

Title: Reform of the regime for resolving disputes over third party access to and for compulsory modifications of upstream petroleum infrastructure (Energy Bill 2010) Lead department or agency: DECC Other departments or agencies:	Impact Assessment (IA)
	IA No: DECC0019
	Date: 01/12/2010
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary? Businesses who own upstream petroleum infrastructure have some degree of monopoly power which they can use to charge above-(opportunity) cost access charges to third parties. The current legislation is piecemeal and inconsistent and there are gaps and uncertainties in the coverage of the Secretary of State's powers to determine third party access rights to, and to require compulsory modifications to, infrastructure in case of disputes. That means that some parts of the upstream petroleum infrastructure are not covered, or are covered ineffectively, by the current legislation. This could leave some of the infrastructure being inefficiently used, potentially reducing the amount of recovery of oil and gas compared to the maximum economic levels.	
What are the policy objectives and the intended effects? The overarching policy objective is to maximise the economic recovery of the UK's oil and gas reserves through the most efficient use of existing infrastructure. The rationalisation and extension of the Secretary of State's powers should reduce delays in development by increasing the credibility of use of those powers.	
What policy options have been considered? Please justify preferred option (further details in Evidence Base) In addition to the "Do Nothing" option (Option 1), which would be unsatisfactory, we have considered (Option 2) just replacing the existing piecemeal/inconsistent legislation with a single comprehensive set of powers relating to third party access, rationalising and simplifying the legislation. This would make the threat of use of the powers more credible. But, in addition, we have considered, and prefer to include, (Option 3) new powers to strengthen the legislation by allowing for the Secretary of State to deem a request for his intervention, where he has reasonable grounds to believe that there is no realistic prospect of the parties reaching an agreement, to overcome the evident reluctance of potential users to resort to that route to resolving disputes. This should lead to more timely negotiation of third party access and, in the hopefully rare cases requiring formal intervention, speedier and more effective intervention.	
When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 01/2015
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.



Signed by the responsible Minister:

..... Date: 01/12/2010.....

Summary: Analysis and Evidence

Policy Option 2

Description: Re-enact and streamline the existing provisions

Price Base Year 2010	PV Base Year 2010	Time Period Years 15	Net Benefit (Present Value (PV)) (£m)		
			Low: 26	High: 51	Best Estimate: 28

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

There would be enforcement costs only if there are (additional) disputes requiring resolution by the Secretary of State. It is hoped that there will be no (more) disputes requiring resolution by the Secretary of State as a result of the legislation.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	2	26
High	0	2	51
Best Estimate	0	10	28

Description and scale of key monetised benefits by 'main affected groups'

Users should get more timely, lower cost access to infrastructure resulting in faster/greater oil and gas production. The benefit would accrue to the oil and gas companies concerned and to the Exchequer; there would also be transfers from infrastructure owners to users. The benefits are net of the resource costs of hydrocarbon production. They are all direct benefits to business.

Other key non-monetised benefits by 'main affected groups'

None.

Key assumptions/sensitivities/risks

Size and number of fields being developed earlier as a result of measures plus future oil prices are the main determinants of the net benefits. The actual benefit will depend on which new fields are brought forward for development which might use the infrastructure in question, their size and prices when they are in production.

Discount rate (%)

3.5

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope Yes/No
New AB: No	AB savings:	Policy cost savings:	Net:	

Summary: Analysis and Evidence

Policy Option 3

Description: Re-enact and streamline the existing provisions but also strengthen the provisions by allowing the Secretary of State to initiate a determination

Price Base Year 2010	PV Base Year 2010	Time Period Years 15	Net Benefit (Present Value (PV)) (£m)		
			Low: 52	High: 103	Best Estimate: 56

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

There would be enforcement costs only if there are (additional) disputes requiring resolution by the Secretary of State. It is hoped that there will be no (more) disputes requiring resolution by the Secretary of State as a result of the legislation.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	4	52
High	0	20	103
Best Estimate	0	4	56

Description and scale of key monetised benefits by 'main affected groups'

Users should get more timely, lower cost access to infrastructure resulting in faster/greater oil and gas production. The benefit would accrue to the oil and gas companies concerned and to the Exchequer; there would also be transfers from infrastructure owners to users. The benefits are net of the resource costs of hydrocarbon production. They are all direct benefits to business.

Other key non-monetised benefits by 'main affected groups'

None.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Size and number of fields being developed earlier as a result of measures plus future oil prices are the main determinants of the net benefits. The actual benefit will depend on which new fields are brought forward for development which might use the infrastructure in question, their size and prices when they are in production.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope Yes/No
New AB:	AB savings:	Policy cost savings:	Net:	

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Other GB and UKCS				
From what date will the policy be implemented?	2011				
Which organisation(s) will enforce the policy?	DECC				
What is the annual change in enforcement cost (£m)?	0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	Yes				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: 0		Non-traded: 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro 0	< 20 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	<i>Guidance on Upstream Oil and Gas Infrastructure Access Dispute Resolution</i> at https://www.og.decc.gov.uk/upstream/infrastructure/infradispute_guide.htm
2	<i>Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UK Continental Shelf / Guidelines to the Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UKCS</i> at http://www.oilandgasuk.co.uk/publications/viewpub.cfm?frmPubID=243
3	<i>Commercial Code of Practice</i> at https://www.og.decc.gov.uk/regulation/codes/comm_code/index.htm
4	Annex F (Fossil fuel and retail price assumptions) to <i>Updated Energy and Emissions Projections</i> (DECC, June 2010) at http://www.decc.gov.uk/en/content/cms/statistics/projections/projections.aspx

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

[See spreadsheet for profiles for central case benefits for options 2 and 3 compared with Option 1]

Evidence Base (for summary sheets)

Problem under consideration

Businesses which own upstream petroleum infrastructure have some degree of monopoly power which they can use to charge above-(opportunity) cost access charges to third parties. The current legislation is piecemeal and inconsistent and there are gaps and uncertainties in the coverage of the Secretary of State's powers to determine third party access rights and require compulsory modifications to infrastructure in case of disputes that mean some parts of the upstream petroleum infrastructure are not covered. This could leave some of the infrastructure being inefficiently used, potentially reducing the amount of recovery of oil and gas compared to the maximum economic levels. Government should have the capability to resolve disputes in this area, though it is not desired or expected that this would be required often.

• Rationale for intervention

Access to infrastructure on fair and reasonable terms is crucial to maximising the economic recovery of the UK's oil and, particularly, gas because many fields on the UK Continental Shelf (UKCS) do not contain sufficient reserves to justify their own infrastructure but are economic as satellite developments utilising existing infrastructure.

The investment required to build the infrastructure needed to transport (oil and) gas from offshore oil and gas fields is characterised by significant costs, significant economies of scale and irreversibility. This can lead to conflict between the efficient use of resources and the wish for greater competition. The efficient use of resources requires no unnecessary duplication of infrastructure while greater competition requires alternative offtake routes to be available to producers. Effective regulatory action may be necessary to prevent the exploitation of local monopoly positions where competition does not exist.

The evolution of offshore infrastructure on the UKCS has been characterised by field owners developing pipelines for sole usage, followed by ullage (i.e. spare capacity) progressively being made more available for use by third parties on payment of a tariff (i.e. a payment for transportation and processing services). Field-dedicated lines are economically viable when fields are relatively large but become less viable as fields get smaller. As a consequence, there is scope for gains by all parties and benefits to the economy generally and to public finances if the development of small fields is made viable by the owners allowing access to their existing infrastructure, with the infrastructure owners gaining additional revenue from the new users. Some of these gains and benefits would be lost if monopolistic behaviour were to delay the timely development of new small fields.

• Policy objective

The overarching policy objective is to maximise the economic recovery of the UK's oil and gas reserves through the most efficient use of existing infrastructure. The rationalisation and extension of the Secretary of State's powers should make this more likely by facilitating timely and efficient development of all economic prospects.

• Description of options considered (including do nothing)

(1) Do Nothing

The current provisions are spread across four Acts of Parliament which contain different processes, requirements and definitions, with some types of infrastructure not explicitly covered by the various provisions. For example, there are at present no powers to require compulsory modifications to oil or gas processing facilities. The only formal application to date for intervention by the Secretary of State has been significantly complicated and delayed by these differences and the absence of powers in relation to some types of infrastructure and/or related services.

(2) Re-enact and streamline the existing provisions

The current provisions would be replaced with one set of requirements covering disputes over third party access to, and compulsory modifications of, all relevant platforms, pipelines and terminals. As with the existing legislation, the replacement provisions would provide that anyone seeking access to upstream infrastructure (which includes offshore pipelines, processing facilities and relevant onshore terminals) may apply to the Secretary of State for determination of relevant terms and conditions, if unable to secure these by negotiation with the owners of the facilities. The Secretary of State would seek

information from both sides and determine appropriate terms and conditions, so far as these may not already be agreed between the parties.

The opportunity would also be taken to drop a requirement for onshore gas processing facilities and certain gas pipelines to publish annually their main commercial conditions for access. The requirement was introduced in 2000 as part of the implementation of the (First) Gas Directive (98/30/EC) but is now considered to be unnecessary in light of the Third Gas Directive (2009/73/EC).

(3) As Option 2 but also strengthen the provisions by allowing the Secretary of State to initiate a determination

To speed up the negotiation process, there would, in addition to the changes in Option 2, be new provisions for the Secretary of State to seek information about any negotiations for access and, where appropriate, for him to initiate a determination at his own discretion (by deeming that an application has been made for a determination), where he has reasonable grounds to believe that there is no realistic prospect of the parties reaching an agreement. These new provisions would give strong incentives to the negotiating parties to negotiate positively and quickly.

The policy intention would remain that the Secretary of State's powers would be a backstop to be used only in the event that normal commercial negotiations were not successful, with a genuine impasse having been reached.

• Costs and benefits of each option

Option 2 compared with Option 1

Users should get more timely and possibly lower cost access to infrastructure resulting in faster/greater oil and gas production. The benefit would accrue to the oil and gas companies concerned and to the Exchequer; there might also be transfers from infrastructure owners to users. Costs and benefits resulting from changes in the price received/paid for infrastructure access would represent transfer payments between businesses. Their scale is difficult if not impossible to quantify as we do not know the extent to which (greater) intervention might reduce tariffs. In addition to the cases of access directly affected by the new regulations there could be an effect through lower tariffs becoming accepted as the norm for future negotiations and that in turn could bring forward (more or earlier) developments. But quantification of the scale of such effects would be entirely speculative.

The approach to quantifying the net benefit to society from this option was to assume the periodic earlier development than otherwise of a typically-sized (15 million barrel) oil field with benefits arising in present value terms from earlier than otherwise production (allowing for forecast rises in real product prices which would offset the timing benefit). A range of average annual benefit estimates of £2–10 million around a central estimate of £2 million pa (all in 2010 prices) was arrived at as follows. We used the low, central and high crude oil price cases in DECC's latest published fossil fuel price assumptions; assumed development and production costs of \$35/barrel; and an exchange rate of \$1.57:£1, based on the average rate for the latest calendar year, namely 2009. Then we assumed that, every second year from 2013 onwards, one development, with extra production of 3 million barrels for each of 5 years, would benefit from the proposed change, with its production start date brought forward a year. Difficult negotiations extending unnecessarily over several months can result in slippage of projects by a whole year due to the need to conduct much offshore work during the summer "weather window". There are typically 10 or so new field developments a year, a few with higher/longer production profiles than those assumed, so the potential benefit is greater than indicated if more or bigger fields benefit. (The low case estimate of impact actually corresponds to the central case price assumption.) The assumption of one field being impacted every second year is necessarily arbitrary but is felt to give a reasonable indication of the scale of impact from this option which makes an application for intervention more credible as it closes gaps in the scope of the current legislation that might have frustrated possible past applications.

There would in addition be a small (unquantified) saving to the operators of onshore gas processing facilities and certain gas pipelines from dropping the requirement for them to publish annually their main commercial conditions for access

Option 3 compared with Option 1

Compared with Option 2, we would expect further benefits to follow from the additional measures in Option 3. Assuming that they are successful in reinforcing even more timely negotiations, we have assumed that each year they bring forward the timing of one development by one year. The benefits of Option 3 are therefore double the benefits of Option 2. The assumption of one field being impacted every year, rather than every second year as in Option 2, is again necessarily arbitrary. It is felt to give a

reasonable indication of the scale of impact from this option which, in addition, introduces an ability for the Secretary of State to take a more proactive role. The threat of an intervention by the Secretary of State without having had an application by a prospective user should encourage more timely negotiation.

As with Option 2, there would in addition be a small (unquantified) saving to the operators of onshore gas processing facilities and certain gas pipelines from dropping the requirement for them to publish annually their main commercial conditions for access.

- **Risks and assumptions**

There is a risk that the enhanced role for involvement by the Secretary of State could undermine the negotiation process. The new powers are intended to underpin negotiated access, not to replace it. Third party applicants for access already have a right to seek a determination from the Secretary of State where they do not consider that fair and reasonable terms are being offered by negotiation. To date, since 1975 when powers in this area were first introduced, there has been only one formal request for such intervention, suggesting a general unwillingness to seek the involvement of the Secretary of State. The intention is that the Secretary of State's new powers would be used to underpin the industry's own Infrastructure Code of Practice. This already sets an obligation on third party applicants to turn to the Secretary of State if their negotiations with infrastructure owners are unduly protracted.

The risk of an adverse impact on investment in infrastructure is considered to be low as the focus of the legislation is on existing infrastructure and where infrastructure is put in place, oversized or maintained for third party use that is recognised in the terms that would be set by the Secretary of State if he were to require access to be provided to it.

- **Administrative burden and policy savings calculations**

There should be no material burden on industry as provision of information to the Department is required already both as part of the process of agreeing to development plans for new fields (and significant changes to existing fields' development plans) and as part of compliance with the voluntary industry Infrastructure Code of Practice.

- **Wider impacts**

None anticipated. Effect on UK/global oil and gas production and/or oil and gas prices is not expected to be significant.

- **Summary and preferred option with description of implementation plan**

Because it is expected to provide greater benefits the preferred option is to re-enact and streamline the existing provisions on resolving disputes over third party access to and for compulsory modifications of upstream petroleum infrastructure but also to strengthen those provisions by allowing the Secretary of State to initiate a determination. The amended powers would be included in the Energy Bill 2010. Existing Guidance would be updated to reflect the revised provisions ahead of their commencement.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>