Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Offshore Chemicals (Amendment) Regulations 2010 ISBN 978-0-11-150303-4*

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

DRAFT STATUTORY INSTRUMENTS

2010 No. 0000

ENVIRONMENTAL PROTECTION

The Offshore Chemicals (Amendment) Regulations 2010

Made - - - - 2010

Coming into force in accordance with regulation 1

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

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

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

Citation and commencement

1. These Regulations may be cited as the Offshore Chemicals (Amendment) Regulations 2010 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations, "the 2002 Regulations" means the Offshore Chemicals Regulations 2002(**2**).

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

(**2**) S.I. 2002/1355, amended by S.I. 2005/2055 and 2010/1513.

Amendment of the 2002 Regulations

3. The 2002 Regulations are amended as follows.

4. In regulation 2 (interpretation)—

(a) for the definition of "discharge" substitute—

""discharge", in relation to an offshore chemical, means any intentional emission of the chemical, or any of its degradation or transformation products, from an offshore installation into the relevant area;";

(b) after the definition of "discharge" insert—

""enforcement notice" means a notice served under regulation 16A(1) or (1A);";

(c) in the definition of "offshore chemical", omit "intentionally" and after "used" insert ", or intended to be used,";

(d) for the definition of "offshore installation" substitute—

""offshore installation" means—

(a) any offshore installation within the meaning of section 44 of the Petroleum Act 1998(**3**) which is located in the relevant area and used for the purposes of offshore petroleum activities;

(b) any installation which is located in the reserved area and used for the purposes of offshore storage and unloading activities;";

(e) after the definition of "permit application", insert—

""permit holder" means the holder from time to time of a permit;"

(f) after the definition of "prescribed date", insert—

""prohibition notice" means a notice served under regulation 16B(1);

"release", in relation to an offshore chemical, means the emission (other than by way of discharge) of the chemical, or any of its degradation or transformation products, from an offshore installation into the relevant area;";

(g) in the definition of "relevant area"—

(i) in sub-paragraph (a) omit "and Wales";

(ii) in sub-paragraph (b) after "Scottish controlled waters" insert "and Welsh controlled waters";

(h) for the definition of "use" substitute—

""use", in relation to an offshore chemical, means any intentional application of the chemical in the carrying out of offshore activities under normal operating conditions;

"Welsh controlled waters" means those parts of the territorial sea adjacent to Wales which are controlled waters within the meaning of section 104 of the Water Resources Act 1991(**4**).";

(i) for paragraph (2) substitute—

"(2) In these Regulations, in relation to an offshore storage or unloading activity—

(a) any reference to the use, discharge or release of an offshore chemical is to be read as a reference to its use in, or discharge or release into, the reserved area;

(**3**) 1998 c.17. Section 44 was amended by section 36 of, and paragraph 11 of Schedule 1 to, the Energy Act 2008 (c.32).
(**4**) 1991 c.57.

(b) any reference to pollution is to be read as a reference to pollution introduced into the reserved area."

5. In regulation 3 (requirement for permit to use or discharge offshore chemicals)—

(a) in paragraph (1) omit "in the relevant area"; and

(b) omit paragraph (3).

6. After regulation 3, insert—

"**Prohibition on the release of offshore chemicals**

3A. No person shall—

(a) release an offshore chemical; or

(b) allow such a release to continue.".

7. In paragraph (2) of regulation 5 (conditions of permits)—

(a) in sub-paragraph (b) for "operator" substitute "permit holder"; and

(b) in sub-paragraph (d) for "accidents" substitute "incidents".

8. In regulation 8 (fees)—

(a) in paragraph (1) after "charge" insert "permit applicants, permit holders and"; and

(b) in paragraph (2), for sub-paragraphs (a) to (c) substitute—

"(a) an application for the grant or renewal of a permit;

(b) an application for the variation of a permit or the conditions to which it is subject, or a review of a permit and its conditions;

(c) a request for the Secretary of State's consent to the transfer of a permit;

(ca) the revocation or surrender of a permit;".

9. In regulation 10 (application for renewal of an existing permit)—

(a) in paragraph (1), for "an operator" substitute "a permit holder"; and

(b) in paragraph (3) omit the words from ", provided that she has consulted" to the end.

10.—(1) In the heading to regulation 11 (variation of permit on application of operator), omit "on application of operator".

(2) In regulation 11—

(a) in paragraph (1)—

(i) for "An operator", substitute "A permit holder";

(ii) omit "relating to the use or discharge of an offshore chemical in the relevant area";

(b) in paragraph (2) omit—

(i) "by the operator"; and

(ii) the words from "provided that she has taken" to the end; and

(c) in paragraph (4) for "the change", substitute "a variation of the terms and conditions as specified in the application".

11. In regulation 12 (reconsideration of permits and permit conditions)—

(a) in paragraph (1) omit "granted in accordance with these Regulations";

(b) in paragraph (3), for "operator concerned" substitute "permit holder";

(c) in paragraph (4), for "operator" substitute "permit holder"; and

(d) omit paragraph (7).

12. After regulation 12, insert—

"**Transfer of permit**

12A. A permit holder shall not, except with the prior consent in writing of the Secretary of State and in accordance with the conditions (if any) of the consent, transfer the permit or any rights granted by the permit, to another person.".

13. In regulation 13 (revocation and surrender of permits)—

(a) in paragraph (1)—

(i) omit "granted pursuant to these Regulations"; and

(ii) for "operator in question" substitute "permit holder"; and

(b) in paragraph (2) for "An operator to whom a permit has been granted" substitute "A permit holder".

14. In paragraph (1) of regulation 14 (register to be kept by the Secretary of State) omit "granted under these Regulations".

15. For paragraph (1) of regulation 15 (provision of information to the Secretary of State) substitute—

"(1) A person who uses, discharges or releases an offshore chemical shall provide the Secretary of State with such information as the Secretary of State may reasonably require for the purposes of performing the Secretary of State's functions under these Regulations.

(1A) The permit holder or, if there is no permit holder, the operator shall without delay provide the Secretary of State with information, in such form and in such manner as the Secretary of State may direct, of—

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

(b) an incident resulting in a release; or

(c) any other incident involving an offshore chemical where there has been, or may be, any significant effect on the environment by means of pollution.".

16. In regulation 16 (appointment of inspectors)—

(a) in paragraphs (1)(b) and (3)(a), for "use or discharge" substitute "use, discharge or release"; and

(b) in paragraph 3(j) omit "granted under these Regulations".

17. In regulation 16A (enforcement notices)—

(a) in paragraph (1)—

(i) for "operator" substitute "permit holder"; and

(ii) omit "in writing ("an enforcement notice")".

(b) after paragraph (1), insert—

"(1A) If the Secretary of State is of the opinion that a release, use without a permit or discharge without a permit has occurred, is occurring, or is likely to occur, the Secretary of State or an inspector appointed under regulation 16 may serve on the permit holder or, if there is no permit holder, the operator, a notice which—

(a) states that the Secretary of State is of that opinion;