

<p>Title: The Offshore Environmental Civil Sanctions Regulations 2018</p> <p>PIR No: DESNZ039(PIR)-23-OPRED</p> <p>Original IA/RPC No: N/A</p> <p>Lead department or agency: Department for Energy Security and Net Zero (OPRED)</p> <p>Other departments or agencies: None</p> <p>Contact for enquiries: Sarah Mclean 01224 254134 sarah.mclean@energysecurity.gov.uk</p>	Post Implementation Review
	Date: 14/12/2023
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 01/10/2018
	Recommendation: Keep
RPC Opinion: Choose an item.	

1. What were the policy objectives of the measure?

The policy objective of the Offshore Environmental Civil Sanctions Regulations 2018 (“the 2018 Regulations”) was to provide The Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) with an effective and proportionate alternative to the pursuance of prosecution for regulatory non-compliance by giving the power to impose civil sanctions on offshore companies operating on the United Kingdom Continental Shelf and in relevant UK territorial waters who breach specified existing environmental legislation.

2. What evidence has informed the PIR?

A call for evidence was made to industry, resulting in two responses. In addition, OPRED reviewed internal data, pertaining to historical investigation cases and enforcement data held for the period 2016-2023 which included two successful prosecution cases.

3. To what extent have the policy objectives been achieved?

The policy objective has been achieved.

The introduction of the 2018 Regulations has meant OPRED’s enforcement options are now consistent with those of onshore UK environmental regulators. The 2018 Regulations provide OPRED with a sufficient and proportionate enforcement response by giving the power to impose civil sanctions for breaches of environmental legislation. OPRED has exercised this power on one occasion since the 2018 Regulations were introduced resulting in the imposition of a civil sanction.

Sign-off for Post Implementation Review by the Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***The Rt Hon Graham Stuart MP***

Date: 28/12/2023

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

It was assumed that the 2018 Regulations would not place extra burdens on the offshore oil and gas industry as they did not alter existing criminal offences.

5. Were there any unintended consequences?

One of the responses from industry suggested that the cost of compliance with the 2018 Regulations was £10 - £20 million a year, but a closer examination of the response shows that the costs cited have been conflated with the costs of compliance with all the relevant environmental regulations under OPRED's remit.

OPRED fees data demonstrates that there is no cost from OPRED to an offshore operator found to be in non-compliance with the requirements of environmental regulations once enforcement activity, including civil sanctions, has commenced.

6. Has the evidence identified any opportunities for reducing the burden on business?

While limited in number, the responses we did receive from industry suggest that the 2018 Regulations do not place any extra burdens on them, and that the guidance published to industry is clear about the use by OPRED of the powers available. Therefore, on that basis, it is clear the 2018 Regulations remain fit for purpose and that there are no tangible reasons for OPRED to make any changes to the existing regulatory provisions.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

The 2018 Regulations' provisions on the imposition of civil penalties for legislative non-compliance (as an alternative to pursuing criminal prosecution) apply to certain regulations that transpose the obligations of EU Directives (now as retained UK law) and other international law which, amongst other commitments, require the instigation of effective enforcement procedures to deal with non-compliance. Consequently, the 2018 Regulations are linked (via the application of civil penalty provisions to 'internationally derived' regulations) to the implementation of appropriate enforcement measures in accordance with retained EU law and other international law. Therefore, as the same obligations apply equally to the UK, EU member states (MS) and EEA states, the UK's approach to meeting those obligations should result in parity with MS and EEA states with an offshore hydrocarbons industry - and particularly where their regulatory enforcement mechanisms involve civil sanctions as well as criminal prosecution.

ANNEX

THE OFFSHORE ENVIRONMENTAL CIVIL SANCTIONS REGULATIONS 2018

What were the policy objectives of the measure?

The 2018 Regulations enable OPRED to impose financial civil sanctions, ranging from £500 to a maximum of £50,000, on offshore oil and gas companies who are found to have breached the following existing Regulations: the Offshore Chemicals Regulations 2002, the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013, the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 or the Offshore Installations (Emergency Pollution Control) Regulations 2002.

Prior to the coming into force of the 2018 Regulations, OPRED had no mechanism for imposing financial sanctions for breaches of offshore oil and gas environmental regulations, unless the case was subject to criminal prosecution which can be costly and time consuming. The 2018 Regulations sought to fill that gap by providing OPRED with powers consistent with those of onshore UK environmental regulators and allowing OPRED a more flexible, timely and cost-effective enforcement option which is more proportionate and transparent to oil and gas operators.

To what extent have the policy objectives been achieved?

Historically, the cases OPRED has referred and achieved successful prosecutions from have attracted fines of an average of £6k under Scottish law whereas the one civil sanction case OPRED has undertaken since the implementation of the 2018 Regulations generated a fine of £25k, thus providing a greater deterrent to offshore oil and gas operators than previously. Furthermore, since the introduction of the 2018 Regulations, OPRED has dealt with suitable cases under the 2018 Regulations and has not referred any cases for consideration of prosecution, thus reducing the burden of costly and time-consuming enforcement.

However, one respondent suggested that although the 2018 Regulations do provide a more cost-effective alternative to prosecution, they do not act as a deterrent as the financial penalties available to OPRED are not high enough. Nevertheless, despite this view, the fact that OPRED has only instigated one civil sanction following the 2018 Regulations' entry into force, would seem to indicate that the potential for the imposition of more substantive fines than those previously imposed via prosecution was acting as a deterrent against further regulatory non-compliances - of the kind that would result in punitive enforcement action - being committed by offshore operators.

Regarding time savings, internal data has shown that cases OPRED has historically referred for prosecution take an average of three years to conclude whereas the civil sanction case OPRED progressed took two years to conclude, which included unforeseen delays in process caused by the COVID-19 outbreak. Overall, the objective of providing OPRED with a timely and cost-effective enforcement option has been achieved.