

Proposal for Amendments to the Danish Subsoil Act

Proposals for amendments to the Danish Subsoil Act have been brought forward by the Danish Minister of Energy, Supply and Climate on 27 February 2019. The proposal contains a number of diverse amendments to the Act.

1. The proposal aims to implement the political decision of 22 February 2018 of a stop to exploration and production of hydrocarbons on land and in the inner waters of Denmark. The prohibition will include pre-investigations. The stop could most likely have been implemented as an administrative measure but will be carried out in the form of a change of the law in order to ensure the necessary political back-up, as the change is of a fundamental nature. Coordinates and a map of the area, where licences can be granted in the future, is appended to the proposal.
2. Under the new proposals, indirect – and not merely direct – transfers of license interests will lead to subsidiary legal liability for the transferor, for costs relating to decommissioning of facilities etc. According to the authorities, the current section 29 a only covers direct transfers. Since implementation of the rules in July 2015, there have been 5 cases of indirect transfers involving facilities and in all cases has the Danish Energy Agency determined that subsidiary liability is necessary. As of February 2019 the subsidiary liability has in no cases been brought forward.
3. The authorities shall have a right to grant dispensations from the principle of subsidiary liability in special, specific cases, based on whether the subsidiary liability will give better security or not. According to the authorities, the proposal is based on the fact that in intra-group direct transfers, a subsidiary liability may not always have any significant effect.
4. A right is granted to the authorities to set out additional rules regarding obtaining and submission of information by the license holders. Rights already exist but according to the minister it is anticipated that more transparent and unified rules on information submission, as well as digitalisation of the process, will increase the quality of submission and the case handling of the authorities. The new rules should not in and of themselves extend the type and character of information that can be requested.
5. Section 17 a of the Act contains rules on preparedness planning for supply of hydrocarbons in the event of crisis situations. These rules are proposed to be expanded to apply to owners of cables and pipelines for the transport of hydrocarbons in the Danish territorial waters.
6. Chapter 10 of the Act – Section 38 – contains rules on criminal offenses and sanctions in the form of penalties and prison for up to 4 months under the law. The proposal aims to clarify the contents of the sanctions provisions.

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7. The proposal also contains a number of more technical amendments, some of them necessitated by the EU Offshore Safety Directive, to clarify that the rules also apply to the 1962 Sole Concession in Denmark, which was granted under a previous (1950) Subsoil Act. According to the authorities, what must be called a “lack of consequence” in the original implementation has caused legal uncertainty, however it was always clear that the rules would apply to license holders and assistance providers of the 1962 concession and not merely to those that have been granted licences under the current (1981) Act.

The amendments, once adopted, are expected to enter into force on 1 July 2019.

Any proposal for amendment of an Act will have to pass through Parliament in three readings (discussion, negotiation). The first reading is set for 14 March 2019.

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For questions or comments to this newsletter or energy and offshore in general, please contact Bo Sandroos on +45 4088 5422 or bos@wsco.dk.

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