which one person (“A”) controls another (“B”).
- (2) 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.
- (3) 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.
- (4) In subsection (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interests 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.
- (5) 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 determining whether, by virtue of subsections (2) to (5), A controls B, A shall be taken to possess—
- (a) any rights and powers possessed by a person as nominee for it, and
  - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).

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