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## EXPLANATORY NOTE

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

These Regulations amend the Offshore Chemicals Regulations 2002 (“the 2002 Regulations”). The 2002 Regulations implement the United Kingdom’s obligations under the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) Decision 2002/2 on a Harmonised Mandatory Control System for the Use and Reduction of the Discharge of Offshore Chemicals in relation to offshore activities. The 2002 Regulations were amended by the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 ([S.I. 2005/2055](#)), and by the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010 ([S.I. 2010/1513](#)), which extended the 2002 Regulations to the use and discharge of chemicals in offshore gas storage and unloading activities.

The principal changes made by these Regulations are to insert a new regulation 3A into the 2002 Regulations, which prohibits any person from releasing an offshore chemical or allowing such a release to continue (*regulation 6*), and to make the contravention of this provision an offence under regulation 18 of the 2002 Regulations (*regulation 20(a)*). A definition of ‘release’ is inserted into the 2002 Regulations (*regulation 4(f)*), along with a revised definition of ‘discharge’ (*regulation 4(a)*). Under these new definitions, a ‘discharge’ involves an intentional emission of an offshore chemical, while any other emission of an offshore chemical will be a ‘release’. Prior to these amendments, the emission of an offshore chemical without a permit could only be prosecuted under the 2002 Regulations if made for operational reasons. The effect of these changes is therefore to widen the circumstances in which a person can be prosecuted for emitting an offshore chemical, so that an intentional emission (i.e. a discharge) will only be lawful if made within the terms and conditions attached to a permit, and any other emission (i.e. a release) will be unlawful (although in both cases a defence may be available under regulation 18(2) of the 2002 Regulations).

These Regulations also make a number of other amendments to the 2002 Regulations. In particular—*Regulation 4(g) and (h)* makes amendments to the 2002 Regulations to exclude their application in relation to offshore petroleum activities to Welsh controlled waters from the low water mark out to three nautical miles from the baseline of the territorial sea. For those purposes, responsibility has transferred to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 2005 ([S.I. 2005/1958](#)) and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

*Regulation 7(b)* amends regulation 5(2)(d) so that conditions of permits can require necessary measures to be taken to prevent or limit the consequences of any incidents affecting the environment, not merely those arising by accident.

*Regulation 8* makes changes to clarify who can be charged fees under the 2002 Regulations, and what those fees can cover.

*Regulations 9(b) and 10(b)(ii)* remove the requirements to consult the Centre for Environment, Fisheries and Aquaculture Science, the Fisheries Research Service and states who are party to the Convention for the Protection of the Marine Environment of the North-East Atlantic 1992 in relation to the renewal or variation of a permit.

*Regulation 12* inserts a new regulation 12A to establish a process for the transfer of a permit from one holder to another.

*Regulation 15* extends the circumstances in which a person may be required to provide information to the Secretary of State about the emission and use of offshore chemicals.

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Offshore Chemicals (Amendment) Regulations 2010 ISBN 978-0-11-150303-4

*Regulations 17 and 18* extend the circumstances in which enforcement and prohibition notices can be served to include any release of an offshore chemical or its use or discharge without a permit. These regulations also make amendments to the provisions about the period within which remedial steps are to be taken under an enforcement or prohibition notice, and who can be served with such notices.

*Regulation 20* amends regulation 18, which makes provision in relation to offences. It qualifies the defences available to a person charged with an offence under paragraph (2)(b) of that regulation so that a person cannot rely upon circumstances caused by their own unreasonable action or fault. It also provides that proceedings may only be brought in England and Wales and in Northern Ireland for an offence under this regulation by or with the consent of the Secretary of State or the relevant Director of Public Prosecution (offences in Scotland can in any event only be prosecuted by or on behalf of the Lord Advocate).

*Regulation 21* makes transitional provision to make clear that a person cannot be guilty of an offence under new regulation 3A of the 2002 Regulations in respect of a release of chemicals that took place before the coming into force of these Regulations, and to ensure that the requirement for the consent of the Secretary of State or the relevant Director of Public Prosecutions for an offence does not apply in respect of proceedings which commenced before the Regulations' coming into force.

The Regulations also make a number of changes to the 2002 Regulations which are consequential on the changes described above, as well as a number of minor changes, including changes to ensure that the 2002 Regulations are consistent with the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.