

*This draft supersedes the draft laid on 10th February 2005 and is being issued free of charge to all known recipients of the earlier draft.*

*Draft Regulations laid before Parliament under section 2(8) of the Pollution Prevention and Control Act 1999, for approval by resolution of each House of Parliament*

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## DRAFT STATUTORY INSTRUMENTS

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**2005 No.**

# ENVIRONMENTAL PROTECTION

## The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005

*Made - - - - 2005*

*Coming into force in accordance with regulation 1*

Whereas the Secretary of State has consulted the persons required to be consulted by section 2(4) of the Pollution Prevention and Control Act 1999<sup>(1)</sup>

And whereas a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 2(8) and (9) of that Act;

Now, therefore, the Secretary of State in exercise of the powers conferred on her by sections 2 and 7(9) of that Act hereby makes the following Regulations—

### **Citation and commencement**

1. These Regulations may be cited as the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 and shall come into force on the thirtieth day after the day on which they are made.

### **Interpretation**

2. In these Regulations —

“discharge”, in relation to oil, means its release from an offshore installation;

“emission” means the direct or indirect release of substances from individual or diffuse sources into the air or into relevant waters;

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(1) [1999 c.24](#); the provisions of paragraph 21A of Part II of Schedule I were inserted into the 1999 Act by section 38 of the Waste and Emissions Trading Act [2003 \(c.33\)](#).

“existing exemption” means an exemption granted by the Secretary of State pursuant to section 23 of the Prevention of Oil Pollution Act 1971(2), being an exemption which is in force on the day before the day on which these Regulations come into force;

“offshore installation” has the same meaning as in section 44 of the Petroleum Act 1998(3);

“oil” means any liquid hydrocarbon or substitute liquid hydrocarbon, including dissolved or dispersed hydrocarbons or substitute hydrocarbons that are not normally found in the liquid phase at standard temperature and pressure, whether obtained from plants or animals, or mineral deposits or by synthesis;

“operator” means any person who operates an offshore installation;

“permit holder” means the holder from time to time of a permit granted under these Regulations;

“pollution” means the introduction by man, directly or indirectly, of substances or energy into relevant waters which results, or is likely to result, in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea;

“relevant waters” has the same meaning as in section 44 of the Petroleum Act 1998(3) save that it:—

- (a) does not include Scottish controlled waters; and
- (b) includes places below relevant waters;

“Scottish controlled waters” means any waters which are controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974(4).

### **Discharge permits**

**3.—**(1) Subject to paragraphs (2) and (3), no oil shall be discharged into relevant waters save in accordance with the terms of, and conditions attached to, a permit granted in accordance with these Regulations.

(2) There shall be exempt from the requirement for a permit under these Regulations discharges regulated by —

- (a) the Offshore Chemicals Regulations 2002 (5);
- (b) the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996(6); or
- (c) the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1998(7).

(3) Where a person is carrying on a discharge of oil to which an existing exemption applies paragraph (1) shall not apply in respect of that discharge until—

- (a) such time as the Secretary of State may specify by notice in writing to that person; or
- (b) (if no notice is given by the Secretary of State in accordance which sub-paragraph (a)) the date after the day on which the period of two years commencing on the date these Regulations come into force expires.

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(2) 1971 c.60.

(3) 1998 c.17.

(3) 1998 c.17.

(4) 1974 c.40; the provisions of section 30A(1) were inserted in the 1974 Act by section 169 of, and Schedule 23 to, the Water Act 1989 (c.15).

(5) S.I. 2002/1355.

(6) S.I. 1996/2154.

(7) S.I. 1998/1377.

(4) A person who discharges oil into relevant waters shall provide the Secretary of State with such information as the Secretary of State may reasonably require for the purpose of performing her functions under these Regulations.

### **Grant or refusal and contents of permits**

4.—(1) Where the Secretary of State receives an application for a permit pursuant to regulation 5, she may either grant or refuse the application.

(2) The Secretary of State may attach conditions to any permit granted by her pursuant to paragraph (1) which are calculated to ensure that —

- (a) the concentration, frequency, quantity, location or duration of any discharge is subject to appropriate restrictions;
- (b) appropriate measures are taken to minimise pollution including, in particular, the appropriate use of technology to limit discharges;
- (c) necessary measures are taken to prevent accidents affecting the environment or, where they occur, to limit their consequences in relation to the environment;
- (d) there is carried out appropriate monitoring of the discharges to which the permit relates, and such conditions may include —
  - (i) provisions relating to measurement techniques, the frequency of measurement and evaluation procedures; and
  - (ii) obligations to supply the Secretary of State with data required for checking compliance with the permit, including any data setting out the actual concentration, frequency, quantity, location or duration of any discharges which have occurred during a specified period.

(3) A permit shall specify the period for which it is to have effect.

(4) In addition to any conditions that may be attached to any permit by virtue of paragraph (2), the Secretary of State may attach to a permit such other conditions as she thinks fit.

### **Contents of permit application**

5.—(1) An application for the grant of a permit shall be made in writing by the operator of the offshore installation and shall contain—

- (a) a description of the offshore installation from which the discharge is to take place, including the location of the offshore installation;
- (b) a description of the oil to which the application relates and of the circumstances in which it is to be discharged; and
- (c) a description of the measures planned to monitor the discharge in relation to which a permit is sought.

(2) For the purpose of considering an application under this regulation, the Secretary of State may by notice in writing require the operator to provide such other information as may be specified in the notice.

### **Fees**

6.—(1) The Secretary of State may, in accordance with a charging scheme made by her for this purpose, charge operators fees in respect of any of the matters to which this paragraph applies.

(2) The matters to which paragraph (1) applies are —

- (a) the grant of a permit;

- (b) the variation of a permit or of the conditions to which it is subject;
- (c) the assignment of a permit;
- (d) the surrender of a permit;
- (e) the subsistence of a permit;
- (f) the testing or analysis of substances;
- (g) the validating of, or of the results of, any testing or analysis of substances; and
- (h) the assessment of the effect upon the environment of the release into it of any oil,

but paragraph (1) only applies to the matters referred to in sub-paragraphs (f) to (h) in cases where the testing, analysis, validating or assessment is in any way in anticipation of, or otherwise in connection with, the making of permit applications or is carried out in pursuance of conditions to which the permit is subject.

(3) A charging scheme made under this regulation shall be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure as may be incurred by or on behalf of the Secretary of State in connection with any of the matters to which paragraph (1) applies.

#### **Variation of permit terms and conditions**

7.—(1) The Secretary of State may, whenever she thinks fit, review the terms and conditions attached to any permit and, when an application is made in accordance with paragraph (2), she shall review the terms and conditions attached to the permit in question.

(2) A permit holder may apply in writing for a variation of the terms and conditions of a permit.

(3) Where, having conducted a review in accordance with paragraph (1), the Secretary of State considers that the terms and conditions of a permit should be varied, she shall give notice to the permit holder in writing of her intention to vary those terms and conditions.

(4) Subject to paragraph (5), a notice given by the Secretary of State pursuant to paragraph (3) shall —

- (a) provide details of the proposed variation; and
- (b) specify the date (“the relevant date”) on which the proposed variation is to take effect.

(5) Where the Secretary of State proposes to vary the terms and conditions of a permit otherwise than in accordance with an application made under paragraph (2) —

- (a) the relevant date shall be not less than 14 days after the date on which notice is given pursuant to paragraph (3);
- (b) the permit holder shall be entitled to make representations in writing as to whether, and if so, how the terms and conditions should be varied;
- (c) where no representations under sub-paragraph (b) are received prior to the relevant date, the variation shall have effect on that date; and
- (d) where representations under sub-paragraph (b) are received prior to the relevant date, the Secretary of State shall consider them in determining whether or not to vary the terms and conditions as originally notified pursuant to paragraph (3) and may determine that revised terms and conditions shall come into effect on a date later than the relevant date.

(6) Where an application is made under paragraph (2) and the Secretary of State decides not to vary the terms and conditions of the permit in question, she shall give notice in writing of her decision to the permit holder.

### **Assignment of permit**

8.—(1) Where a permit holder wishes to assign his permit to another person (“the proposed assignee”) the permit holder and the proposed assignee shall each make an application to the Secretary of State to effect the assignment.

(2) The Secretary of State shall effect the assignment provided she is satisfied that the proposed assignee will become the operator of the installation to which the permit relates after the assignment is effected.

(3) The Secretary of State shall effect an assignment under this regulation by causing the permit to be endorsed with the name and other particulars of the proposed assignee as the permit holder.

(4) The Secretary of State may, by notice, require the permit holder or the proposed assignee to furnish such further information specified in the notice, within the period so specified, as the Secretary of State may require for the purpose of determining an application under this regulation.

### **Revocation and surrender of permits**

9.—(1) The Secretary of State may by notice in writing revoke a permit granted pursuant to these Regulations where she is of the opinion that —

- (a) any application made under these Regulations in connection with that permit contained or was supported by any information or statement which was false or misleading in a material particular; or
- (b) any person has been guilty of a breach of any term or condition attached to the permit.

(2) A permit holder may surrender his permit by notice in writing to the Secretary of State.

### **Allowance Trading**

10.—(1) The making by the Secretary of State of the following is hereby authorised —

- (a) a plan or plans for the allocation of allowances in relation to specified emissions (“allocation plans”); and
- (b) one or more emissions trading schemes (“the trading schemes”) for the purpose of facilitating the trading of allowances allocated under the allocation plans.

(2) The Secretary of State may include in the rules of the trading schemes—

- (a) provision for penalties in respect of contraventions of the terms and conditions of the trading scheme; and
- (b) provision for the amount of any penalty under the trading scheme to be such as may be set out in or calculated in accordance with the scheme.

### **Registry**

11.—(1) The Secretary of State shall for the purposes of the trading schemes establish and maintain one or more registries in which there shall be recorded —

- (a) allocations;
- (b) adjustments of allocations;
- (c) trades;
- (d) transfers;
- (e) withdrawals; and
- (f) surrenders

of allowances.

## Inspectors

- 12.—(1) The Secretary of State may, if she thinks fit, appoint one or more inspectors –
- (a) to investigate whether the requirements, restrictions or prohibitions imposed by or under these Regulations have been, or are being complied with; or
  - (b) to monitor any discharge of oil.
- (2) The inspectors shall report to the Secretary of State in such manner as she may direct.
- (3) An inspector appointed under paragraph (1) may for any of the purposes mentioned in that paragraph and on producing evidence of his appointment –
- (a) at any reasonable time (or, in a situation which in his opinion may give rise to a risk of significant pollution as a result of the discharge of oil, at any time) board any offshore installation;
  - (b) on boarding an offshore installation, take with him any other person authorised by the Secretary of State for the purposes mentioned in paragraph (1) and any equipment or materials that he thinks he may require;
  - (c) make such examination or investigation as he considers necessary (including any examination or investigation of the offshore installation or of the maintenance or monitoring of apparatus on the offshore installation);
  - (d) give a direction requiring that any part of the offshore installation be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
  - (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (f) take samples of any articles or substances found on the offshore installation or take samples of the atmosphere, land, seabed (including the subsoil thereof) or water in the vicinity of the offshore installation;
  - (g) in the case of any article or substance which he finds on the offshore installation, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless, in the circumstances of the case, that is necessary);
  - (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely –
    - (i) to examine it and do to it anything which he has power to do under that sub-paragraph;
    - (ii) to ensure that it is not tampered with before his examination of it is completed; and
    - (iii) to ensure that it is available for use as evidence in any proceedings relating to an offence under these Regulations;
  - (i) require any person whom he has reasonable cause to believe is able to give any information relevant to any examination or investigation under sub-paragraph (c) –
    - (i) to attend at a place and time specified by the inspector;
    - (ii) to answer (in the absence of any person other than persons whom the inspector may allow to be present and a person nominated to be present by the person upon whom the requirement is imposed) such questions as the inspector thinks fit to ask; and
    - (iii) to sign a declaration as to the truth of his answers;
  - (j) require the production of, and inspect and take copies of –

- (i) any records which by virtue of any provision of any permit granted under these Regulations are required to be kept; and
- (ii) any records which he considers it necessary for him to see for the purposes of any examination or investigation under sub-paragraph (c); and
- (k) require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this regulation.

(4) An answer given by a person in compliance with a requirement imposed under paragraph 3(i) shall be admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings.

(5) In criminal proceedings in which such person as is mentioned in paragraph (4) is charged with an offence to which this paragraph applies no evidence relating to that person's answer may be adduced and no questions relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person.

(6) Paragraph (5) applies to any offence other than one under –

- (a) regulation 16(1)(g)(ii);
- (b) section 5 of the Perjury Act 1911<sup>(8)</sup> (false statements made otherwise than on oath);
- (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(9)</sup> (false statements made otherwise than on oath); or
- (d) article 10 of the Perjury (Northern Ireland) Order 1979<sup>(10)</sup> (false statutory declarations and other (false unsworn statements)).

(7) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would, on grounds of legal professional privilege, be entitled to withhold production on an order for disclosure or discovery in an action in the High Court or in the High Court in Northern Ireland or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

### **Enforcement notices**

**13.—**(1) Subject to paragraph (2), if the Secretary of State is of the opinion that any person has contravened or is contravening any condition of a permit or is likely to contravene any such condition, the Secretary of State or an inspector appointed by her under regulation 12 may serve on the permit holder a notice in writing (“an enforcement notice”) which —

- (a) states that the Secretary of State is of the opinion mentioned in paragraph (1);
- (b) specifies the matters which constituted, constitute or, as the case may be, are likely to constitute the contravention;
- (c) specifies the steps that must be taken to remedy or, as the case may be, to prevent the contravention; and
- (d) specifies the period within which those steps must be taken.

(2) Paragraph (1) shall not apply where the permit condition in question relates exclusively to one or more of the trading schemes.

(3) The steps that may be specified under paragraph (1)(c) include steps that must be taken to remedy any pollution caused by the contravention.

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<sup>(8)</sup> 1911 c.6.

<sup>(9)</sup> 1995 c.39.

<sup>(10)</sup> 1979 No. 1714 (NI 19).

(4) Where a person to whom an enforcement notice is addressed has failed to take the action required by it within such time as may be specified by it and such a notice has not been revoked, the Secretary of State may herself undertake any action so required and the reasonable costs and expenses of her so doing shall be recoverable as a debt from that person.

(5) A person to whom an enforcement notice is addressed shall afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers conferred on the Secretary of State by paragraph (4).

(6) The Secretary of State or an inspector appointed by her under regulation 12 may revoke an enforcement notice served under paragraph (1).

(7) The exercise by the Secretary of State of any power conferred by paragraphs (1) or (4) shall be without prejudice to the exercise by her of any other power under any other provision of these Regulations.

### **Prohibition notices**

**14.**—(1) If the Secretary of State is of the opinion that the operation of an offshore installation involves an imminent risk of serious pollution as a consequence of any discharge of oil, the Secretary of State or an inspector appointed by her under regulation 12 may serve a notice in writing (“a prohibition notice”) on the permit holder.

(2) A prohibition notice may be served whether or not the risk relates to the contravention of a permit granted under these Regulations, and may relate to any aspects of the operation of an offshore installation whether or not regulated by the conditions of such a permit.

(3) A prohibition notice —

- (a) shall state that the Secretary of State is of the opinion mentioned in paragraph (1);
- (b) shall specify the risk involved in the operation of the offshore installation;
- (c) shall specify the steps that must be taken to remove it and the period within which they must be taken; and
- (d) may direct that any permit granted under these Regulations shall, until the notice is withdrawn wholly or in part, cease to have effect and where the direction applies to part only of the operation of the offshore installation, it may impose conditions to be observed in carrying on that part of the operation which is authorised under the relevant permit.

(4) The Secretary of State or an inspector appointed by her under regulation 12 may by notice withdraw a prohibition notice wholly or in part at any time and shall withdraw a notice when the Secretary of State is satisfied that the steps required by the notice have been taken.

(5) It shall be the duty of the person to whom the prohibition notice is addressed to comply with its terms save to the extent that it is withdrawn wholly or in part.

(6) The service of a prohibition notice shall be without prejudice to the exercise by any person of any power under any other provision of these Regulations.

### **Appeal to the High Court, Court of Session, or High Court in Northern Ireland**

**15.**—(1) In this regulation, the expressions “the English area”, “the Scottish area” and “the Northern Irish area” shall have the same meanings as in the Civil Jurisdiction (Offshore Activities) Order 1987(11).

(2) Subject to paragraph (6), any applicant for a permit, any permit holder or any person the subject of a decision by the Secretary of State under these Regulations, aggrieved by her decision, may appeal to the court.

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(11) S.I. 1987/2197



- (3) Subject to paragraph (4), the expression, “the court” means —
- (a) in respect of a decision relating to the discharge of oil in the English area, the High Court;
  - (b) in respect of a decision relating to the discharge of oil in the Scottish area (excluding Scottish controlled waters), the Court of Session;
  - (c) in respect of a decision relating to the discharge of oil in the Northern Irish area, the High Court in Northern Ireland.

(4) Where oil is discharged or is to be discharged in more than one of the areas referred to in paragraph (1) (excluding Scottish controlled waters), any of the courts having jurisdiction in the area or areas where oil is discharged or is to be discharged shall have jurisdiction in relation to the decision in question.

(5) Unless the court otherwise orders, any decision of the Secretary of State which is the subject of an appeal under paragraph (2) shall remain in force pending a final disposal of that appeal.

(6) An appeal under this regulation shall be made within 28 days of written notification of the decision in question.

## Offences

**16.—**(1) Subject to paragraphs (2) and (4), a person is guilty of an offence if he —

- (a) contravenes regulation 3(1);
- (b) fails to comply with the terms of an enforcement notice or a prohibition notice;
- (c) fails to supply any information required to be supplied by virtue of the terms or conditions of any permit granted under these Regulations;
- (d) fails to supply any information required to be supplied by virtue of regulation 3(4);
- (e) wilfully obstructs an inspector appointed under regulation 12;
- (f) without reasonable excuse, fails to comply with a requirement imposed in pursuance of regulation 12(3), or prevents another person from complying with such a requirement;
- (g) knowingly or recklessly makes a statement which he knows to be false or misleading in a material particular where such a statement —
  - (i) is made in connection with, or for the purposes of, any application for a permit, the renewal of a permit, the variation of a permit or the assignment of a permit; or
  - (ii) is made for the purposes of satisfying any requirement under these Regulations for the supply of information to the Secretary of State or an inspector appointed by her pursuant to regulation 12.

(2) Where a person is charged with an offence under paragraph (1)(a), (1)(b), (1)(c) or (1)(d), it is a defence to prove that the contravention or failure —

- (a) arose as a result of something which could not reasonably have been prevented by him; or
- (b) subject to paragraph (3), was due to something done as a matter of urgency for the purpose of securing the safety of any person.

(3) A person does not have the defence provided by paragraph (2)(b) if the court is satisfied —

- (a) that the thing done —
  - (i) was not necessary for the purpose mentioned in that paragraph; and
  - (ii) was not a reasonable step to take in the circumstances; or
- (b) that it was necessary for the purpose mentioned in that paragraph but the necessity was due to the fault of the defendant.

(4) The discharge of oil into relevant waters in contravention of any one or more of the terms of or conditions attached to a permit shall not constitute an offence for the purpose of this regulation where the term or condition in question relates exclusively to one or more of the trading schemes.

(5) A person guilty of an offence under this regulation shall, on summary conviction, be liable to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine.

(6) Where an offence under this regulation by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(8) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

(9) Proceedings for an offence under this regulation may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom.

(10) Section 3 of the Territorial Waters Jurisdiction Act 1878 (restriction on prosecutions)<sup>(12)</sup> shall not apply to any proceedings for an offence under this regulation.

### Service of notices

17.—(1) In this regulation

“electronic communication” means a communication transmitted —

- (a) by means of an electronic communications network, or
- (b) by other means but while in electronic form; and

“written document” includes an application, a permit, information, data, evidence, a representation or a notice under these Regulations or a copy thereof.

(2) A written document may be sent, given or issued to the intended recipient by —

- (a) delivering it to him, or
- (b) leaving it at his proper address, or
- (c) sending it by post to him at that address.

(3) A written document may be sent, given or issued —

- (a) to a body corporate by being sent, given or issued to its secretary or clerk;
- (b) to a firm (including a Scottish partnership) by being sent, given or issued to a partner in the firm or to a person having management or control of the partnership business;
- (c) to an unincorporated body by being sent, given or issued to a member of its governing body.

(4) For the purposes of this regulation and of section 7 of the Interpretation Act 1978<sup>(13)</sup> in its application to this regulation, the proper address (except in a case falling within paragraph (7) of this regulation) of —

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<sup>(12)</sup> 1878 41 & 42 Vict. c.73.

<sup>(13)</sup> 1978 c.30.

- (a) the Secretary of State is the address of the principal office of the holder of the office of Secretary of State who for the time being exercises the functions of the Secretary of State under these regulations;
  - (b) a body corporate is the address of its registered or principal office;
  - (c) a firm (including a Scottish partnership) or unincorporated body is the address of its principal office;
  - (d) any other person is his last known address.
- (5) Where, by virtue of the above provisions of this regulation, the proper address of the intended recipient of a written document is outside the United Kingdom, references in this regulation to the proper address of —
- (a) a body corporate, firm or unincorporated body include its principal office (if any) in the United Kingdom;
  - (b) any other person includes his last known address in the United Kingdom unless he is known no longer to have an address in the United Kingdom).
- (6) If the person to whom a written document is to be sent, given or issued has furnished the person by whom the written document is to be sent, given or issued with an address pursuant to any provision of these Regulations, that address shall also be treated for the purpose of this regulation as his proper address.
- (7) Where a written document is to be sent, given or issued by means of an electronic communication, the proper address of any person includes the number or address which he has indicated is to be used by him for receipt of the communication.
- (8) This regulation is without prejudice to any other lawful method of giving or serving notice.

#### **Disapplication or consequential modifications of enactments**

**18.**—(1) Sections 1, 2, 3, 6 and 23 of the Prevention of Oil Pollution Act 1971<sup>(14)</sup> shall not apply to discharges of oil which are regulated by a permit granted under these Regulations.

(2) The Deposits in the Sea (Exemptions) Order 1985<sup>(15)</sup> is amended as follows:

- (a) paragraph 4(a) of the Schedule is repealed; and
- (b) after paragraph 4(b) insert —

“(c) of a kind regulated under The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.”

#### **Amendment of the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001**

**19.** The Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001<sup>(16)</sup> are amended as set out in Schedule 1 to these Regulations.

#### **Amendment of the Offshore Chemicals Regulations 2002**

**20.** The Offshore Chemicals Regulations 2002<sup>(17)</sup> are amended as set out in Schedule 2 to these Regulations.

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<sup>(14)</sup> 1971 c.60.  
<sup>(15)</sup> S.I. 1985/1699.  
<sup>(16)</sup> S.I. 2001/1091.  
<sup>(17)</sup> S.I. 2002/1355.

2005

Minister for Energy and E-Commerce  
Department of Trade and Industry

## SCHEDULE 1

Regulation 18

### AMENDMENT OF THE OFFSHORE COMBUSTION INSTALLATIONS (PREVENTION AND CONTROL OF POLLUTION) REGULATIONS 2001

1. In regulation 2 (interpretation), omit the definitions of “address” and “electronic communication”.

2. For regulation 6 (fees), substitute —

#### “Fees

6.—(1) The Secretary of State may, in accordance with a charging scheme made by her for this purpose, charge operators fees in respect of any of the matters to which this paragraph applies.

(2) The matters to which paragraph (1) applies are —

- (a) the grant of a permit;
- (b) the variation of a permit or of the conditions to which it is subject;
- (c) the surrender or assignment of a permit;
- (d) the subsistence of a permit;
- (e) the testing or analysis of substances;
- (f) the validity of, or of the results of, any testing or analysis of substances; and
- (g) the assessment of the effect upon the environment of the operation of any qualifying offshore combustion installation

but paragraph (1) only applies to the matters referred to in sub-paragraphs (e) to (g) in cases where the testing, analysis, validating or assessment is in any way in anticipation of, or otherwise in connection with, the making of permit applications or is carried out in pursuance of conditions to which any permit is subject.

(3) A charging scheme made under this regulation shall be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure as may be incurred by or on behalf of the Secretary of State in connection with any of the matters to which paragraph (1) applies.”

3. In regulation 9(4) omit the words “either” and “or by such electronic means as the Secretary of State may determine”.

4. In regulation 13 (appointment of inspectors)—

(1) in sub-paragraph (b) of paragraph (1) (which deals with inspectors’ functions)—

- (a) for “as to”, substitute “to monitor”; and
- (b) insert “emissions from” after “operation of,”

(2) in paragraph (2) (which deals with inspectors’ powers) omit “may” where first occurring in each of sub-paragraphs (h) to (k) of that paragraph.

(3) For paragraph (3) (which deals with the admissibility in evidence of answers to inspectors), substitute—

“(3) An answer given by a person in compliance with a requirement imposed under paragraph 2(i) shall be admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings.

(3A) In criminal proceedings in which such person as is mentioned in paragraph (3) is charged with an offence to which this paragraph applies no evidence relating to that person's answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person.

(3B) Paragraph (3A) applies to any offence other than one under—

- (a) regulation 18(1)(f)(ii);
- (b) section 5 of the Perjury Act 1911<sup>(18)</sup> (false statements made otherwise than on oath);
- (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(19)</sup> (false statements made otherwise than on oath); or
- (d) article 10 of the Perjury (Northern Ireland) Order 1979<sup>(20)</sup> (false statutory declarations and other false unsworn statements)."

5. In regulation 14 (enforcement notices)—

(1) in paragraph (1) (which deals with the conditions for service of an enforcement notice)—

- (a) for “the operator of an installation”, substitute “any person”;
- (b) insert “or an inspector appointed by him under regulation 13” after “the Secretary of State” where it appears for a second time;
- (c) for “on him”; substitute “on the operator ”;
- (d) for “notice”, substitute “notice in writing”; and
- (e) for paragraphs (3) and (4), substitute—

“(3) Where a person to whom an enforcement notice is addressed has failed to take the action required by it within such time as may be specified by it and such a notice has not been revoked, the Secretary of State may undertake any action so required and the reasonable costs and expenses of the Secretary of State's so doing shall be recoverable as a debt from that person.

(4) A person to whom an enforcement notice is addressed shall afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers conferred on the Secretary of State by paragraph (3).

(4A) The Secretary of State or an inspector appointed by the Secretary of State under regulation 13 may revoke an enforcement notice served under paragraph (1).”

6. In regulation 15 (prohibition notices) —

(1) For paragraph (1) substitute —

“(1) If the Secretary of State is of the opinion that the operation of a qualifying offshore combustion installation involves an imminent risk of serious pollution, the Secretary of State or an inspector appointed by him under regulation 13 may serve a notice in writing (“a prohibition notice”) on the operator of the installation.”; and

(2) For paragraph (4) substitute —

“(4) The Secretary of State or an inspector appointed by him under regulation 13 may by notice withdraw a prohibition notice wholly or in part at any time and shall withdraw a notice when the Secretary of State is satisfied that the steps required by the notice have been taken.”.

7. For regulation 19 substitute —

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<sup>(18)</sup> 1911 c.6.

<sup>(19)</sup> 1995 c.39.

<sup>(20)</sup> 1979 No. 1714 (NI19).

## “Service of Notices

19.—(1) In this regulation —

“electronic communication” means a communication transmitted —

- (a) by means of an electronic communications network, or
- (b) by other means but while in electronic form;

“written document” includes an application, a permit, information, data, evidence, a representation or a notice under these Regulations.

(2) A written document may be sent, given or issued to the intended recipient by —

- (a) delivering it to him, or
- (b) leaving it at his proper address, or
- (c) sending it by post to him at that address.

(3) A written document may be sent, given or issued —

- (a) to a body corporate by being sent, given or issued to its secretary or clerk;
- (b) to a firm (including a Scottish partnership) by being sent, given or issued to a partner in the firm or to a person having management or control of the partnership business;
- (c) to an unincorporated body by being sent, given or issued to a member of its governing body.

(4) For the purposes of this regulation and of section 7 of the Interpretation Act 1978<sup>(21)</sup> in its application to this regulation, the proper address (except in a case falling within paragraph (7) of this regulation of —

- (a) the Secretary of State is the address of the principal office of the holder of the office of Secretary of State who for the time being exercises the functions of the Secretary of State under these regulations;
- (b) a body corporate is the address of its registered or principal office;
- (c) a firm (including a Scottish partnership) or unincorporated body is the address of its principal office;
- (d) any other person is his last known address.

(5) Where, by virtue of the above provisions of this regulation, the proper address of the intended recipient of a written document is outside the United Kingdom, references in this regulation to the proper address of —

- (a) a body corporate, firm or unincorporated body include its principal office (if any) in the United Kingdom;
- (b) any other person include his last known address in the United Kingdom (unless he is known no longer to have an address in the United Kingdom).

(6) If the person to whom a written document is to be sent, given or issued has furnished the person by whom the written document is to be sent, given or issued with an address pursuant to any provision of these Regulations, that address shall also be treated for the purpose of this regulation as his proper address.

(7) Where a written document is to be sent, given or issued by means of an electronic communication, the proper address of any person includes the number or address which he has indicated is to be used by him for receipt of the communication.

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(21) 1978 c.30.

(8) This regulation is without prejudice to any other lawful method of giving or serving notice.”

## SCHEDULE 2

Regulation 19

### AMENDMENT OF THE OFFSHORE CHEMICALS REGULATIONS 2002

1. In Regulation 2 omit the definitions of “address” and “electronic communication”
2. In regulation 16 (appointment of inspectors)—
  - (1) in paragraph (2), omit “their conclusions”; and
  - (2) omit paragraph (4).
3. After Regulation 16 insert —

#### **“16A Enforcement notices**

(1) If the Secretary of State is of the opinion that any person has contravened or is contravening any condition of a permit or is likely to contravene any such condition, the Secretary of State or an inspector appointed by her under regulation 16 may serve on the operator a notice in writing (“an enforcement notice”) which —

- (a) states that the Secretary of State is of the opinion mentioned in paragraph (1);
- (b) specifies the matters which constitute, constituted or, as the case may be, are likely to constitute the contravention;
- (c) specifies the steps that must be taken to remedy or, as the case maybe, prevent the contravention; and
- (d) specifies the period within which those steps must be taken.

(2) The steps that may be specified under paragraph (1)(c) include steps that must be taken to remedy any pollution caused by a contravention.

(3) Where a person to whom an enforcement notice is addressed has failed to take the action required by it within such time as may be specified by it and such a notice has not been revoked, the Secretary of State may undertake any action so required and the reasonable costs and expenses of the Secretary of State’s so doing shall be recoverable as a debt from that person.

(4) A person to whom an enforcement notice is addressed shall afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers conferred on the Secretary of State by paragraph (3).

(5) The Secretary of State or an inspector appointed by her under regulation 16 may revoke an enforcement notice served under paragraph (1).

(6) The exercise by the Secretary of State of any power conferred by paragraphs (1) or (3) shall be without prejudice to the exercise by her of any other power under any other provision of these Regulations.

#### **16B Prohibition notices**

(1) If the Secretary of State is of the opinion that the operation of an offshore installation involves an imminent risk of serious pollution as a consequence of any use or discharge of offshore chemicals, the Secretary of State or an inspector appointed by her under



regulation 16 may serve a notice in writing (“a prohibition notice”) on the operator of the installation.

(2) A prohibition notice may be served whether or not the risk relates to the contravention of a permit and may relate to any aspects of the operation of the offshore installation, whether or not regulated by the conditions such a permit.

(3) A prohibition notice —

- (a) shall state that the Secretary of State is of the opinion mentioned in paragraph (1) above;
- (b) shall specify the risk involved in the operation of the offshore installation;
- (c) shall specify the steps that must be taken to remove it and the period within which they must be taken; and
- (d) may direct that any permit shall, until the notice is withdrawn wholly or in part, cease to have effect and, where the direction applies to part only of the operation of the offshore installation, it may impose conditions to be observed in carrying on that part of the operation which is authorised under the relevant permit.

(4) The Secretary of State or an inspector appointed by her under regulation 16 may by notice withdraw a prohibition notice wholly or in part at any time and shall withdraw a notice when the Secretary of State is satisfied that the steps required by the notice have been taken.

(5) It shall be the duty of the person to whom the prohibition notice is addressed to comply with its terms save to the extent that it is withdrawn wholly or in part.

(6) The service of a prohibition notice shall be without prejudice to the exercise by any person of any power under any other provision of these Regulations.”

4. In regulation 18 (offences)(1) in paragraph (1) (which deals with specifying offences) —

- (a) omit “or” where it occurs in sub-paragraph (f);
- (b) insert “; or” at the end of sub-paragraph (g); and
- (c) after sub-paragraph (g) insert —

“(h) fails to comply with the terms of an enforcement notice or a prohibition notice.”

5. For Regulation 19 there is substituted a provision identical to that set out in paragraph 6 of Schedule 1 to these Regulations.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under sections 2 and 7(9) of the Pollution Prevention and Control Act 1999. They provide for the phasing out of the system of exemptions under the Prevention of Oil Pollution Act 1971 (permitting certain discharges of oil into the sea) and the replacement of that system by a permit system.

The Regulations apply to the whole of the United Kingdom Continental Shelf except Scottish controlled waters.

Regulation 3 provides that, in order for operators of offshore installations to discharge oil into relevant waters, a permit must be granted to them. This regulation also allows for the phasing in of the new permitting scheme.

Regulations 4 and 5 deal with the procedure for the granting by the Secretary of State of permits, any conditions which may be attached to permits and the requirements for permit applications. Regulation 6 permits the Secretary of State to charge fees in relation to certain activities. Regulations 7 to 9 make provision for permits to be varied, assigned, revoked and surrendered in certain circumstances.

Regulation 10 authorises the Secretary of State to make allocation plans in relation to specified emissions, and to make provision for one or more emissions trading schemes for the purpose of facilitating the trading of allowances allocated under the allocation plans. Regulation 11 requires the Secretary of State to establish and maintain a registry to record the trading in allowances allocated under the allocation plans.

Regulations 12 to 14 deal with enforcement and give:

- (a) the Secretary of State power to appoint inspectors whose powers and duties are set out in regulation 12, and the power to serve prohibition notices (regulation 14); and
- (b) the Secretary of State or an inspector power to serve enforcement notices (regulation 13).

Regulation 15 gives an applicant for a permit, any permit holder, or any person the subject of a decision by the Secretary of State a right to appeal to the court against the Secretary of State's decisions under the Regulations. Regulation 16 creates offences. Regulation 17 deals with the services of notices and other documents.

Regulations 18, 19 and 20 deal with the disapplication and consequential modifications of enactments and amendments of other secondary legislation.

Schedules 1 and 2 effect amendments of the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 and the Offshore Chemicals Regulations 2002.

These Regulations come into force on the thirtieth day after the day on which they are made.

A regulatory impact assessment of the effect that this instrument will have on the costs of business is available from Energy Resources and Development Unit, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET (telephone 020 7215 5151). Copies have been placed in the libraries of both Houses of Parliament.