

EXPLANATORY MEMORANDUM TO
THE OFFSHORE CHEMICALS AND OFFSHORE PETROLEUM ACTIVITIES
(OIL POLLUTION PREVENTION AND CONTROL) (CORONAVIRUS)
(AMENDMENT) REGULATIONS

2020 No. 855

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

The Offshore Chemicals and Offshore Petroleum Activities (Oil Pollution Prevention and Control) (Coronavirus) (Amendment) Regulations 2020 modifies existing legislation to remove the requirement for offshore oil and gas operators to make relevant documents available for public inspection at a specified address within the United Kingdom, where the effects of coronavirus, including any restrictions on movement, mean that it is not reasonably practicable for the public to be able inspect documents in this way.

3. Matters of special interest to Parliament

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

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws).

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is any designated area of the United Kingdom Continental Shelf (from the low water mark up to the seaward limits of territorial waters, excluding those areas comprised of Scottish controlled waters and Welsh controlled waters).

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Offshore Chemical Regulations 2002 (“OCR”) (S.I. 2002/1355) sets out chemical permit requirements for the use and discharge of chemicals in connection with offshore petroleum activities, and offshore storage and unloading activities.
- 6.2 The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (“OPPC”) (S.I. 2005/2055) prohibit the discharge of oil to sea from offshore oil and gas installations other than in accordance with the terms and conditions of a permit.
- 6.3 Regulation 7 to the OCR and regulation 5A to the OPPC require an applicant for a permit application to make a copy of the application available for public inspection at a specified address within the United Kingdom. This instrument inserts new regulations into the OCR (regulation 7A) and into the OPPC (regulation 5B), to modify this requirement where the effects of coronavirus, including any restrictions on movement, mean that it is not reasonably practicable for the public to be able inspect documents in this way and impose a new requirement on the applicant to make the application available on a publicly- accessible website.
- 6.4 The new regulations also modify the existing provisions to the effect that applicants for a permit application do not need to make the relevant documents obtainable in person, and instead makes provision for a copy of the permit to be made available by post free of charge or electronically. These modifications will only apply for the time that the effects of coronavirus mean that inspection of the relevant documents by the public at a specified UK address is not reasonably practicable. The modifications will also cease to apply after 12 months from this instrument coming into force.
- 6.5 These modifications to OCR are compatible with OSPAR Decision 2000/2 (as amended by Decision 2005/1) and the modifications to OPPC made by the instrument are compatible with OSPAR Recommendation 2001/1 (as amended by OSPAR Recommendation 2006/4 and OSPAR Recommendation 2011/8) - see below.

7. Policy background

What is being done and why?

- 7.1 The OCR and OPPC are made under the Pollution Prevention and Control Act 1999 (“the PPCA”) whose aim is to control and prevent pollution offshore. The OCR implement OSPAR Decision 2000/2 on a Harmonised Mandatory Control System for the use and reduction of the discharge of offshore chemicals (as amended by OSPAR Decision 2005/1). The OPPC implement OSPAR Recommendation 2001/1 for the Management of Produced Water from Offshore Installations (as amended by OSPAR Recommendation 2006/4 and OSPAR Recommendation 2011/8).
- 7.2 The regulations require offshore oil and gas operators to make the relevant documents publicly available at a UK address of the operator’s choice. Due to current government restrictions in response to the coronavirus outbreak, some operators’ offices are closed and consequently cannot be used to make the relevant documents available for inspection. In addition, the public would be unable to inspect or obtain such documents if available at the operator’s offices, due to restrictions on travel.
- 7.3 The instrument removes the requirement to make documents available for inspection or to be obtained at a UK address where the effects of coronavirus, including guidelines or legal requirements put in place to respond to coronavirus, mean that public inspection or collection of documents at a specified UK address is not reasonably practicable. The

public will be able to obtain copies of the relevant document by post or electronically and the applicant must make a copy of the application available on a publicly accessible website.

- 7.4 There is an imminent need for these modifications as there will potentially be up to 3 permit applications under the OCR and 3 under the OPPC to be submitted in 2020 that will be subject to public inspection, though currently we expect that the earliest these permit applications would be submitted is autumn 2020. There is always the chance however that an application may be submitted earlier. If the OCR and OPPC are not amended, then the developments would be delayed because the offshore oil and gas operators would be unable to have a copy of the required documents available for public inspection at an address in the UK.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not consolidate the existing legislation.

10. Consultation outcome

- 10.1 The instrument is made under section 2 of the PPCA and therefore requires the Secretary of State to consult the following bodies before making the regulations: the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency, such bodies or persons representative of the interests of local government, industry, agriculture and small businesses respectively and such other bodies or persons as considered appropriate. A consultation was therefore carried out between 23rd July 2020 and 6th August 2020. The consultation was also shared with Marine Scotland and the Centre for Environment, Fisheries and Aquaculture Science. We have considered the comments received and concluded that the comments do not prevent the modifications to the regulations proceeding. The comments and our response have been published on the 'Citizen Space' website which hosted the consultation.

11. Guidance

- 11.1 The Department intends to inform industry by email on the date the instrument comes into force and via a guidance update on the [website.gov.uk](https://www.gov.uk).

12. Impact

- 12.1 The impact for offshore oil and gas operators who have made or intend to make an application that will require public inspection under the OCR and OPPC whilst coronavirus restrictions apply, is to give them the ability to continue the application process without contravening the requirement to allow for public inspection or collection of the relevant documents at a UK address, by means of an exemption to this requirement.
- 12.2 There is no, or no significant, impact on the public sector.

- 12.3 An Impact Assessment has not been prepared for this instrument because the SI has temporary effect, relates to maintenance of existing regulatory standards, and will have minimal cost impact on business.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. The amending instrument will benefit all size of offshore oil and gas businesses, as the amendment will enable applicants to comply with the requirements of the OCR and OPPC whilst coronavirus restrictions apply. No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The provisions made by the instrument will cease to have effect 12 months from the date this instrument comes into force. Therefore, in accordance with section 28(3)(d) of the Small Business Enterprise and Employment Act 2015, there is no need for a statutory review clause.

15. Contact

- 15.1 David MacDonald at the Department for Business, Energy and Industrial Strategy Telephone: 01224 254008 or email: david.macdonald@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Wendy Kennedy, Chief Executive for the Offshore Petroleum Regulator for Environment and Decommissioning, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.