

EXPLANATORY MEMORANDUM TO:
**THE OFFSHORE COMBUSTION INSTALLATIONS (POLLUTION
PREVENTION AND CONTROL) REGULATIONS 2013**

2013 No. 971

1.0 This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty.

2.0 Purpose of the Instrument

2.1 The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 (“the Offshore PPC Regulations 2013”) transpose the appropriate provisions of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) - commonly referred to as the Industrial Emissions Directive (“the IED”) - in respect to combustion installations (see paragraphs 4.1 and 4.2) on offshore platforms undertaking activities involving oil and gas production and gas and carbon dioxide unloading and storage.

2.2 Before making the Offshore PPC Regulations 2013, designation of the IED in an offshore context was first required by Order made under the Pollution Prevention and Control Act 1999 (“the PPC Act”). Parts of the offshore were designated by the Pollution Prevention and Control (Designation of Industrial Emissions Directive) (Scotland) Order 2011 (S.S.I 2011/423) and the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2013 (S.I. 2013/123). The Pollution Prevention and Control (Designation of the Industrial Emissions Directive) (Offshore) Order 2013 (“the Order”) designated the remaining offshore waters. The Order was made on 14 March and entered into force on 15 March 2013.

3.0 Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4.0 Legislative Context

4.1 The IED brings together the provisions of seven Directives on industrial emissions which it replaces. One of those Directives is Directive 2008/1/EC - formerly 96/61/EC - concerning integrated pollution prevention and control (IPPC), which DECC transposed via the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 (“the Offshore PPC Regulations 2001”). In line with the IPPC Directive’s provisions, the Offshore PPC Regulations 2001 introduced a permitting regime for controlling atmospheric emissions of NO_x (oxides of nitrogen), SO_x (oxides of sulphur), CO (carbon monoxide), methane and non-methane Volatile Organic Compounds (VOCs) from combustion installations (e.g. gas turbines and engines) on offshore platforms (including fixed and floating structures) where the aggregated thermal capacity of the equipment is ≥ 50 MW. The Offshore PPC Regulations 2001 were amended in 2005, 2007 and 2010 in order to

respectively improve the clarity of the Regulations; implement the obligations of Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment; and apply the PPC permitting regime to the offshore unloading and storage of gas and carbon dioxide.

4.2 DECC is now required to implement the relevant provisions of the IED (contained in Chapters I, II and VII of the Directive) in relation to the same types of combustion installations situated on offshore platforms and emissions as indicated in paragraph 4.1. As far as offshore platforms are concerned, IED transposition only needs to focus on atmospheric emissions (as with the implementation of the IPPC Directive's permitting obligations), because discharges to water from offshore platforms of any of the pollutants listed in Annex II to the IED are already effectively controlled / permitted under the Offshore Chemicals Regulations 2002 (as amended) and the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as amended). The Commission will be advised of this fact when DECC submits an IED transposition notification.

4.3. Based on a thorough analysis of the IED's provisions, it is evident that the IED does not place any additional administrative or compliance burdens on offshore operators over and above what is presently required under the offshore PPC regime. Where there are any extra obligations in the IED (such as the need to produce inspection plans and publicly available inspection reports) then these fall on DECC as the environmental regulator.

4.4 The Offshore PPC Regulations 2013 will apply to those offshore combustion installations where a permit for their use is applied for and granted after the date the Regulations come into force. As required by the IED, the existing 2001 Regulations (as amended) will continue to apply to offshore combustion installations which already have a permit before the Offshore PPC Regulations 2013 come into force or where a permit is applied for before that date and it is subsequently granted. Subject to transitional provisions, the existing 2001 Regulations (as amended) will cease to apply after 07 January 2014. Given the number of amendments already made to the Offshore PPC Regulations 2001, it was not considered consistent with better regulation principles and good drafting practice to try to amend those Regulations further in order to implement the IED. The Offshore PPC Regulations 2013 will therefore, revoke the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001; regulation 19 of, and Schedule 1 to, the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005; the Offshore Combustion Installations (Prevention and Control of Pollution) (Amendment) Regulations 2007; and article 5 of the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010.

4.5 A Transposition Note is appended to this Explanatory Memorandum setting out how the 2013 Regulations transpose the IED.

5.0 Territorial Extent and Application

5.1 The Offshore PPC Regulations 2013 apply to combustion installations on petroleum platforms and gas storage and unloading platforms in the waters around the United Kingdom, namely:

- (a) 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 adjacent to -
 - (i) England; and
 - (ii) Scotland, Wales and Northern Ireland except that part which extends seaward for 3 miles from the landward baseline; and
- (c) the sea for the time being designated under section 1(7) of the Continental Shelf Act 1964 or, for gas storage and unloading platforms, the sea in the Gas Importation and Storage Zone.

5.2 The Offshore PPC Regulations 2013 also apply to combustion installations on carbon dioxide storage or unloading platforms in the waters adjacent to the United Kingdom, where those platforms are subject to a licence issued by the Secretary of State under section 18 of the Energy Act 2008.

6.0 European Convention on Human Rights

6.1 Not applicable.

7.0 Policy Background

7.1 DECC has an international commitment to transpose EU Directives. The IED aims to control pollutant emissions from industrial sources which have combustion apparatus with an aggregated thermal capacity rating $\geq 50\text{MW}$. Most offshore platforms involved in oil / gas production and gas and carbon dioxide unloading / storage operations meet this criteria in Annex 1 of the IED. To achieve its objectives, the IED (like the IPPC Directive) requires the establishment of a permitting regime to control such emissions.

7.2 The IED will be transposed in respect to offshore platforms (with combustion installations $\geq 50\text{MWth}$) undertaking oil and gas production and gas (including carbon dioxide) unloading / storage activities via the Offshore PPC Regulation 2013. The Regulations are made under section 2 of the PPC Act, which gives the Secretary of State powers to introduce measures to control and prevent pollution. For the reasons stated in paragraph 4.2, the 2013 Regulations will only concern the control / permitting of certain atmospheric emissions (listed in Annex II to the IED) from eligible combustion installations onboard offshore platforms. Transitional provisions set out in the 2013 Regulations (regulation 38) apply to those operators who have a permit granted before the 2013 Regulations come into force or who applied for a permit prior to that date and a permit was subsequently granted.

7.3 The IED obligations on the offshore sector mirror those of the IPPC Directive - hence the conclusion that the IED will not result in extra administrative or compliance burdens on offshore operators. This means that the provisions which operators will be expected to comply with under the Offshore PPC Regulations 2013 are no different in scope to those that currently apply under the Offshore PPC Regulations 2001 (as amended). The majority of IED requirements on DECC also mirror the IPPC Directive so the obligations of the Department under the 2013

Regulations do not significantly differ from its existing legislative / enforcement functions under the 2001 PPC Regulations (as amended).

7.4 However, as explained in paragraph 4.3, there are some additional IED obligations being transposed by the Offshore PPC Regulations 2013 which will fall solely on DECC. These concern the need for DECC to produce inspection plans / programmes and publicly available inspection reports (regulations 27, 28 and 29).

7.5 The Offshore PPC Regulations 2013 contain provisions on offences (regulation 34) which are substantially the same as those that presently apply under the Offshore PPC Regulations 2001 (as amended). On that basis, the Ministry of Justice confirmed clearance of the proposed offence provisions in the 2013 Regulations under the Justice Impact Test and Criminal Offences Gateway processes on 01 and 26 November 2012 respectively.

7.6 As no new offences are being created by the Offshore PPC Regulations 2013, the Regulations are being laid before Parliament under the negative resolution procedure.

8.0 Consultation Outcome

8.1 As the IED does not impose any additional administrative or compliance burdens on the offshore sector, the Department's Better Regulation Team agreed it was not necessary to undertake extensive consultation on the draft 2013 Regulations and that a more targeted consultation would be appropriate.

8.2 Accordingly, on 05 December 2012 an informal consultation exercise was launched involving relevant stakeholders (i.e. offshore oil / gas operators, the Devolved Administrations and environmental Non-Governmental Organisations (eNGOs)) which closed on 19 December 2012. Two responses were received from Oil & Gas UK (O&G UK) and BP seeking clarification on technical aspects regarding the setting of permit conditions under the 2013 Regulations for emission levels and the assessment of best available techniques. All the points raised were resolved via DECC responses which were sent to O&G UK and BP on 08 February 2013. None of the issues raised during the consultation required any substantive changes to the draft Offshore PPC Regulations 2013.

9.0 Guidance

9.1 The existing Guidance Notes for the Offshore PPC Regulations 2001 (as amended) will be updated to reflect the requirements of the Offshore PPC Regulations 2013 and DECC will ensure that offshore operators are made aware of the revised Guidance Notes prior to them being placed on the new 'Gov UK' website.

10.0 Impact

10.1 As the IED will not impose any new administrative or compliance burdens on the offshore industry, the only additional financial costs that will apply are those connected with the requirement for DECC to produce inspection plans / programmes and publicly available inspection reports (any other obligations on DECC arising from

the IED will be similar to the Department's current requirements under the IPPC Directive as implemented by the Offshore PPC Regulations 2001 (as amended)). The extra requirements on DECC will not be onerous (i.e. DECC Inspectors already produce overarching reports on the outcomes of their inspections of offshore platforms) and the related costs could easily be met through normal Departmental running costs. The Department's Chief Economist's Office therefore confirmed on 21 August 2012 that an Impact Assessment was not required to effect transposition.

11.0 Regulating Small Businesses

11.1 The Offshore PPC Regulations 2013 will apply to a small number of small businesses. Even though there are offshore operators that meet the "small firms" or "micro-business" definitions, the companies will invariably be one of several co-venturers (including, in a number of cases, large multinationals). Where there are several such co-venturers, they will undertake operations under a Joint Operating Agreement (JOA). Creating or amending a JOA entails the apportionment of operational costs between the parties - usually based on the percentage equity. Consequently, responsibility for undertaking or meeting the full costs of energy-related operations will not rest with "small firms" or "micro-business". In view of this, the transposition of the IED will not have a disproportionate impact on those companies

12.0 Review

12.1 The Offshore PPC Regulations 2013 contain provisions in regulation 1 requiring a review of the Regulations - the first review report is required five years after the Regulations have entered into force, with subsequent reports required every five years thereafter.

13.0 Contact

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TRANSPOSITION NOTE

Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (“the Industrial Emissions Directive”),

and

The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 (S.I. 2013/xxx) (“the Offshore Regulations”).

Introduction

The Industrial Emissions Directive entered into force on 06 January 2011. Subject to transitional provisions, Member States have until 07 January 2013 to transpose its requirements into national law in respect of the combustion installations to which the Offshore Regulations apply.

The following table indicates how it is proposed to transpose the provisions of the Industrial Emissions Directive which are relevant to combustion installations situated in the offshore areas of the United Kingdom. Those installations are ones to which Chapters I, II and VII (so far as relevant) apply. Further transposition of the Industrial Emissions Directive has been undertaken by the Department for Environment, Food and Rural Affairs and the devolved administrations and separate transposition notes have been made in respect of the legislation which effects that transposition.

Provision of the Industrial Emissions Directive	Provision of the Offshore Regulations which transposes	Commentary
Article 1 Subject matter	None	
Article 2 Scope	None	The Offshore Regulations do not apply to research activities, development activities or the testing of new products and processes which under Article 2(2) are outside the scope of the Industrial Emissions Directive.
Article 3 Definitions	Regulation 2, including the definition of “offshore combustion installation”.	Not all the definitions in Article 3 are relevant to combustion installations to which the Offshore Regulations apply.

Article 4 Obligation to hold a permit	Regulation 3	The derogation contained in Article 4(1) does not apply to combustion installations to which the Offshore Regulations apply.
Article 5(1) Granting of a permit	Regulation 7(2)	
Article 5(2) Granting of a permit	None	Co-ordination between competent authorities in the United Kingdom will be dealt with administratively.
Article 5(3) Granting of a permit	Regulation 7(1)(b)	
Article 6 General binding rules	None	There is no adoption of such rules in relation to combustion installations to which the Offshore Regulations apply.
Article 7 Incidents and accidents	Regulations 9(2)(h) and 23(3)(b). If incidents or accidents occur further to a breach of the conditions in a permit, additionally regulations 9(2)(i) and 30 to 32.	
Article 8 Non-compliance	Regulations 9(2)(i), 23(1)(b) and (3)(c) and 30 to 32	
Article 9 Emission of greenhouse gases	Regulation 11	The derogation contained in Article 9(2) is not applied in respect of offshore combustion installations. The exception contained in Article 9(4) does not apply to combustion installations to which the Offshore Regulations apply.
Article 10 Scope	See the definition of "offshore combustion installation" in regulation 2.	
Article 11 General principles governing the basic obligations of the operator	Regulation 7(3)	
Article 12(1) Applications for permits	Regulation 4(2) and (3)	
Article 12(2) Applications for permits	Regulation 4(4)	

Article 13 BAT reference documents and exchange of information	None	This Article imposes obligations on the Commission.
Article 14 Permit conditions	Regulation 9	
Article 15(1) - (3) Emission limit values, equivalent parameters and technical measures	Regulation 9	
Article 15(4) Emission limit values, equivalent parameters and technical measures	Regulation 10	
Article 15(5) Emission limit values, equivalent parameters and technical measures	None	Where applicable, the permit will include the matters covered by this derogation.
Article 16 Monitoring requirements	Regulation 9(2)(d) and (e)	
Article 17 General binding rules for activities listed in Annex I	None	See Article 6.
Article 18 Environmental quality standards	None	There are no such standards requiring stricter conditions in relation to combustion installations to which the Offshore Regulations apply.
Article 19 Developments in best available techniques	None	This obligation is binding on the Secretary of State without the requirement for transposition.
Article 20 Changes by operators to installations	Regulation 12	
Article 21 Reconsideration and updating of permit conditions by the competent authority	Regulations 13 to 15	
Article 22 Site closure		Not applicable to combustion installations to which the Offshore Regulations apply.
Article 23 Environmental inspections	Regulations 27 to 29	

Article 24 Access to information and public participation in the permit procedure	Regulations 5, 6(2) & (3), 7(1)(a), 8(2), 12(5), 14(6), 15(2) to (6) & 15(8), 16(3), 17(4), 18(4), 20(2)(b) & (c), 20(3) & (4), 21, 29(3)(b) and 39	
Article 25 Access to justice	Regulation 33	
Article 26 Transboundary effects	Regulations 6 and 20	
Article 27 Emerging techniques	Regulation 13(4)(a)	
Article 71 Competent authorities	None	Notification that the Secretary of State is the competent authority in respect of combustion installations to which the Offshore Regulations apply will be made administratively.
Article 79 Penalties	Regulations 34 to 36	
Article 80 Transposition and Article 82 Transitional provision	Regulation 38	

**Department of Energy and Climate Change (DECC)
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