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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**The Offshore Environmental Civil Sanctions Regulations 2018**

**PART 1**

Preliminary

**Citation and commencement**

1.—(1) These Regulations may be cited as the Offshore Environmental Civil Sanctions Regulations 2018.

(2) These Regulations come into force on 1 October 2018.

**Interpretation**

2. In these Regulations—

“fixed monetary penalty” has the meaning given in regulation 4(3);

“FMP offence” has the meaning given in regulation 4(2);

“non-compliance penalty” has the meaning given in regulation 18(3);

“relevant permit” means any of the following—

(a) a permit within the meaning of the Offshore Chemicals Regulations 2002<sup>(1)</sup> (authorisation to use or discharge an offshore chemical);

(b) a permit within the meaning of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005<sup>(2)</sup> (authorisation to discharge oil);

(c) a permit within the meaning of the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013<sup>(3)</sup> (written permission to operate an offshore combustion installation);

“Tribunal” means the First-tier Tribunal<sup>(4)</sup>;

“variable monetary penalty” has the meaning given in regulation 11(3);

“VMP offence” has the meaning given in regulation 11(2).

**Penalties may only be imposed in respect of acts or omissions occurring on or after 1 November 2018**

3. The power to impose fixed and variable monetary penalties under these Regulations may be exercised only in relation to acts or omissions occurring on or after 1 November 2018.

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(1) [S.I. 2002/1355](#); relevant amending instruments are [S.I. 2005/2055](#) and [2011/982](#). “Permit” is defined in regulation 2(1).  
(2) [S.I. 2005/2055](#), amended by [S.I. 2011/983](#); there are other amending instruments but none is relevant. “Permit” is defined in regulation 2.  
(3) [S.I. 2013/971](#). “Permit” is defined in regulation 2(1).  
(4) The First-tier Tribunal was established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007 (c.15).

## PART 2

### Fixed monetary penalties

#### **Fixed monetary penalties: power to impose**

4.—(1) If the Secretary of State is satisfied beyond reasonable doubt that a person has committed a FMP offence, the Secretary of State may, in accordance with this Part, impose a fixed monetary penalty on the person in relation to the offence.

(2) An offence is a “FMP offence” if—

- (a) the offence is contained in a provision specified in column 1 of any of the tables in the Schedule; and
- (b) “Yes” is set out in the corresponding entry in column 2 of that table.

(3) A “fixed monetary penalty”, in relation to a FMP offence, is a requirement to pay to the Secretary of State a penalty of the amount set out in the corresponding entry in column 3 of that table.

#### **Fixed monetary penalties: duty to serve notice of intent**

5.—(1) This regulation applies where the Secretary of State proposes to impose a fixed monetary penalty on a person in relation to an act or omission constituting a FMP offence.

(2) Before imposing a fixed monetary penalty, the Secretary of State must first serve on the person a notice of what is proposed (a “notice of intent”) that complies with regulation 6.

(3) But no notice of intent may be served if—

- (a) the Secretary of State has previously imposed a fixed or variable monetary penalty on the person in relation to an offence constituted by the act or omission;
- (b) the person has discharged liability to a fixed monetary penalty in relation to an offence constituted by the act or omission under regulation 5(4);
- (c) the act or omission constituted a breach of a term or condition of a relevant permit and the permit has been revoked because of the breach; or
- (d) criminal proceedings have been instituted in relation to an offence constituted by the act or omission.

(4) The person on whom the notice of intent is served may discharge the person’s liability for the fixed monetary penalty by paying two-thirds of the amount of the fixed monetary penalty to the Secretary of State within the period of 28 days beginning with the day on which the notice of intent is received.

(5) The person on whom the notice of intent is served may make written representations and objections to the Secretary of State in relation to the proposed imposition of the fixed monetary penalty within the period of 28 days beginning with the day on which the notice of intent is received.

#### **Fixed monetary penalties: content of notice of intent**

6. The notice of intent must—

- (a) include information as to the grounds for the proposal to impose the fixed monetary penalty (including details of the act or omission referred to in regulation 5(1));
- (b) state the amount of the fixed monetary penalty;
- (c) state that the person on whom the notice of intent is served may discharge the liability in accordance with regulation 5(4) within the period referred to in that paragraph and include information as to how payment may be made;

- (d) state that the person on whom the notice of intent is served has the right to make written representations and objections to the Secretary of State in relation to the proposed imposition of the fixed monetary penalty within the period referred to in regulation 5(5) and include information about how representations and objections may be made; and
- (e) include information as to the circumstances in which the Secretary of State may not impose the fixed monetary penalty.

#### **Fixed monetary penalties: decision to impose**

7.—(1) This regulation applies where the person on whom the notice of intent was served does not discharge the person’s liability for the fixed monetary penalty in accordance with regulation 5(4).

(2) After the end of the period referred to in regulation 5(5) (period in which person may make representations and objections), the Secretary of State must—

- (a) consider any representations and objections made by the person; and
- (b) decide whether or not to impose the fixed monetary penalty.

(3) The Secretary of State may not impose a fixed monetary penalty on a person in relation to a FMP offence if the Secretary of State is satisfied that the person would not, by reason of any defence raised by the person, be liable to be convicted of the offence.

(4) If the Secretary of State decides not to impose the fixed monetary penalty, the Secretary of State must give notice in writing to the person on whom the notice of intent was served.

(5) If the Secretary of State decides to impose the fixed monetary penalty, the Secretary of State must serve on the person on whom the notice of intent was served a notice (a “final notice”) that complies with regulation 8.

(6) A person on whom a final notice is served must pay to the Secretary of State the amount of the fixed monetary penalty within the period of 28 days beginning with the day on which the final notice is received.

(7) The Secretary of State may at any time withdraw a final notice by giving notice in writing to the person on whom the final notice was served.

#### **Fixed monetary penalties: content of final notice**

8. The final notice must state the amount of the fixed monetary penalty and include information as to—

- (a) the grounds for imposing the fixed monetary penalty;
- (b) how payment may be made;
- (c) the period within which payment must be made;
- (d) rights of appeal; and
- (e) the consequences of non-payment.

#### **Fixed monetary penalties: appeals**

9.—(1) A person on whom a final notice is served may appeal to the Tribunal in relation to the decision to impose the fixed monetary penalty on any of the following grounds—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unreasonable;
- (d) any other reason.

(2) In any appeal where the commission of an offence is an issue requiring determination, the relevant enforcement authority must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

(3) In any other case the Tribunal must determine the standard of proof.

(4) Where an appeal is made in relation to a decision to impose a fixed monetary penalty, the fixed monetary penalty is suspended until a decision is made by the Tribunal in respect of the appeal.

(5) On an appeal, the Tribunal may do any of the following—

- (a) confirm the decision to impose the fixed monetary penalty;
- (b) set aside the decision to impose the fixed monetary penalty;
- (c) award costs.

### **Fixed monetary penalties: criminal proceedings and convictions**

**10.**—(1) Where a notice of intent is served on a person under regulation 5—

- (a) no criminal proceedings for the offence in relation to which the notice was served may be instituted against the person in respect of the act or omission referred to in regulation 5(1) before the end of the period referred to in regulation 5(4);
- (b) if the person discharges the liability for the fixed monetary penalty in accordance with regulation 5(4), the person may not at any time be convicted of that offence in respect of the act or omission.

(2) Where a fixed monetary penalty is imposed on a person in relation to an offence, the person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

## PART 3

### Variable monetary penalties

#### **Variable monetary penalties: power to impose**

**11.**—(1) If the Secretary of State is satisfied beyond reasonable doubt that a person has committed a VMP offence, the Secretary of State may, in accordance with this Part, impose a variable monetary penalty on the person in relation to the offence.

(2) An offence is a “VMP offence” if—

- (a) the offence is contained in a provision specified in column 1 of any of the tables in the Schedule; and
- (b) “Yes” is set out in the corresponding entry in column 4.

(3) A “variable monetary penalty”, in relation to a VMP offence, is a requirement to pay to the Secretary of State a penalty of an amount determined by the Secretary of State.

(4) The amount of any variable monetary penalty must not exceed £50,000.

#### **Variable monetary penalties: duty to serve notice of intent**

**12.**—(1) This regulation applies where the Secretary of State proposes to impose a variable monetary penalty on a person in relation to an act or omission constituting a VMP offence.

(2) Before imposing a variable monetary penalty, the Secretary of State must first serve on the person a notice of what is proposed (a “notice of intent”) that complies with regulation 13.

- (3) But no notice of intent may be served if—
- (a) the Secretary of State has previously imposed a fixed or variable monetary penalty on the person in relation to an offence constituted by the act or omission;
  - (b) the person has discharged liability to a fixed monetary penalty in relation to an offence constituted by the act or omission under regulation 5(4);
  - (c) the act or omission constituted a breach of a term or condition of a relevant permit and the permit has been revoked because of the breach; or
  - (d) criminal proceedings have been instituted in relation to an offence constituted by the act or omission.

(4) The person on whom the notice of intent is served may offer to the Secretary of State within the period of 35 days beginning with the day on which the notice of intent is received an undertaking as to action to be taken by the person (including the payment of a sum of money) to benefit any person affected by the offence in relation to which the notice of intent is served.

(5) The person on whom the notice of intent is served may make written representations and objections to the Secretary of State in relation to the proposed imposition of the variable monetary penalty within the period of 35 days beginning with the day on which the notice of intent is received.

#### **Variable monetary penalties: content of notice of intent**

- 13.** The notice of intent must—
- (a) include information as to the grounds for the proposal to impose the variable monetary penalty (including details of the act or omission referred to in regulation 12(1));
  - (b) state the amount of the variable monetary penalty;
  - (c) state that the person on whom the notice of intent is served may offer to the Secretary of State within the period referred to in regulation 12(4) an undertaking as to action to be taken by the person (including the payment of a sum of money) to benefit any person affected by the offence in relation to which the notice of intent is served and include information about how an undertaking may be offered;
  - (d) state that the person on whom the notice of intent is served has the right to make written representations and objections to the Secretary of State in relation to the proposed imposition of the variable monetary penalty within the period referred to in regulation 12(5) and include information about how representations and objections may be made; and
  - (e) include information as to the circumstances in which the Secretary of State may not impose the variable monetary penalty.

#### **Variable monetary penalties: decision to impose and to accept or reject undertaking**

**14.—(1)** After the end of the period referred to in regulation 12(5) (period in which person may make representations and objections), the Secretary of State must—

- (a) consider any representations and objections made by the person on whom the notice of intent was served;
- (b) decide whether to accept or reject any undertaking offered by the person and, if the Secretary of State decides to accept an undertaking, take the undertaking into account in making the decision referred to in sub-paragraph (c); and
- (c) decide to do one of the following—
  - (i) not to impose a variable monetary penalty;
  - (ii) to impose a variable monetary penalty of the amount stated in the notice of intent;

(iii) to impose a variable monetary penalty of a lower amount.

(2) The Secretary of State may not impose a variable monetary penalty on a person in relation to a FMP offence if the Secretary of State is satisfied that the person would not, by reason of any defence raised by the person, be liable to be convicted of the offence.

(3) If the Secretary of State decides not to impose a variable monetary penalty, the Secretary of State must give notice in writing to the person on whom the notice of intent was served.

(4) If the Secretary of States decides to accept an undertaking from the person on whom the notice of intent was served, the Secretary of State must give notice in writing to the person.

(5) If the Secretary of State decides to impose a variable monetary penalty, the Secretary of State must serve on the person on whom the notice of intent was served a notice (a “final notice”) that complies with regulation 15.

(6) A person on whom a final notice is served must pay to the Secretary of State the amount of the variable monetary penalty within the period of 28 days beginning with the day on which the final notice is received.

(7) The Secretary of State may at any time withdraw a final notice by giving notice in writing to the person on whom the final notice was served.

#### **Variable monetary penalties: content of final notice**

**15.** The final notice must state the amount of the variable monetary penalty and include information as to—

- (a) the grounds for imposing the variable monetary penalty;
- (b) details of any undertaking that has been accepted;
- (c) how payment may be made;
- (d) the period within which payment must be made;
- (e) rights of appeal; and
- (f) the consequences of non-payment.

#### **Variable monetary penalties: appeals**

**16.—**(1) A person on whom a final notice is served may appeal to the Tribunal in relation to the decision to impose the variable monetary penalty on any of the following grounds—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the variable monetary penalty is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other reason.

(2) In any appeal where the commission of an offence is an issue requiring determination, the relevant enforcement authority must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

(3) In any other case the Tribunal must determine the standard of proof.

(4) Where an appeal is made in relation to a decision to impose a variable monetary penalty, the variable monetary penalty is suspended until a decision is made by the Tribunal in respect of the appeal.

(5) On an appeal, the Tribunal may do any of the following—

- (a) confirm the amount of the variable monetary penalty;
- (b) reduce the amount of the variable monetary penalty;
- (c) set aside the decision to impose the variable monetary penalty;
- (d) award costs.

### **Variable monetary penalties: criminal proceedings and convictions**

**17.**—(1) Where a variable monetary penalty is imposed on a person in relation to an offence, the person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

(2) Where an undertaking is accepted from a person in relation to an offence, the person may not at any time be convicted of the offence in respect of the act or omission giving rise to the undertaking, except in a case where—

- (a) no variable monetary penalty was imposed on the person in respect of the act or omission giving rise to the undertaking; and
- (b) the person fails to comply with the undertaking.

### **Non-compliance penalties: power to impose where undertaking not complied with**

**18.**—(1) This regulation applies where—

- (a) the Secretary of State accepts an undertaking from the person on whom the notice of intent was served; and
- (b) the person fails to comply with the undertaking.

(2) The Secretary of State may, by notice (a “non-compliance penalty notice”) served on the person, impose a non-compliance penalty on the person.

(3) A “non-compliance penalty” is a requirement to pay to the Secretary of State a penalty of an amount determined by the Secretary of State.

(4) The amount of any non-compliance penalty must not exceed £50,000.

(5) The non-compliance penalty notice must state the amount of the non-compliance penalty and include information as to—

- (a) the grounds for imposing the non-compliance penalty;
- (b) how payment may be made;
- (c) the period within which payment must be made;
- (d) rights of appeal; and
- (e) the consequences of non-payment.

(6) A person on whom a non-compliance penalty notice is served must pay to the Secretary of State the amount of the non-compliance penalty within the period of 28 days beginning with the day on which the non-compliance penalty notice is received.

(7) The Secretary of State may at any time withdraw a non-compliance penalty notice by giving notice in writing to the person on whom the non-compliance penalty notice was served.

### **Non-compliance penalties: appeals**

**19.**—(1) A person on whom a non-compliance penalty notice is served may appeal to the Tribunal against the decision to serve the notice on any of the following grounds—

- (a) that the decision was based on an error of fact;

- (b) that the decision was wrong in law;
  - (c) that the decision was unfair or unreasonable for any reason (including that the amount of the non-compliance penalty is unreasonable);
  - (d) any other reason.
- (2) Where an appeal is made against a decision to serve a non-compliance penalty notice, the non-compliance penalty is suspended until a decision is made by the Tribunal in respect of the appeal.
- (3) On an appeal, the Tribunal may do any of the following—
- (a) confirm the amount of the non-compliance penalty;
  - (b) reduce the amount of the non-compliance penalty;
  - (c) set aside the decision to impose the non-compliance penalty;
  - (d) award costs.

## PART 4

### Miscellaneous

#### **Guidance as to use of civil sanctions**

**20.**—(1) The Secretary of State must before 1 November 2018 prepare and publish guidance about the Secretary of State’s use of the powers to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties.

- (2) The guidance must contain information as to—
- (a) the circumstances in which a penalty is likely to be imposed;
  - (b) the circumstances in which a penalty may not be imposed;
  - (c) in the case of a fixed monetary penalty—
    - (i) the amount of the penalty; and
    - (ii) how liability for the penalty may be discharged and the effect of discharge;
  - (d) in the case of a variable monetary penalty or a non-compliance penalty, the matters likely to be taken into account by the Secretary of State in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance);
  - (e) rights to make representations and objections;
  - (f) rights of appeal.
- (3) The Secretary of State must from time to time review the guidance and, where appropriate, prepare and publish revised guidance.

(4) The Secretary of State must consult such persons as the Secretary of State considers appropriate before publishing the guidance or any revised guidance.

(5) The Secretary of State must have regard to the guidance, or any revised guidance, in exercising the Secretary of State’s functions under these Regulations.

#### **Publication of enforcement action**

- 21.**—(1) The Secretary of State must from time to time publish a report specifying—
- (a) the cases in which a fixed or variable monetary penalty or a non-compliance penalty has been imposed (other than cases where the penalty has been imposed but overturned on appeal);



(b) the cases in which liability for a fixed monetary penalty has been discharged by payment under regulation 5(4);

(c) the cases in which an undertaking is accepted from a person under regulation 14(1)(b).

(2) But the Secretary of State is not required to include in the report anything that the Secretary of State thinks is not appropriate for publication.

### **Service, etc. of notices**

**22.**—(1) Any notice that the Secretary of State must or may serve on or give to a person under these Regulations may be served or given in any of the following ways—

(a) by delivering it to the person;

(b) by leaving it at the person's proper address;

(c) by sending it by post to the person at the person's proper address;

(d) if the person is a body corporate, by serving it in accordance with sub-paragraph (a), (b) or (c) on the secretary of the body;

(e) if the person is a partnership, by serving it in accordance with sub-paragraph (a), (b) or (c) on a partner or a person having the control or management of the partnership business;

(f) in a case where an address for correspondence using electronic communications is given by the person, by sending it using electronic communications to the person at that address, provided that the condition referred to in paragraph (2) is satisfied.

(2) The condition is that the notice is—

(a) capable of being accessed by the person;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference.

(3) Paragraph (1)(f) does not apply if the person notifies the Secretary of State (before any notice is served or given) that the person does not wish the notice to be sent using electronic communications.

(4) For the purposes of this regulation and section 7 of the Interpretation Act 1978(5)(which relates to the service of documents by post) in its application to this regulation, the proper address of any person on or to whom a notice is to be served or given is the person's last-known address, except that—

(a) in the case of service on a body corporate or its secretary, it is the address of the registered or principal office of the body;

(b) in the case of service on a partnership, a partner or a person having control or management of a partnership business, it is the address of the principal office of the partnership;

and for the purposes of this paragraph (except where the company or partnership has no office in the United Kingdom) the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(5) If a person to be served with a notice, or to whom a notice is to be given, under these Regulations notifies the Secretary of State that an address within the United Kingdom other than the person's proper address (as determined under paragraph (4)) is the one at which the person or someone on the person's behalf will accept service of notices under these Regulations, that address must also be treated as the person's proper address for the purposes of this regulation and for the purposes of section 7 of the Interpretation Act 1978 in its application to this regulation.

(6) In this regulation—

“address”, in relation to electronic communications, means any number or address used for the purposes of such communications;

“electronic communication” has the same meaning as in the Electronic Communications Act 2000(6);

### **Recovery of payments**

**23.**—(1) In England, Wales and Northern Ireland the Secretary of State may recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed under these Regulations as if payable under a court order.

(2) In Scotland the Secretary of State may recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed under these Regulations as if payable under an extract registered decree arbitral bearing a warrant for execution by a sheriff of any sheriffdom.

Date

*Name*  
Minister of State for Energy and Clean Growth  
Department for Business, Energy and Industrial  
Strategy

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(6) [2000 c.7](#). The definition of “electronic communication” is in section 15(1). The definition was amended by paragraph 158 of Schedule 17 to the Communications Act [2003 \(c.21\)](#).