

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 12 October 2010 and published on 19 October 2010. It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Draft Regulations laid before Parliament under section 2(8) and (9)(d) of the Pollution Prevention and Control Act 1999, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2010 No. 0000

ENVIRONMENTAL PROTECTION

The Offshore Petroleum Activities (Oil Pollution Prevention and Control) (Amendment) Regulations 2010

Made - - - - 2010

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 2(1) to (3) and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(a).

The Secretary of State has consulted the persons required to be consulted by section 2(4) of that Act.

A draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament in accordance with section 2(8) and (9)(d) of that Act.

Citation and commencement

1. These Regulations may be cited as the Offshore Petroleum Activities (Oil Pollution Prevention and Control) (Amendment) Regulations 2010 and come into force on the day after the day on which they are made.

(a) 1999 c.24. Paragraph 25 of Schedule 1 was amended in relation to England and Wales by section 105(1)(a) and (b) of the Clean Neighbourhoods and Environment Act 2005 (c.16), and in relation to Scotland by section 66 of, and paragraph 5 of Schedule 2 to, the Antisocial Behaviour etc (Scotland) Act 2004 (asp 8). There are other amendments to that Schedule which are not relevant. Most functions of the Secretary of State under section 2 so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by article 3 of S.I. 2005/1958, and from the National Assembly to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32). However, responsibility for pollution from oil and gas exploration and exploitation in the territorial sea was excluded from the transfer and is therefore reserved, except in 'relevant territorial waters' within the meaning of section 104(1)(a) of the Water Resources Act 1991 (see the definition of 'offshore' in article 1 of S.I. 2005/1958). Similarly, by virtue of article 2 of S.I. 2008/1776 and Section D5 of Part II of Schedule 5 to the Scotland Act 1998, responsibility for pollution relating to oil and gas exploration in Scotland is reserved (although only outside Scottish controlled waters as defined by section 30A(1) of the Control of Pollution Act 1974 (c.40)).

Interpretation

2. In these Regulations “the 2005 Regulations” means the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005(a).

Amendment of the 2005 Regulations

3. The 2005 Regulations are amended as follows.

4. In regulation 2 (interpretation)—

(a) for the definition of “discharge” substitute—

““business day” means any day, except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom by virtue of the Banking and Financial Dealings Act 1971(b);

“discharge”, in relation to oil, means any intentional emission of the oil from an offshore installation into the relevant area;”;

(b) omit the definition of “emission”, and in its place insert—

““enforcement notice” means a notice served under regulation 13(1) or (1A);”;

(c) after the definition of “existing exemption”, insert—

““notice” means notice in writing;”;

(d) after the definition of “operator”, insert—

““permit” means an authorisation granted by the Secretary of State pursuant to these Regulations to discharge oil;”;

(e) in the definition of “permit holder” omit “granted under these Regulations”;

(f) in the definition of “pollution”, for “relevant waters” substitute “the relevant area”;

(g) after the definition of “pollution”, insert—

““prohibition notice” means a notice served under regulation 14(1);

“release”, in relation to oil, means the emission (other than by way of discharge) of the oil from an offshore installation into the relevant area;”;

(h) omit the definition of “relevant waters” and in its place insert—

““relevant area” means that area (together with places above and below it) comprising—

(a) those parts of the sea adjacent to England from the low water mark to the landward baseline of the United Kingdom territorial sea;

(b) the United Kingdom territorial sea apart from those areas comprised in Scottish controlled waters and Welsh controlled waters; and

(c) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964(c);”;

(i) after the definition of “Scottish controlled waters”, insert—

““Welsh controlled waters” means those parts of the territorial sea adjacent to Wales which are controlled waters within the meaning of section 104 of the Water Resources Act 1991(d).”

5. In regulation 3 (discharge permits)—

(a) S.I. 2005/2055; these Regulations are applied with modifications to installations established or maintained for the purposes of offshore storage or unloading activities under Part 1 of the Energy Act 2008 (c.32) by S.I. 2010/1513.

(b) 1971 c.80. Schedule 1 to the Act was amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007. There are other amendments to the Act which are not relevant.

(c) 1964 c.29. Section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c.23).

(d) 1991 c.57.

- (a) in paragraph (1), omit “into relevant waters” and “granted in accordance with these Regulations”;
- (b) in paragraph (2)—
 - (i) omit “under these Regulations”; and
 - (ii) for sub-paragraph (c), substitute—
 - “(c) the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008(a).”;
- (c) in paragraph (3)(a), omit “in writing”; and
- (d) omit paragraph (4).

6. After regulation 3 insert—

“Prohibition on the release of oil

3A. No person shall—

- (a) release any oil; or
- (b) allow such a release to continue.”.

7. In regulation 4 (grant or refusal and contents of permits)—

- (a) in sub-paragraph (c) of paragraph (2) for “accidents” substitute “incidents”;
- (b) for paragraph (3), substitute —
 - “(3) A permit may be granted for a period specified in the permit or without limit of time.”; and
- (c) after paragraph (4) insert—
 - “(5) Where a permit is granted, the Secretary of State must send the permit to the applicant.
 - (6) Where a permit is refused, the Secretary of State must send a notice of such refusal to the applicant.”

8. In regulation 5 (contents of permit application)—

- (a) in paragraph (1)—
 - (i) omit “by the operator of the offshore installation”;
 - (ii) after sub-paragraph (b) omit “and”;
 - (iii) in sub-paragraph (c) for “sought.” substitute “sought; and”; and
 - (iv) after sub-paragraph (c) insert—
 - “(d) an assessment of the risk of harm to the environment from the proposed discharge of oil.”; and
- (b) in paragraph (2)—
 - (i) omit “in writing”; and
 - (ii) for “operator” substitute “applicant”.

9. After regulation 5 insert—

“Publicity for permit applications

5A.—(1) Except where the permit application is one to which paragraph (5) applies, for a period of not less than four weeks immediately following the publication of the notice

(a) S.I. 2008/3257, amended by S.I. 2010/897.

referred to in paragraph (2) (or last publication, where it is published in more than one newspaper or on more than one occasion), a permit applicant shall—

- (a) having regard to the general whereabouts of any persons likely to be interested in, or affected by, the discharge of oil to which the application relates, make a copy of the application available for public inspection between the hours of 10 am and 4 pm on business days at an address in the United Kingdom; and
- (b) subject to paragraph (4), supply a copy of the application to any person on request.

(2) A permit applicant shall publish in such newspapers on such occasions as to be likely to come to the attention of any persons likely to be interested in, or affected by, the discharge of oil to which the application relates, a notice which—

- (a) describes the application;
- (b) gives the address at which a copy of the application may be inspected;
- (c) gives the address from which a copy of the application may be requested and specifies the amount of any payment required in accordance with paragraph (4); and
- (d) states a date not less than four weeks after the date on which the notice is to be last published by which any person may make representations in relation to the application to the Secretary of State and specifies the address to which any such representations are to be sent.

(3) The permit applicant shall provide the Secretary of State with copies of the newspapers in which the notice appeared.

(4) Where a copy of the application is demanded in accordance with paragraph (1)(b), the permit applicant—

- (a) must supply a copy as soon as reasonably practicable; and
- (b) may make the supply of a copy conditional on the payment of a sum reflecting the cost of printing and distribution, subject to a maximum of £10 per copy.

(5) This regulation does not apply to applications made—

- (a) in connection with a relevant project for which the Secretary of State gives a direction, pursuant to regulation 6 of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999(a), that no environmental statement need be prepared;
- (b) in connection with a discharge from a pipeline, being a discharge to which the Secretary of State gives consent pursuant to an authorisation issued under Part 3 of the Petroleum Act 1998(b); or
- (c) in connection with activities carried out in accordance with an abandonment programme approved by the Secretary of State under Part 4 of the Petroleum Act 1998(c).”

10. In regulation 6 (fees)—

- (a) in paragraph (1) after “charge” insert “applicants for permits, permit holders or”; and
- (b) in paragraph (2), for sub-paragraphs (a) to (c) substitute—
 - “(a) an application for the grant or renewal of a permit;
 - (b) a review, or an application for a review, of a permit or the conditions to which it is subject;
 - (c) a request for the Secretary of State’s consent to the transfer of a permit;”.

(a) S.I. 1999/360, amended by S.I. 2007/933.

(b) 1998 c.17. Relevant amendments to sections 26 and 28 of Part 3 were made by sections 36, 78 and 108 of, and Schedules 1 and 6 to the Energy Act 2008 (c.32), and by S.I. 2000/1937 and 2004/2043.

(c) Part 4 of the Petroleum Act 1998 was amended by sections 36, 72 to 74, 107 and 108 of, and Schedules 1, 5 and 6 to, the Energy Act 2008, and by section 112 of, and Schedule 8 to, the Marine and Coastal Access Act 2009 (c.23).

11. After regulation 6 insert—

“Application for renewal of an existing permit

6A.—(1) Subject to paragraph (2), a permit holder may apply in writing to the Secretary of State to renew the permit.

(2) An application for renewal of a permit pursuant to paragraph (1) shall be made no more than three months before the expiry of the permit.

(3) The Secretary of State may grant or refuse an application received under paragraph (1).

(4) Where the Secretary of State grants the renewal of a permit—

(a) the Secretary of State may make the grant subject to such further terms and conditions as the Secretary of State considers fit; and

(b) notice of the renewal and of any terms and conditions to which the renewal is subject under sub-paragraph (a) has effect once served on the applicant.

(5) Where the Secretary of State refuses an application under this regulation, notice of such refusal shall be sent to the applicant.”.

12. In paragraphs (3) and (6) of regulation 7, omit “in writing”.

13. For regulation 8 (assignment of permit) substitute—

“Transfer of permit

8. A permit holder shall not, except with the prior consent in writing of the Secretary of State and in accordance with the conditions (if any) of the consent, transfer the permit or any rights granted under the permit, to another person.”.

14. In regulation 9 (revocation and surrender of permits) omit—

(a) “in writing” in both places where it occurs; and

(b) “granted pursuant to these Regulations”.

15. After regulation 9 insert—

“Register of permits to be kept by the Secretary of State

9A.—(1) The Secretary of State shall keep a register at a place in the United Kingdom in which shall be entered—

(a) the terms and conditions of any permits; and

(b) the results of any monitoring information required to be sent to the Secretary of State under the conditions of any permit.

(2) The register shall be open to public inspection on business days from 10 am to 4 pm.”.

16. After regulation 11 (registry) insert—

“Provision of information to the Secretary of State

11A.—(1) A person who discharges or releases oil shall provide the Secretary of State with such information as the Secretary of State may reasonably require for the purpose of performing the Secretary of State’s functions under these Regulations.

(2) The permit holder or, if there is no permit holder, the operator shall without delay provide the Secretary of State with information, in such form and in such manner as the Secretary of State may direct, of—

(a) an incident resulting in a discharge of oil save in accordance with the terms of, or conditions attached to, a permit;

- (b) an incident resulting in a release; or
- (c) any other incident involving oil where there has been, or may be, any significant effect on the environment by means of pollution.

(2) For the purposes of this regulation “effect” includes any direct, indirect, secondary, cumulative, short, medium or long-term, permanent or temporary, or positive or negative effect.”.

17. In regulation 12 (inspectors)—

- (a) in sub-paragraph (b) of paragraph (1) after “discharge” insert “or release”;
- (b) in paragraph (3)—
 - (i) in sub-paragraph (a) after “discharge” insert “or release”; and
 - (ii) in sub-paragraph (j) omit “granted under these Regulations”.

18. In regulation 13 (enforcement notices)—

- (a) in paragraph (1) omit “in writing (“an enforcement notice”)”;
- (b) after paragraph (1), insert—

“(1A) If the Secretary of State is of the opinion that a release or a discharge without a permit has occurred, is occurring, or is likely to occur, the Secretary of State or an inspector appointed under regulation 12 may serve on the permit holder or, if there is no permit holder, the operator, a notice which—

 - (a) states that the Secretary of State is of that opinion;
 - (b) specifies the matters which constituted, constitute, or are likely to constitute the release or discharge;
 - (c) specifies the remedial steps that must be taken; and
 - (d) specifies the period within which those steps must be taken.

(1B) The Secretary of State may serve a notice on a permit holder to vary the period within which remedial steps must be taken under an enforcement notice.”;

- (c) in paragraph (3)—
 - (i) after “paragraph (1)(c)” insert “or (1A)(c)”;
 - (ii) after “contravention” insert “, release or discharge”;
- (d) in paragraph (6), omit “served under paragraph (1)”;
- (e) in paragraph (7), for “paragraphs (1) and (4)” substitute “paragraph (1), (1A) or (4)”.

19. In regulation 14 (prohibition notices)—

- (a) in paragraph (1)—
 - (i) after “discharge” insert “or release”;
 - (ii) omit “in writing (“a prohibition notice”)”;
 - (iii) after “permit holder” insert “or, if there is no permit holder, the operator”;
- (b) in paragraph (2) omit “granted under these Regulations”; and
- (c) in paragraph (3)—
 - (i) in sub-paragraph (c) omit “and the period within which they must be taken”;
 - (ii) after sub-paragraph (c)—
 - (aa) omit “and”; and
 - (bb) insert—

“(ca) may specify the period within which any such steps must be taken; and”;
 - (iii) in sub-paragraph (d) omit “granted under these Regulations”.

20. In regulation 15 (appeal to the High Court, Court of Session, or High Court in Northern Ireland)—

(a) for paragraph (2) substitute—

“(2) Subject to paragraph (6), any applicant for a permit, permit holder or operator aggrieved by a decision of the Secretary of State made under these Regulations may appeal to the court.”;

(b) in paragraph (3)—

(i) in each of sub-paragraphs (a), (b) and (c) after “discharge” insert “or release”;

(ii) in paragraph (b) omit “(excluding Scottish controlled waters)”;

(c) in paragraph (4)—

(i) after “discharged” where it occurs for the first and third time insert “or released”;

(ii) omit “(excluding Scottish controlled waters)”.

21. In regulation 16 (offences)—

(a) in paragraph (1)—

(i) after sub-paragraph (a) insert—

“(aa) contravenes regulation 3A;”;

(ii) in sub-paragraph (c) omit “granted under these Regulations”;

(iii) in sub-paragraph (d) for “3(4)” substitute “11A”; and

(iv) in paragraph (i) of sub-paragraph (g) for “assignment” substitute “transfer”.

(b) in paragraph (2)—

(i) after “(1)(a)” insert “or (1)(aa)” and delete “, (1)(b), (1)(c) or 1(d),” and

(ii) after “contravention” delete “or failure”;

(c) in paragraph (3), for sub-paragraph (a) substitute—

“(a) that the thing done was not a reasonable step to take in the circumstances;”;

(d) in paragraph (4), omit “into relevant waters”; and

(e) after paragraph (10) insert—

“(11) Proceedings in England and Wales for an offence under this regulation may be brought only by, or with the consent of, the Secretary of State or the Director of Public Prosecutions.

(12) Proceedings in Northern Ireland for an offence under this regulation may be brought only by, or with the consent of, the Secretary of State or the Director of Public Prosecutions for Northern Ireland.”.

22. In regulation 18 (Disapplication or consequential modifications of enactments), in paragraph (1), for “discharges of oil which are regulated by a permit” substitute “any emission of oil which is a discharge or release for the purposes of these Regulations”.

Transitional and consequential provision

23.—(1) The amendments made by regulation 21 do not have effect in relation to a contravention which occurred, or proceedings which commenced, before the coming into force of these Regulations.

(2) Article 9(3) of the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010(a) is amended as follows.

(3) For “relevant waters” to the end, substitute “the relevant area does not include areas (or places above and below them) comprised in the territorial sea adjacent to Scotland or Wales.”.

(a) 2010/1513.

Date

Name
Minister of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (“the 2005 Regulations”), which regulate the emission of oil from offshore installations. The 2005 Regulations were amended by the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010 (S.I. 2010/1513) to extend those Regulations to the discharge of oil in offshore gas storage and unloading activities.

Under the 2005 Regulations, it is an offence to discharge oil without a permit, and a discharge is defined as a release from an offshore installation. *Regulation 4(a)* of these Regulations inserts a narrower definition of ‘discharge’ into regulation 2 of the 2005 Regulations, so that a discharge requires the intentional emission of oil. Any other emission will be a ‘release’, which is prohibited by new regulation 3A of the 2005 Regulations (inserted by *regulation 6*). The effect of these changes is to clearly distinguish unlawful releases of oil from discharges, which may be lawful if made in accordance with the terms and conditions of a permit.

Regulation 4(h) and (i) makes amendments to the 2005 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 amends regulation 4 to clarify the procedural requirements relating to the grant of a permit, and to ensure 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(a)(iv) amends regulation 5 to require that an application for a permit to discharge oil must include an assessment of the risk of harm to the environment from the proposed discharge.

Regulation 9 inserts a new regulation 5A which requires applicants for permits to satisfy certain publicity requirements (except where their application comes within paragraph (5) of the new regulation). Applicants must publish details of their application in newspapers likely to come to the attention of persons likely to be interested in or affected by the discharge of oil to which the application relates. They must also make copies of the application available for public inspection, and provide copies of the application on request.

Regulation 10 makes changes to clarify who can be charged fees under the 2005 Regulations, and what those fees can cover.

Regulation 11 inserts a new regulation 6A so as to establish a process for the renewal of a permit, and *regulation 12* substitutes a new regulation 8 which creates a simpler process for the transfer of permits.

Regulation 15 inserts a new regulation 9A, which requires the Secretary of State to keep a public register of the terms and conditions of any permits and the results of monitoring information obtained under the conditions of any permit.

Regulation 16 inserts a new regulation 11A, which extends the circumstances in which a person may be required to provide information to the Secretary of State about emissions of oil.

Regulations 18 and 19 extend the circumstances in which enforcement and prohibition notices can be served to include any release of oil or its discharge without a permit. These regulations also

make amendments to provisions about the specification of 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 21 amends regulation 16 to make the release of oil an offence. It also inserts a requirement into regulation 16 for proceedings to be brought in England and Wales and in Northern Ireland for an offence under this regulation only 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 22 amends regulation 18, which provides that the Prevention of Oil Pollution Act 1971 (c.60) shall not apply to discharges regulated under the 2005 Regulations, so that the Act is also disapplied in relation to releases regulated under those Regulations.

Regulation 23 makes transitional provision to make clear that the changes made to the provisions of the 2005 Regulations concerning criminal offences do not have retrospective effect.

The Regulations also make a number of changes to the 2005 Regulations which are consequential on the changes described above, as well as a number of minor changes, including changes to ensure that the 2005 Regulations are consistent with the Offshore Chemicals Regulations 2002 (S.I. 2002/1355, amended by S.I. 2005/2005 and 2010/1513).

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

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DRAFT STATUTORY INSTRUMENTS

2010 No. 0000

ENVIRONMENTAL PROTECTION

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£5.75