

EXPLANATORY MEMORANDUM TO
THE OFFSHORE COMBUSTION INSTALLATIONS (PREVENTION AND
CONTROL OF POLLUTION) (AMENDMENT) REGULATIONS 2007

2007 No. 938

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Offshore Combustion Installations (Prevention and Control of Pollution) (Amendment) Regulations 2007 (“the amending Regulations”) amend the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 (the “Offshore IPPC Regulations 2001”) in accordance with the provisions of the Public Participation Directive 2003/35/EC (the “Public Participation Directive”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Public Participation Directive implements the additional requirements for publicity and access to justice contained in the 1998 Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters. The Public Participation Directive amends the Integrated Pollution Prevention and Control Directive 96/61/EC, for which the Offshore IPPC Regulations 2001 were introduced and now require amending to transpose the extra publicity requirements into UK law.

4.2 A Transposition Note is attached to this Explanatory Memorandum setting out how the amending Regulations transpose the Public Participation Directive.

5. Territorial Extent and Application

5.1 The amending Regulations apply to offshore oil and gas matters, and extend to:

- those parts of the sea adjacent to England and Wales from the low water mark to the landward baselines of the United Kingdom territorial sea;
- the United Kingdom territorial sea apart from those areas comprised in Scottish controlled waters; and
- waters in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964.

6. European Convention on Human Rights

6.1 As the amending Regulations are subject to a negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

7.1 The amending Regulations introduce further requirements for the publicity process - as set out in the Public Participation Directive - which are:

- including, within the application for a consent or permit, an outline of the main alternatives, if any, that are studied by the applicant;
- notifying the public of appropriate decisions and making available the relevant consents or permits together with the reasons and considerations on which the decisions are based;
- notifying the public early in the procedure (or as soon as the information can be provided) of the nature of the possible decisions; and
- making available within appropriate timeframes: **(i)** the main reports and advice issued to the regulator in accordance with national legislation when the application was made, and **(ii)** information relevant to the decision which only becomes available after the advertisement of the application.

7.2 In addition, the Offshore IPPC Regulations 2001 have also been amended (in line with the Directive) to require the Government to publicise information on any proposed offshore oil / gas developments in other EEA States that might have significant transboundary impacts on the UK offshore environment.

Commencement Date

7.3 The amending Regulations will come into force on 16 April 2007, but they will apply only to applications received by the Secretary of State after that date.

Consultation

7.4 A public consultation (involving more than sixty key stakeholders e.g. the offshore oil / gas industry, environmental Non-Governmental Organisations (NGOs), and other affected bodies) on the legislative proposals to amend the Offshore IPPC Regulations 2001 was carried out between 4 September and 4 December 2006. Five responses were received which all agreed with the need to amend the existing Regulations in accordance with the Public Participation Directive. No comments of a significant nature (i.e. requiring major changes to the amending Regulations) were made.

Guidance

7.5 The existing Guidance Notes are in the process of being updated to reflect the requirements of the amending Regulations. The revised Guidance Notes will be available in parallel with the Regulations' entry into force. Copies of the Guidance Notes will also be placed on DTI's Oil and Gas website and in the Libraries of both Houses.

8. Impact

8.1 The full Regulatory Impact Assessment is attached to this Explanatory Memorandum.

9. Contact

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Final Regulatory Impact Assessment (RIA)

1. Title of proposal

The Offshore Combustion Installations (Prevention and Control of Pollution) (Amendment) Regulations 2007.

2. Purpose and intended effect of measure

(i) The objectives

The objectives of the measure are to increase public access to environmental information and to allow for greater public participation in the environmental decision-making process. This requires amendments to the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 (“the 2001 Regulations”) in accordance with the requirements of the Public Participation Directive 2003/35/EC. This Directive amends the Integrated Pollution Prevention and Control Directive 96/61/EC, which was the reason for the introduction of the 2001 Regulations.

Offshore oil and gas environmental issues are a reserved matter.

(ii) The background

The Public Participation Directive implements the additional requirements for publicity and access to justice contained in the Aarhus Convention. The 2001 Regulations therefore need to be amended in order to reflect the additional publicity requirements although not the access to justice provisions as the existing procedure of judicial review is deemed sufficient to do this.

The additions to the publicity process required are:

- including, within the application for a consent or permit, an outline of the main alternatives, if any, that are studied by the applicant;
- notifying the public of appropriate decisions and making available the relevant consents or permits together with the reasons and considerations on which the decisions are based;
- notifying the public early in the procedure (or as soon as the information can be provided) of the nature of the possible decisions; and
- making available within appropriate timeframes: **(i)** the main reports and advice issued to the regulator in accordance with national legislation when the application was made, and **(ii)** information relevant to the decision which only becomes available after the advertisement of the application.

Under the 2001 Regulations, publicity for a permit application is carried out by Government. These extra publicity requirements will therefore, also be carried out by Government with the relevant costs recovered from industry under the permit application process.

In addition to the above, there is a requirement on the Government to make the arrangements for publicising information concerning any proposed offshore oil / gas related development in another EEA State, where the associated combustion kit might have a significant impact on the UK offshore environment. Accordingly, the amending Regulations include provisions to meet this requirement.

(iii) Rationale for Government intervention

Provide the public with increased access to and more information than at present to allow all stakeholders to reach better informed decisions that are more acceptable to a wider audience. In addition, without these Regulations, the UK would not be properly implementing a Directive that itself has been amended. Consequently, the UK would be at risk of infraction proceedings from the Commission for incorrect transposition of the Public Participation Directive.

3. Consultation

(i) Within Government

Consultation with relevant Government Departments took place from 14 October to 7 December 2005. No significant comments were received.

(ii) Public consultation

A public consultation (involving more than sixty key stakeholders e.g. the offshore oil / gas industry, environmental Non-Governmental Organisations (NGOs), and other affected bodies) on the legislative proposals to amend the 2001 Regulations was carried out between 4 September and 4 December 2006. Five responses were received which all agreed with the need to amend the existing Regulations in accordance with the Public Participation Directive. No comments of a significant nature (i.e. requiring major changes to the amending Regulations) were made.

4. Options

(i) Option 1: Do nothing

This is not possible as correct implementation of the Directive requires Regulations to be introduced. As already indicated, the UK would be open to infraction proceedings from the Commission if the provisions of the Directive were not properly transposed into UK law.

(ii) Option 2: Amend the Guidance Notes accompanying the 2001 Regulations

The 2001 Regulations provide a clear legislative framework within which the permit application and determination process must operate. We have, therefore, looked at the possibility of amending the Guidance Notes to reflect the Directive's requirements. However, it is unlikely that amended Guidance Notes on their own would be accepted as proper implementation of the Directive. Accordingly, this is not a viable option.

(iii) Option 3: Introduce Regulations

This is considered the only option available. The publicity requirements set out in the existing Regulations do not sufficiently reflect the additional requirements of the Directive and must therefore be amended.

5. Costs and Benefits

(i) Sectors and Groups affected

The only business sector affected is the UK offshore oil and gas industry.

(ii) Benefits

(a) Option 1: There are no benefits associated with this option. As previously stated, there would be a risk of infraction proceedings if this option were to be adopted.

(b) Option 2: This would obviate the need for further Regulations but it is unlikely that amended Guidance Notes on their own would represent adequate implementation of the Directive, which might lead to infraction proceedings. Therefore, the only way to ensure the Directive's provisions are fully transposed in to UK law is to introduce the amending offshore Regulations. However, to provide certainty and clarity on the Directive's requirements, revised Guidance Notes will accompany the Regulations.

(c) Option 3: The obvious benefit is correct implementation of a Directive, which will deliver increased public access to environmental information leading to greater participation in the environmental decision-making process. In addition, there would be more transparency in, and accountability for, all decisions taken by Government regards the approval of proposed developments.

(iii) Costs

(a) Implementation costs

Under the current version of the 2001 Regulations, the Government is responsible for the publicity relating to a permit application. The permit application fee (currently £5,869 per application) covers the cost of publicity and staff-time to process a permit. The 'public notification' requirements of the Directive already form part of the existing permit application regime under the 2001 Regulations (i.e. notification via the TSO London, Belfast and Edinburgh Gazettes / DTI's Oil & Gas website of permit applications received). The costs of any publicity needed in addition to these requirements would, by comparison, be insignificant. On that basis, the present costs associated with processing a permit are considered sufficient for meeting all the Directive's provisions and will, therefore, remain unchanged.

Since the Regulations came into force in 2001, only six permits have been issued for **new** offshore installations meeting the threshold for a permit, as the occurrence of developments (with combustion equipment in excess of a rated thermal input of 50MW) is infrequent. The Regulations in their amended form will start to impose further costs on Government as part of the on-going process of permitting all **existing** installations meeting the threshold – which need to have been issued with a permit by October 2007. These costs will be recouped from industry via the permit application fee (i.e. £5,869 per application). In all, eighty eligible installations will have been provided permits.

As indicated in Section 2(ii), the Government is required to arrange the publicity in respect of any proposed offshore oil / gas related development in another EEA State, where the associated combustion plant might have a significant effect on the UK offshore environment. This is likely to occur, on average, no more than twice a year with the annual publicity costs (which would include use of the London, Belfast and Edinburgh Gazettes) being in the region of £540 (i.e. £90 x 3 x 2).

(b) Policy costs

Apart from the transboundary effects issue mentioned above, there are no other policy costs as a result of the amending Regulations.

(c) Other costs

No environmental or social costs are anticipated as a result of these Regulations.

(d) Costs for a typical business

The permit application fee will be unchanged as a result of the Regulations (currently £5,869).

6. Small Firms' Impact test

There are forty-eight production operators present offshore (the majority being large multi-national companies) of which five would meet the 'small firms' definition e.g. less than 250 employees. However, the five operators concerned would only be one of several co-venturers on licensed fields - none of them is solely responsible for undertaking or meeting the full costs of activities related to oil and gas production. In view of this situation, there is no need to carry out this test, as the regulatory proposals would have no disproportionate impact on these firms.

7. Competition Assessment

As the amending Regulations impose no additional costs on the offshore oil and gas industry (i.e. no changes to the existing permit application fee), there are no competition impacts.

8. Enforcement, Sanctions and Monitoring

(i) Enforcement and Sanctions

The amending Regulations themselves do not alter the enforcement and sanctions provisions already existing in the 2001 Regulations.

(ii) Monitoring

The implementation of the Directive's requirements for issuing permits under the amending Regulations will be monitored. Should it become apparent that difficulties were arising for either Government or industry, then additional measures would be considered and, if necessary, introduced to resolve any problems.

9. Implementation and Delivery Plan

The amending Regulations will enter into force on 16 April 2007. The summary of comments received to the public consultation exercise and the Government's response to these (including reasons for decisions finally taken) has now been published on the DTI website.

10. Post-implementation Review

Under the offshore oil and gas legislative regime, the Regulations will undergo periodic reviews e.g. at least once every couple of years, to ensure that:

- the policy objectives are being met;
- the impacts have been as expected;
- compliance levels indicate that the enforcement regime is effective; and

- guidance to industry is updated as appropriate in light of experience of enforcing the Regulations.

The Regulations may also require further amending should any future proposals from the Commission arise which impact on the permitting process and / or the public participation requirements.

11. Summary and Recommendation

The 2001 Regulations need to be amended in order to implement the provisions of the Public Participation Directive and avoid any potential infraction proceedings from the Commission (e.g. for incorrect transposition). This can be achieved only by introducing the amending Regulations.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed : *Truscott*

Date: 19th March 2007

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TRANSPOSITION NOTE RELATING TO AMENDMENTS TO COUNCIL DIRECTIVE 96/61/EC ARISING FROM DIRECTIVE 2003/35/EC (the “Public Participation Directive”) IN THE CONTEXT OF S.I. 2001/1091 (The Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001)

The Public Participation Directive amends Council Directive 96/61/EC concerning integrated pollution prevention and control (“the IPPC Directive”). The IPPC Directive was transposed (to the extent that it applied to offshore combustion installations) by the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 (“the Principal Regulations”). The Public Participation Directive is transposed by amendment of the Principal Regulations through amending Regulations (the “Amending Regulations”).

In order to help the reader to identify the method of transposition adopted, cross references in this Transposition Note are both to the Principal Regulations as amended (the “Consolidated Regulations”) and the Amending Regulations.

These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply:

Article	Objective	Implementation	Responsibility
2(10)(b)	Clarifies the definition of “substantial change” to make clear any change to or extension of an operation shall be deemed to be substantial if the change or extension in itself meets the thresholds set out in Annex I.	Regulation 4(f) of the Amending Regulations amends the definition of “substantial change” to make clear that this covers any change, the extent of which is greater than a rated thermal output of 50 megawatts (see regulation 2 of the Consolidated Regulations).	Secretary of State
6(1)	Obliges Member States to take the necessary measures to ensure that an application to the competent authority for a permit includes a description of the main alternatives, if any, studied by the applicant in outline.	Regulation 5(c) of the Amending Regulations inserts this requirement (see regulation 5(j) of the Consolidated Regulations).	The applicant
15(1)	1. Obliges Member States to ensure that the public concerned are given early and effective opportunities to participate in the procedure for: <ul style="list-style-type: none"> • issuing a permit for new installations; • issuing a permit for any substantial change in the operation of an 	Regulation 6 of the Amending Regulations amends the publicity requirements in conformity with the Directive for applications for permits (see regulation 7 of the Consolidated Regulations). In relation to the issue of a permit for a substantial change, see the new definition of	Secretary of State

	<p>installation;</p> <ul style="list-style-type: none"> • updating of a permit or permit conditions for an installation in accordance with Article 13, paragraph 2, first indent (where the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included). <p>2. Stipulates that the procedure set out in Annex V shall apply for the purposes of such participation.</p>	<p>“substantial change” transposed by regulation 4(f) of the Amending Regulations (see regulations 2 and also 8(3) of the Consolidated Regulations).</p> <p>Regulation 8 of the Amending Regulations inserts new provisions dealing with the updating of permit conditions in accordance with Article 13, paragraph 2, first indent (see regulation 9 of the Consolidated Regulations).</p>	
15(5)	<p>Provides that, when a decision has been taken, the competent authority shall inform the public in accordance with the appropriate procedures and, in particular, shall make available to the public the information listed in sub-paragraphs (a) and (b) of Article 15(5)</p>	<p>Regulation 9 of the Amending Regulations provides for the requisite information to be entered into the public register (see regulation 11(1) of the Consolidated Regulations).</p>	Secretary of State
17(1)	<p>Amends the transboundary provisions so that, where a Member State likely to be significantly affected by a project in another Member State so requests, the Member State in whose territory the application was submitted must forward to the requesting Member State any information required to be given or made available pursuant to Annex V at the same time as it makes it available to its own nationals.</p>	<p>This was already partly transposed by regulation 7(3) of the Principal Regulations. The position is clarified by regulations 6(c) and 6(d) of the Amending Regulations (see regulations 7(3) and 7(3A) of the Consolidated Regulations).</p>	Secretary of State
17(3)	<p>Imposes an obligation on a competent authority to consider any consultations pursuant to the</p>	<p>This is achieved by regulation 6(e) of the Amending Regulations (see the amendment to regulation 7(4) of</p>	Secretary of State

	transboundary provisions of paragraphs (1) and (2) of Article 17 when reaching a decision on an application	the Consolidated Regulations).	
17(4)	<p>1. Imposes an obligation on a competent authority deciding on an application to inform any Member State, which has been consulted pursuant to paragraph 1 of Article 17 of the decision reached and to forward to that Member State the information referred to in Article 15(5).</p> <p>2. Imposes on a Member State receiving such a notification of a decision and additional information a duty to take the measures necessary to ensure that that information is made available in an appropriate manner to the public concerned in its own territory.</p>	<p>Article 17(4), first sentence, is transposed by regulation 9(c) of the Amending Regulations (see regulation 11(3) of the Consolidated Regulations).</p> <p>Article 17(4), second sentence, is transposed through regulation 7 of the Amending Regulations, (see regulation 7A(2) into the Consolidated Regulations).</p>	Secretary of State
Annex V	Sets out in detail aspects of the public participation procedure applicable in accordance with Article 15(1)	This is transposed by regulations 6 and 8 of the Amending Regulations (see the amendments to regulation 7 and 9 of the Consolidated Regulations).	Secretary of State