
STATUTORY INSTRUMENTS

1999 No. 360

**The Offshore Petroleum Production and Pipe-lines
(Assessment of Environmental Effects) Regulations 1999**

Citation, commencement and application

1.—(1) These Regulations may be cited as the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 and shall come into force on 14th March 1999.

(2) Nothing in these Regulations shall apply to anything done pursuant to a consent or approval granted or relevant requirement imposed prior to 30th April 1998 or to the use of a floating installation where such use commenced prior to that date.

Revocation and transitional and saving provisions

2.—(1) In this regulation “the 1998 Regulations” means the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1998(1).

(2) Subject to paragraph (3) below, the 1998 Regulations are hereby revoked.

(3) The 1998 Regulations shall continue to apply to any application for a consent received by the Secretary of State prior to the coming into force of these Regulations.

(4) Any reference in these Regulations to a consent or approval granted or relevant requirement imposed pursuant to these Regulations shall include a reference to any consent or approval granted or relevant requirement imposed pursuant to the 1998 Regulations regardless of whether such grant or imposition took place before or after the coming into force of these Regulations.

Interpretation

3.—(1) In these Regulations—

“the 1998 Act” means the Petroleum Act 1998(2);

“application” means, except in regulations 16 and 17 (applications to court), an application in writing;

“appropriate particulars” means the name and address of the undertaker, the location of the project in question, the nature and purpose of the project and what the undertaker considers would be likely to be the main environmental consequences of the execution of the project;

“approval” means an approval of the kind referred to in regulation 11(1) below (approval of proposals for the carrying out of relevant project);

“authorisation” means a pipe-line works authorisation required by section 14 of the Petroleum Act 1998 (construction and use of pipe-lines);

(1) S.I.1998/968.

(2) 1998 c. 17.

“business day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday in any part of the United Kingdom by virtue of the Banking and Financial Dealings Act 1971(3);

“consent” means, except in regulation 4 below (requirements as to contents of licences; requirement as to consent for use of floating installations in connection with a development etc.),–

- (a) in relation to any relevant project comprising the drilling of an exploration well, any consent required by or under a licence to the commencement or re-commencement of the drilling of that well;
- (b) in relation to a relevant project comprising a development–
 - (i) any consent required by or under a licence in respect of the erection of any structure;
 - (ii) any consent required by or under a licence to the getting of more than 500 tonnes of oil per day or 500,000 cubic metres of gas per day otherwise than as a by-product of the drilling or the testing of any well;
 - (iii) any consent required by virtue of regulation 4(4)(a) below (consent to use of floating installation);
 - (iv) any consent required by or under a licence in respect of the commencement or re-commencement of the drilling of any well used for the purposes of, or in connection with, the development; or
 - (v) any authorisation for the execution of works for the construction of a pipe-line for the conveyance of petroleum, being a pipe-line which is to form an integral part of the development;
- (c) in relation to any relevant project comprising a pipe-line for the conveyance of petroleum other than a pipe-line which is to form an integral part of a development, any authorisation for the execution of works for the construction of that pipe-line; or
- (d) in relation to any relevant project comprising the use of a mobile installation for the extraction of petroleum where the principal purpose of the extraction is the testing of any well, any consent required under regulation 4(4)(b) below (requirement for consent to use of mobile installation for the purposes of the testing of well),

but does not in any case include any consent required pursuant to a licence in respect of anything done or to be done wholly outside the relevant area or any approval;

“development” means any project which has as its main object the getting of petroleum as opposed to the establishment of its existence, the appraisal of its quantity, characteristics or quality or the characteristics or extent of any reservoir in which it occurs;

“EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“effect” includes, except where the context otherwise requires, any direct, indirect, secondary, cumulative, short, medium or long-term, permanent or temporary, or positive or negative effect;

“environmental authority” means any person on whom environmental responsibilities are conferred by or under any enactment other than these Regulations;

“environmental statement” means a statement prepared in respect of a relevant project and which includes the matters specified in Schedule 2 to these Regulations;

“exploration well” means any well other than a well drilled for the purposes of, or in connection with, a development;

“floating installation” means any floating construction or device maintained on a station by whatever means but does not include a structure;

“gas”, except in the definition of “petroleum” below, means natural gas existing in its natural condition in strata;

“the Gazettes” means the London, Edinburgh and Belfast Gazettes;

“licence” means a licence granted or having effect as if granted under section 3 of the 1998 Act (licences to search and bore for and get petroleum) and “licensee” shall be construed accordingly;

“notice” means notice in writing;

“oil”, except in the definition of “petroleum” below, includes any mineral oil or relative hydrocarbon existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

“petroleum” includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

“the relevant area” means that area comprising—

- (a) tidal waters and parts of the sea adjacent to the United Kingdom from the low water mark up to the seaward limits of territorial waters;
- (b) waters in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964(4) (designation of areas of continental shelf); and
- (c) the seabed and subsoil under the waters referred to in paragraphs (a) and (b) above;

“relevant project” means a project comprising—

- (a) the drilling of an exploration well;
- (b) a development;
- (c) the construction of a pipe-line for the conveyance of petroleum other than one which is to form an integral part of any development, or
- (d) the use of a mobile installation for the extraction of petroleum where the principal purpose of the extraction is the testing of any well,

wholly or partly within the relevant area;

“relevant requirement” means any requirement, imposed under a licence, of the kind referred to in regulation 11(4) below (powers of Secretary of State to require carrying out of relevant project);

“structure” means any structure used for or, as the case may be, to be used for the purpose of getting petroleum or conveying petroleum to land (including any structure for the storage of petroleum) which is intended to be permanent and is neither designed to be moved from place to place without major dismantling nor to be used only for searching for petroleum;

“undertaker” means any person who carries out, or may reasonably be taken to propose the carrying out of, a relevant project; and

“well” means any well or borehole drilled for the purposes of, or in connection with, the getting of petroleum, the exploration for petroleum or the establishment of the existence of, or appraisal of, the quantity, characteristics or quality of, petroleum in a particular location but does not include any well drilled in connection with the exploration for petroleum to a depth

of 350 metres or less below the surface of the seabed for the purpose of obtaining geological information about strata or any drilling operation, the main purpose of which is the testing of the stability of the seabed.

(2) References in these Regulations to a project being in a particular area include, unless the context otherwise requires, references to a project proposed to be carried out in that area, a project which is in the course of being carried out in that area and a project which has been carried out in that area.

Requirements as to contents of licences; requirement as to consent for use of floating installations in connection with a development or use of mobile installation for the testing of a well

4.—(1) The Secretary of State shall not grant any licence which does not require the licensee to obtain the prior consent of the Secretary of State to the operations to which paragraph (2) below applies.

(2) This paragraph applies to any of the following operations wholly or partly in the relevant area—

- (a) the commencement or re-commencement of the drilling of any well;
- (b) the extraction of petroleum (otherwise than as a by-product of the drilling or the testing of any well) where the amount extracted exceeds 500 tonnes per day in the case of oil and 500,000 cubic metres per day in the case of gas; or
- (c) the erection of any structure in connection with a development.

(3) The Secretary of State shall not exercise any power conferred on him to vary the terms of a licence so as to relieve the licensee of any requirement to obtain the consent of the Secretary of State to any of the operations to which paragraph (2) above applies.

(4) Notwithstanding any provision in any licence, an undertaker shall not without the prior written consent of the Secretary of State granted in accordance with these Regulations—

- (a) use a floating installation in connection with a relevant project comprising a development; or
- (b) use any mobile installation for the extraction of petroleum where the principal purpose of the extraction is the testing of any well.

Grant of consent by Secretary of State in respect of relevant projects

5.—(1) The Secretary of State shall not grant a consent in respect of a relevant project unless the application for that consent is one to which paragraph (2) below applies or is—

- (a) accompanied by an environmental statement in respect of the relevant project in question; or
- (b) the subject of a direction given under regulation 6 below (provision as to directions that no environmental statement need be prepared).

(2) This paragraph applies to any application for consent to—

- (a) the renewal or extension of a consent to the getting of petroleum in relation to a relevant project (other than as the by-product of the drilling or testing of a well) where—
 - (i) the consent to be renewed or extended is a consent to the getting of more than 500 tonnes per day of oil or 500,000 cubic metres per day of gas; and
 - (ii) by reference to the rate at which production is permitted or, as the case may be, was last permitted, the daily rate of production would not be increased by more than 1,500 tonnes of oil or 2.5 million cubic metres of gas or in either case by more than 20 per cent. whichever would be less; or

- (b) the construction of a pipe-line or the extension of an existing pipe-line where no part of the pipe-line to be constructed or the extension would extend more than 500 metres from a well or any part of a fixed installation to which that pipe-line would be directly or indirectly attached,

where the Secretary of State has decided that having regard to the matters set out in Schedule 1 to these Regulations the operation in respect of which consent is sought would not be likely to have a significant effect on the environment and that accordingly no environmental statement need be prepared in respect of the relevant project in question.

(3) Where the Secretary of State receives an application for a consent in respect of a relevant project to which paragraph (2) above applies, the undertaker in question shall provide the Secretary of State with such information as he may require regarding that application.

(4) Where an application for consent in respect of a relevant project is accompanied by an environmental statement, the Secretary of State shall not grant a consent in respect of that project unless he—

- (a) is satisfied that the requirements of regulations 9 and 10 below (requirements as to consultation and publicity) have been substantially met; and
- (b) has taken into consideration—
 - (i) the environmental statement;
 - (ii) any information in respect of that relevant project of the kind referred to in regulation 10(2) below (information omitted from environmental statement);
 - (iii) the representations of any environmental authority to which a copy of that statement was required to be sent pursuant to these Regulations; and
 - (iv) any opinions expressed by the public.

(5) Where pursuant to regulation 12(2) below (request by member State to participate in procedure under the Regulations in relation to relevant project affecting it) a member State has requested to participate in the procedure pursuant to these Regulations in relation to the decision whether to grant consent in respect of a relevant project, the Secretary of State shall not grant consent in respect of that project unless—

- (a) he is satisfied that the requirements of regulation 12(1) and (2) below (projects affecting other States) have been complied with;
- (b) he has communicated to that member State the response that he proposes to make to the application for consent (including information as to any measures envisaged to reduce or eliminate any trans-boundary effects of the project);
- (c) he is satisfied that—
 - (i) the member State has been consulted regarding the application for consent and arrangements for consulting persons in that member State (including any authorities likely to be interested in the relevant project in question by virtue of their particular environmental responsibilities);
 - (ii) a reasonable time has been allowed for the consultation of the persons referred to in sub-sub-paragraph (i) above and for any representations made by them regarding the relevant project to be forwarded to the Secretary of State; and
 - (iii) any timetable agreed with that member State regarding consultation with the persons referred to in sub-sub-paragraph (i) above has been observed; and
- (d) he has taken into consideration any representations made by the member State, members of the public and authorities in that member State and any information regarding the relevant project supplied by any of them.

(6) Where the Secretary of State has made a direction under regulation 6(2) below (provision as to directions that no further environmental statement need be prepared where one already prepared), he shall not grant a consent to an application which falls within the terms of that direction unless he has taken into consideration—

- (a) the environmental statement prepared in respect of the relevant project in question;
- (b) any information in respect of that relevant project of the kind referred to in regulation 10(2) below (information omitted from environmental statement);
- (c) any representations previously made by an environmental authority to whom that statement was required to be sent;
- (d) any opinions originally expressed by the public; and
- (e) any representations or information relating to the relevant project of the kind referred to in paragraph (5)(d) above.

(7) Where the Secretary of State gives his consent to a relevant project, he may (to the extent that he has no power to do so apart from this paragraph (7)) attach conditions to that consent for the purpose of reducing or eliminating any significant adverse effects of that project on the environment.

(8) The Secretary of State shall publish a notice in the Gazettes of his decision in relation to any application for consent accompanied by an environmental statement and such a notice shall either—

- (a) set out—
 - (i) the contents of the decision and any conditions attached to the decision;
 - (ii) the main reasons and considerations on which the decision is based;
 - (iii) a description, where necessary, of the main measures required to be taken to avoid, reduce and, if possible, offset major adverse effects on the environment, or
- (b) specify where details of the matters referred to in sub-paragraph (a) above may be obtained.

(9) Where pursuant to paragraph (8) above the Secretary of State publishes in the Gazettes a notice of a decision in relation to an application for consent accompanied by an environmental statement, he shall communicate that decision including the information referred to in paragraph (8)(a) above to any EEA State which has, pursuant to regulation 12 below (projects affecting other States), been provided with a copy of the environmental statement that accompanied that application.

(10) Where the Secretary of State decides that no environmental statement is required to be prepared in respect of a relevant project which is the subject of an application for a consent to which paragraph (2) above applies, he shall publish in the Gazettes notice of that decision.

(11) In this regulation “daily rate of production” means either the daily rate of production of petroleum specified in a consent to the getting of petroleum or, where no such rate is specified, the rate of production arrived at by dividing the total permitted production by the number of days over which such production is permitted.

Provisions as to directions that no environmental statement need be prepared

6.—(1) Where—

- (a) an undertaker makes an application containing the appropriate particulars to the Secretary of State for him to exercise the power conferred by this paragraph (1); and
- (b) the Secretary of State is satisfied that either—
 - (i) the carrying out of the relevant project described in that application; or
 - (ii) the carrying out of the relevant project as modified or carried out in a particular way or carried out at a particular time,

is not likely to have a significant effect on the environment, he may, subject to paragraph (5) below, give a direction that any application for consent in respect of that relevant project or that relevant project as modified, or to be carried out in the manner or at the time specified in the direction, need not be accompanied by an environmental statement.

(2) Where a relevant project has been the subject of an environmental assessment in accordance with regulation 5(4) above (grant of consent by Secretary of State in respect of relevant projects subject to environmental assessment), the Secretary of State may, on the application of the undertaker concerned, give a direction that further applications for consents of such kind as may be specified in that direction need not be accompanied by an environmental statement provided that the Secretary of State is satisfied that if such consents were granted anything that might be done pursuant to them would not give rise to substantially different or significantly greater effects from those mentioned in the environmental statement originally prepared in respect of the relevant project.

(3) In deciding whether or not to give a direction under paragraph (1) or (2) above, the Secretary of State shall take into consideration, where relevant, the matters set out in Schedule 1 to these Regulations.

(4) An undertaker shall provide to the Secretary of State such further information in relation to any application made by the undertaker under paragraph (1)(a) or (2) above as the Secretary of State may require.

(5) Subject to paragraph (6) below, no direction shall be given pursuant to paragraph (1) above in respect of any application for consent—

- (a) to the getting of more than 500 tonnes of oil per day or 500,000 cubic metres of gas per day otherwise than in the course of the drilling or testing of any well;
- (b) to the erection of any structure in relation to a relevant project comprising a development which the Secretary of State is not satisfied would be likely to produce 500 tonnes or less of oil per day or 500,000 cubic metres or less of gas per day;
- (c) for the execution of works for the construction of a pipe-line of 40 kilometres or more in length and a diameter of 800 millimetres or more (regardless of whether that pipe-line forms an integral part of a development); or
- (d) in respect of which another member State has requested to participate in the procedure pursuant to regulation 12 below (projects affecting other States).

(6) Paragraph (5) above shall not prevent the giving of a direction pursuant to paragraph (1) above in respect of an application for—

- (a) a consent to the variation of the terms or conditions of any consent to the getting of oil or gas in excess of the amounts referred to in paragraph (5)(a) above;
- (b) a consent to the variation of any consent to the erection of any structure in relation to a development (whether the structure has already been erected pursuant to that consent or not); or
- (c) the renewal or extension of any consent, provided that in the case of the extension of a consent to the getting of petroleum, the consent which it is sought to extend is a consent to the getting of oil or gas in excess of the amounts referred to in paragraph (5)(a) above.

(7) Any direction given pursuant to this regulation shall remain in force for 2 years (or such shorter period as may be specified in the direction) from the date on which it was given.

(8) The Secretary of State shall give notice to the undertaker concerned of his decision in relation to any application made under this regulation.

(9) The Secretary of State shall publish in the Gazettes notice of the giving of a direction under paragraph (1) or (2) above.

(10) The Secretary of State may revoke any direction given under this regulation.

Opinion by Secretary of State as to content of environmental statements

7.—(1) Subject to paragraphs (2) and (3) below, the Secretary of State shall on the application of an undertaker containing the appropriate particulars give an opinion as to the matters to be included in an environmental statement in respect of the relevant project referred to in that application.

(2) The Secretary of State shall not give his opinion pursuant to paragraph (1) above unless—

- (a) he has served a notice setting out the opinion that he is minded to give on—
 - (i) the undertaker; and
 - (ii) any environmental authority which the Secretary of State considers would be likely to be interested in the relevant project by reason of its particular environmental responsibilities;
- (b) the Secretary of State is satisfied that a reasonable opportunity for making representations regarding the opinion he is minded to give has been afforded to the persons referred to in paragraph (2)(a) above; and
- (c) he has considered any representations made regarding the proposed opinion.

(3) An opinion given pursuant to paragraph (1) above shall be without prejudice to the power of the Secretary of State to request further information under regulation 10 below (provision to Secretary of State of further information and evidence respecting environmental statements) or regulation 11(5) below (further information in respect of environmental statements in relation to exercise of powers under licences by Secretary of State).

Obtaining of information for the preparation of environmental statements

8.—(1) This regulation applies where an undertaker makes an application to the Secretary of State containing appropriate particulars in respect of a relevant project for the provision to the undertaker of any information which—

- (a) would assist the undertaker in the preparation of the environmental statement in respect of the relevant project referred to in the appropriate particulars; and
- (b) but for the provisions of paragraphs (2) and (3) below, could not readily be obtained by the undertaker.

(2) On receipt of such an application as is mentioned in paragraph (1) above, the Secretary of State shall—

- (a) subject to paragraph (4) below, provide to the undertaker such information as he may have of the kind mentioned in paragraph (1) above;
- (b) provide to the undertaker the name and address of any environmental authority that he considers may have any such information; and
- (c) at the same time as he provides the name and address of any environmental authority to an undertaker, serve on that authority a notice which—
 - (i) states that he has provided the authority's name and address to the undertaker;
 - (ii) refers to the duty imposed on the authority by paragraph (3) below; and
 - (iii) is accompanied by a copy of the application made by the undertaker under this regulation.

(3) Where a notice pursuant to paragraph (2)(c) above is served on an environmental authority by the Secretary of State, the authority shall, subject to paragraph (4) below, provide to the undertaker

concerned, within the period specified in the notice, any information held by it which it considers is of the kind mentioned in paragraph (1) above.

(4) Nothing in this regulation shall require the disclosure of any information which is by virtue of any rule of the law of any part of the United Kingdom subject to any obligation of confidentiality.

Procedure on receipt of application for consent in respect of which environmental statement prepared; publicity requirements; provision of environmental statements to public

9.—(1) Where the Secretary of State receives an application for a consent in respect of a relevant project which is accompanied by an environmental statement, he shall forthwith serve on the undertaker concerned a notice specifying those environmental authorities which in the opinion of the Secretary of State are likely to be interested in the project by reason of their particular environmental responsibilities.

- (2) The undertaker referred to in paragraph (1) above shall—
- (a) serve on each environmental authority notified to him under paragraph (1) above—
 - (i) a copy of the Secretary of State’s notice under paragraph (1) above;
 - (ii) a copy of the application for consent and the environmental statement that accompanied it; and
 - (iii) a notice stating that representations may be made to the Secretary of State by a date specified in the notice which shall be at least 4 weeks after the date on which the application, environmental statement and notice were served on the authority;
 - (b) give notice to the Secretary of State of the name of every authority whom he has served under sub-paragraph (a) above, and of the date of such service;
 - (c) having regard to the general whereabouts of any persons likely to be interested in, or affected by, the relevant project, make available for public inspection at an address within the United Kingdom between the hours of 10 a.m. and 4 p.m. on business days for a period of not less than 4 weeks immediately following the publication (or last publication, where it is published in more than one newspaper or on more than one occasion) of the notice referred to in sub-paragraph (f) below—
 - (i) a copy of the application for consent; and
 - (ii) a copy of the environmental statement that accompanied it;
 - (d) make available at an address within the United Kingdom enough copies of the environmental statement to be likely to satisfy all reasonable demands for copies pursuant to sub-paragraph (c) above;
 - (e) subject to sub-paragraph (d) above and the receipt by the undertaker of any sum mentioned in the notice referred to in sub-paragraph (f) below, supply during the period mentioned in sub-paragraph (c) above to any person on request, a copy of the environmental statement; and
 - (f) publish in such newspapers on such occasions as to be likely to come to the attention of those likely to be interested in, or affected by, the relevant project, a notice which—
 - (i) describes the application and states that it is accompanied by an environmental statement;
 - (ii) gives the address referred to in sub-paragraph (c) above at which a copy of the application for consent and environmental statement may be inspected;
 - (iii) states that a copy of the environmental statement may be obtained from the address referred to in sub-paragraph (d) above and, subject to paragraph (4) below, specifies the amount of any payment required to be tendered for the statement; and

(iv) states a date not less than 4 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 in question to the Secretary of State and specifies the address to which any such representations are to be sent.

(3) The undertaker shall provide to the Secretary of State copies of the newspapers in which the notice referred to in paragraph (2)(f) above appeared.

(4) An undertaker may make the supply of a copy of an environmental statement to any person other than an environmental authority conditional on the receipt by the undertaker of a sum calculated by reference to the cost of printing and distributing copies of the statement, subject to a maximum of £2.00 for each copy requested.

(5) Where an undertaker is subject to an obligation to supply a copy of an environmental statement pursuant to a request made under paragraph (2)(e) above, he shall supply a copy of the environmental statement to the person requesting it as soon as reasonably practicable after receipt of the request.

Provision to Secretary of State of further information and evidence respecting environmental statements

10.—(1) The Secretary of State may by notice require an undertaker to provide in respect of an environmental statement provided to him pursuant to these Regulations such further information as the Secretary of State may require, including evidence in support of any information in that statement.

(2) Where the Secretary of State is of the opinion that information provided pursuant to a requirement imposed under paragraph (1) above ought to have been included in the environmental statement in question, he shall in writing direct the undertaker to—

- (a) serve that information on any environmental authority on which the environmental statement was required to be served pursuant to regulation 9(2)(a)(ii) above together with a notice referring to the material previously served on that authority and stating that further representations may be made to the Secretary of State by a date specified in that notice which shall be at least 4 weeks after the date on which the information and notice were served on that authority;
- (b) notify the Secretary of State of the name of every authority served with the information and notice referred to in sub-paragraph (a) above and the date of such service;
- (c) make available to the public the application for consent, the environmental statement and the information referred to in sub-paragraph (a) above in the same way as the application and environmental statement were previously made available for the period of 4 weeks immediately following the publication (or last publication) of the notice referred to in sub-paragraph (d) below; and
- (d) publish in such newspapers on such occasions as to be likely to come to the attention of those likely to be interested in, or affected by, the relevant project, a notice which—
 - (i) refers to the previous notice in respect of the application and environmental statement and states that further information is available in respect of the relevant project;
 - (ii) gives the address at which a copy of the application for consent and environmental statement and further information may be inspected;
 - (iii) states where a copy of the environmental statement and the additional information may be obtained and, subject to regulation 9(4) above (maximum payment for copy of environmental statement), specifies the amount of any payment required to be tendered for the copy; and

(iv) states a date not less than 4 weeks after the date on which the notice is to be published (or last published) by which any person may make representations in relation to the application in question to the Secretary of State and specifies the address to which any such representations are to be sent.

(3) The undertaker shall provide to the Secretary of State copies of the newspapers in which the notice referred to in paragraph (2)(d) above appeared.

Exercise by Secretary of State of powers under licences

11.—(1) Where the Secretary of State exercises any powers under a licence so as to require a licensee to submit to him for his approval any proposals for the carrying out of a relevant project comprising a development then, subject to paragraph (2) below, any proposals so submitted shall be accompanied by an environmental statement.

(2) Proposals of the kind referred to in paragraph (1) above need not be accompanied by an environmental statement where—

(a) the licensee has submitted appropriate particulars in respect of the development referred to in the proposals submitted to the Secretary of State; and

(b) the Secretary of State, being satisfied that—

(i) the proposals either relate to a development which will produce 500 tonnes or less of oil per day or 500,000 cubic metres or less of gas per day or do not involve the construction of a pipe-line of 40 kilometres or more in length and a diameter of 800 millimetres or more;

(ii) having regard to the matters set out in Schedule 1 to these Regulations, the carrying out of the proposals is not likely to have a significant effect on the environment; and

(iii) no member State has requested under regulation 12 below (projects affecting other States) to participate in the decision relating to the granting of the approval,

has given a direction in writing within the two years immediately preceding the submission of the proposals that they need not be accompanied by an environmental statement.

(3) The Secretary of State may revoke a direction given under paragraph (2) above.

(4) Where the Secretary of State proposes to exercise powers under a licence to impose a requirement on a licensee to carry out a relevant project comprising a development—

(a) which in his opinion is likely to produce in excess of 500 tonnes of oil per day or in excess of 500,000 cubic metres of gas per day or involves the construction of a pipe-line of 40 kilometres or more in length and a diameter of 800 millimetres or more; or

(b) other than one falling within sub-paragraph (a) above which, having regard to the matters set out in Schedule 1 to these Regulations, he is not satisfied is not likely to have a significant effect on the environment,

he shall serve a notice on the licensee setting out details of the relevant project which he proposes that the licensee should be required to carry out and requiring the licensee to provide him with an environmental statement in respect of that project within such time as may be specified in the notice.

(5) Where—

(a) proposals are submitted to the Secretary of State accompanied by an environmental statement; or

(b) an environmental statement is provided to the Secretary of State in compliance with a requirement imposed by virtue of paragraph (4) above,

regulations 9 (procedure on receipt of application for consent accompanied by environmental statement; publicity requirements; provision of environmental statements to public) and 10

(provision to Secretary of State of further information and evidence respecting environmental statements) above shall apply in respect of such an environmental statement in the same way as they apply to an application for a consent accompanied by an environmental statement save that references to the application for consent shall be treated as references to the proposals submitted by the licensee or, as the case may be, to the notice served pursuant to paragraph (4) above.

(6) The Secretary of State shall not approve proposals which entail the carrying out of a relevant project comprising a development or exercise any power under a licence to require the carrying out of a relevant project comprising a development where in either case an environmental statement has been submitted to him, unless he is satisfied that the requirements of regulations 9 and 10 above as they apply by virtue of paragraph (5) above have been substantially met and he has taken into account—

- (a) the environmental statement;
- (b) any information of the kind referred to in regulation 10(2) (information omitted from environmental statement) as that regulation applies by virtue of paragraph (5) above;
- (c) the representations of any environmental authority sent a copy of the environmental statement in compliance with the requirements of regulation 9 above as it applies by virtue of paragraph (5) above; and
- (d) any opinions expressed by the public.

(7) Where under regulation 12(2) below (request by member State to participate in procedure under the Regulations in relation to relevant project affecting it) any other member State has requested to participate in the procedure pursuant to these Regulations in relation to the decision whether to grant an approval or impose a relevant requirement in respect of a relevant project, the Secretary of State shall not grant an approval or impose a relevant requirement in respect of that project unless—

- (a) he is satisfied that the requirements of regulation 12(1) and (2) below (projects affecting other States) have been met;
- (b) he has communicated to that member State the response that he proposes to make to the application for approval or, as the case may be, the relevant requirement he is minded to impose (including in either case information as to any measures envisaged to reduce or eliminate any trans-boundary effects of the project);
- (c) he is satisfied that—
 - (i) the member State has been consulted regarding the application for consent and the arrangements for consulting persons in that member State (including any authorities likely to be interested in the relevant project in question by virtue of their particular environmental responsibilities);
 - (ii) a reasonable time has been allowed for the consultation of the persons referred to in sub-sub-paragraph (i) above and for any representations made by them regarding the relevant project to be forwarded to the Secretary of State; and
 - (iii) any timetable agreed with that member State regarding consultation with the persons referred to in sub-sub-paragraph (i) above has been observed; and
- (d) he has taken into consideration any representations made by the member State, members of the public and authorities in that member State and any information regarding the relevant project supplied by any of them.

(8) Where, having considered the matters referred to in paragraphs (6) and (7) above, the Secretary of State approves any proposals of the kind referred to in paragraph (1) above or imposes any relevant requirement, he may (to the extent that he has no power to do so apart from this paragraph (8)) attach conditions to that approval or requirement for the purpose of reducing or eliminating any significant adverse effects of the relevant project referred to in those proposals.

- (9) The Secretary of State shall publish in the Gazettes—
- (a) any decision regarding the approval pursuant to a licence of a project which entails the carrying out of a relevant project in respect of which an environmental statement was submitted to the Secretary of State;
 - (b) particulars of the exercise by the Secretary of State of any powers pursuant to a licence requiring the carrying out of a relevant project in respect of which an environmental statement was submitted to the Secretary of State; or
 - (c) any decision that an environmental statement is not to be required in connection with the giving of an approval or the imposition of a relevant requirement.

(10) Upon the publication in the Gazettes referred to in paragraph (9) above, the Secretary of State shall inform any EEA State which has, pursuant to regulation 12 below (projects affecting other States), been provided with a copy of the environmental statement, of the approval of the proposals or, as the case may be, of the imposition of the relevant requirement.

Projects affecting other States

12.—(1) Where it appears to the Secretary of State that the carrying out of a relevant project would be likely to have a significant effect on the environment of any other member State or where any other member State which considers that its environment is likely to be significantly affected by that project so requests, the Secretary of State shall forward to the member State in question as soon as possible and no later than the date on which the environmental statement in respect of that project is made available to the public (except in a case where a request is made by the member State after that date)—

- (a) a description of the project together with any available information regarding the possible trans-boundary impact of the project; and
- (b) a written notification explaining the nature of the decision to be taken as to whether or not to grant consent in respect of the relevant project and informing the member State in question that it may within such reasonable period as may be specified in the notification request to participate in the procedure relating to the taking of the decision pursuant to these Regulations.

(2) Where any other member State requests to participate in the procedure under these Regulations in relation to a relevant project, the Secretary of State shall, save to the extent that he has not already done so, send to that member State—

- (a) a copy of the application for consent in respect of the relevant project, a copy of any proposals submitted to the Secretary of State for approval or, as the case may be, any notice served by the Secretary of State pursuant to paragraph 11(3) above (notice by Secretary of State of project proposed to be carried out by undertaker);
- (b) the environmental statement relating to that project; and
- (c) to the extent that it is not included in the items referred to in sub-paragraph (a) or (b) above and subject to paragraph (4) below, any other available information which is relevant to that project.

(3) Where it appears to the Secretary of State that the carrying out of a relevant project would be likely to have a significant effect on the environment of an EEA State other than a member State or any such EEA State which considers that its environment is likely to be significantly affected by that project so requests, the Secretary of State shall forward to the State in question the environmental statement relating to that project at the same time as it is made available to the public pursuant to these Regulations or where a request is made after the date on which the environmental statement is made available to the public, as soon as reasonably practicable after receipt of the request by the Secretary of State.

(4) Nothing in this regulation shall require the disclosure by the Secretary of State of any material which is subject to an obligation of confidentiality under the law of any part of the United Kingdom.

Exempt projects

13.—(1) The Secretary of State may in exceptional circumstances direct that a relevant project shall be exempt in whole or in part from the requirements of these Regulations provided that he is satisfied that the carrying out of that project is not likely to have a significant effect on the environment of any other EEA State.

(2) Prior to the giving of any such direction as is mentioned in paragraph (1) above, the Secretary of State shall inform the Commission of the European Communities of the reasons justifying the exemption to be granted and provide it with details of the information to be made available to the public pursuant to paragraph (3)(b) below.

- (3) A direction given by the Secretary of State in pursuance of paragraph (1) above shall—
- (a) require the carrying out of such other form of assessment as the Secretary of State considers appropriate;
 - (b) specify what information collected pursuant to sub-paragraph (a) above is to be made available to the public and the manner in which it is to be made available;
 - (c) specify the extent to which these Regulations are to apply or that they are not to apply at all; and
 - (d) include a statement of his reasons for giving the direction.

(4) A direction given by the Secretary of State in pursuance of paragraph (1) above may disapply such provisions of these Regulations as may in the circumstances appear to him to be appropriate.

(5) The Secretary of State shall publish a copy of any direction given pursuant to this regulation in the Gazettes.

Service of notices

14.—(1) Any notice or other document required or authorised to be given or served on any person under these Regulations may be given or served by—

- (a) delivering it to that person;
- (b) leaving it at his proper address; or
- (c) sending it to his proper address by the recorded delivery service.

(2) Any notice or other document required or authorised to be served on, or given to, any body corporate or unincorporated association other than a partnership shall be duly given or served on the secretary or clerk or other similar officer of that body.

(3) Any notice or other document required or authorised to be served on, or given to, any partnership may be served on or given to a partner or a person having the control or management of the partnership business.

(4) Subject to paragraph (5) below, for the purpose of this regulation, the proper address of any person on whom or to whom any such notice or document is to be served or given shall be his last known address except that such address shall be—

- (a) in the case of a body corporate or their secretary or clerk, the address of the registered office or principal office of the body corporate;
- (b) in the case of an unincorporated association (other than a partnership) or their secretary or clerk, the address of the principal office of the association; and

- (c) in the case of a partnership or a person having control or the management of the partnership business, the address of the principal office of the partnership, and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be its principal office within the United Kingdom.

(5) If the person to be served with or given any such notice or document has furnished the person by whom the notice or document is to be served or given with an address pursuant to any provision of these Regulations, that address shall also be treated for the purposes of this regulation as his proper address.

Applications to the court

15.—(1) Subject to paragraph (3) below, for the purposes of regulations 16 (application to court by person aggrieved) and 17 (application to court by Secretary of State) below, the expression “the court” means—

- (a) in respect of a relevant project in the English area, the High Court;
- (b) in respect of a relevant project in the Scottish area, the Court of Session; and
- (c) in respect of a relevant project in the Northern Irish area, the High Court in Northern Ireland.

(2) 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(5).

(3) Where a project is situated in more than one of the areas referred to in paragraph (1) above, then any of the courts having jurisdiction in those areas shall have jurisdiction in relation to any question arising under regulation 16 or 17 below.

Application to court by person aggrieved

16.—(1) On the application of any person aggrieved by the grant of consent in respect of a relevant project in relation to which an environmental statement was required to be submitted by virtue of regulation 4(1) above (grant of consent by Secretary of State in respect of relevant projects), the court may grant an order quashing the grant of consent where it is satisfied that the consent was granted in contravention of regulation 5(2)(b) above (consideration of environmental statement etc.) or that the interests of the applicant have been substantially prejudiced by any failure to comply with any other requirement of these Regulations.

(2) On the application of any person aggrieved by—

- (a) an approval; or
- (b) the imposition of a relevant requirement,

in respect of a relevant project in relation to which an environmental statement was required to be submitted by virtue of regulation 11 above (exercise by the Secretary of State of powers under licences), the court may grant an order quashing the approval or, as the case may be, the imposition of the relevant requirement where it is satisfied that the approval or, as the case may be, the imposition of the relevant requirement was in contravention of regulation 9(5) above (consideration of environmental statement etc.) or that the interests of the applicant have been substantially prejudiced by any failure to comply with any other requirement of these Regulations.

(3) An application to the court under this regulation shall be made within six weeks from the date of publication in the Gazette of details of the consent, approval or, as the case may be, imposition of the relevant requirement.

(4) The court may by interim order, pending the determination of any question referred to in paragraphs (1) and (2) above, stay the operation of the consent, approval or, as the case may be, the relevant requirement on such terms as it may think fit.

Application to the court by Secretary of State

17.—(1) Subject to paragraphs (3) and (6) below, where—

- (a) any activity in relation to a relevant project is being, or has been, carried out without the necessary consent or approval of the Secretary of State granted in accordance with these Regulations or otherwise than in accordance with a relevant requirement imposed in accordance with these Regulations; or
- (b) a relevant project is being, or has been, carried out in breach of any condition attached to any consent or approval, being a condition so attached for the purpose of reducing or eliminating any significant adverse effects on the environment,

the court may, on the application of the Secretary of State, make an order restraining the continued carrying out of the relevant project or compelling the performance of any act required to be done by a condition of the kind mentioned in sub-paragraph (b) above.

(2) The court may, in addition to making such an order as is mentioned in paragraph (1) above, make an order requiring—

- (a) the removal, so far as is practicable in all the circumstances, of any structure erected—
 - (i) without the consent or approval of the Secretary of State as mentioned in paragraph (1)(a) above;
 - (ii) otherwise than in accordance with any relevant requirement as mentioned in paragraph (1)(a) above; or
 - (iii) in breach of a condition of the kind mentioned in paragraph (1)(b) above; and
- (b) where it orders the removal of any structure, the reinstatement of the site where the structure was erected.

(3) The court shall not grant an order under this regulation in respect of a breach of any condition of the kind mentioned in paragraph (1)(b) above where—

- (a) the breach in question was due to circumstances beyond the control of the undertaker and the breach could not reasonably have been prevented by the undertaker; or
- (b) the breach occurred as a result of anything required to be done as a matter of urgency for the purposes of securing the safety of any person.

(4) Where the undertaker fails to comply with the terms of an order made pursuant to paragraph (2) above within such time as may be specified in it or, in default of such specification, within a reasonable time of the making of the order, the Secretary of State may himself take the action required to be taken by the order and the reasonable costs and expenses of doing so shall be recoverable as a debt from the undertaker.

(5) Where the Secretary of State takes action in accordance with paragraph (4) above, that action shall be without prejudice to any consequences which may flow from the undertaker's failure to comply with the order.

(6) This regulation shall not apply to anything done in relation to a project which is the subject of an exemption granted pursuant to regulation 13 above (exempt projects).

Offences

18.—(1) Subject to paragraph (3) below, any person who intentionally or recklessly submits to the Secretary of State—

- (a) an environmental statement;
- (b) appropriate particulars; or
- (c) any other information required to be submitted by virtue of any provision of these Regulations,

which is false or misleading in a material particular shall be guilty of an offence.

(2) Subject to paragraphs (3), (4) and (8) below, an undertaker who—

- (a) intentionally acts in breach of the terms of a condition attached to any consent or approval, being a condition so attached for the purpose of reducing or eliminating any significant adverse effects on the environment; or
- (b) carries out any activity in relation to a relevant project without the necessary consent or approval of the Secretary of State granted in accordance with these Regulations or otherwise than in accordance with a relevant requirement imposed in accordance with these Regulations,

shall be guilty of an offence.

(3) Paragraphs (1) and (2) above shall not apply to anything which is an offence by virtue of section 21 of the Petroleum Act 1998⁽⁶⁾ (enforcement).

(4) It shall be a defence to a charge under paragraph (2)(a) above for the undertaker to show—

- (a) that he took all reasonable steps to avoid the commission of the offence; or
- (b) that the acts in question were attributable to anything required to be done as a matter of urgency for the purposes of securing the safety of any person.

(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 any offence provided for by this regulation committed 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 on the part of any person purporting to act in such capacity, he as well as the body corporate shall be guilty of that 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) above 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) This regulation shall not apply to anything done in relation to a project which is the subject of an exemption granted pursuant to regulation 13 above (exempt projects).

(9) No proceedings shall be instituted in England and Wales or Northern Ireland except—

- (a) in the case of proceedings in England and Wales, by or with the consent of the Director of Public Prosecutions; or
- (b) in the case of proceedings in Northern Ireland, by or with the consent of the Director of Public Prosecutions for Northern Ireland; or
- (c) in any case, by the Secretary of State or a person authorised by him in that behalf.

(10) Section 3 of the Territorial Waters Jurisdiction Act 1878⁽⁷⁾ (restriction on prosecutions) shall not apply to any proceedings for an offence under this regulation.

(11) 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 place in the United Kingdom.

⁽⁶⁾ 1998 c. 17.

⁽⁷⁾ 1878 41 & 42 Vict. c. 73.

17th February 1999

John Battle
Minister for Energy and Industry,
Department of Trade and Industry