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 This draft has been replaced by a new draft, The Offshore Petroleum Activities (Oil Pollution Prevention and Control) (Amendment) Regulations 2010 ISBN 978-0-11-150302-7*

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 Petroleum Activities (Oil Pollution Prevention and Control) (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 Petroleum Activities (Oil Pollution Prevention and Control) (Amendment) Regulations 2010 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations "the 2005 Regulations" means the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005(**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. 2005/2055; these Regulations are applied with modifications to installations established or maintained for the purposes of offshore storage or unloading activities under Part 1 of the Energy Act 2008 (c.32) by S.I. 2010/1513.

Amendment of the 2005 Regulations

3. The 2005 Regulations are amended as follows.

4. In regulation 2 (interpretation)—

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

> ""business day" means any day, except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom by virtue of the Banking and Financial Dealings Act 1971(**3**);
>
> "discharge", in relation to oil, means any intentional emission of the oil from an offshore installation into the relevant area;";

(b) omit the definition of "emission", and in its place insert—

> ""enforcement notice" means a notice served under regulation 13(1) or (1A);";

(c) after the definition of "existing exemption", insert—

> ""notice" means notice in writing;";

(d) after the definition of "operator", insert—

> ""permit" means an authorisation granted by the Secretary of State pursuant to these Regulations to discharge oil;";

(e) in the definition of "permit holder" omit "granted under these Regulations";

(f) in the definition of "pollution", for "relevant waters" substitute "the relevant area";

(g) after the definition of "pollution", insert—

> ""prohibition notice" means a notice served under regulation 14(1);
>
> "release", in relation to oil, means the emission (other than by way of discharge) of the oil from an offshore installation into the relevant area;";

(h) omit the definition of "relevant waters" and in its place insert—

> ""relevant area" means that area (together with places above and below it) comprising—
>
> (a) those parts of 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 apart from those areas comprised in Scottish controlled waters and Welsh controlled waters; and
>
> (c) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964(**4**);"; and

(i) after the definition of "Scottish controlled waters", insert—

> ""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(**5**)."

5. In regulation 3 (discharge permits)—

(a) in paragraph (1), omit "into relevant waters" and "granted in accordance with these Regulations";

(b) in paragraph (2)—

(**3**) 1971 c.80. Schedule 1 to the Act was amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007. There are other amendments to the Act which are not relevant.
(**4**) 1964 c.29. Section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c.23).
(**5**) 1991 c.57.

(i) omit "under these Regulations"; and

(ii) for sub-paragraph (c), substitute—

"(c) the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008(**6**).";

(c) in paragraph (3)(a), omit "in writing"; and

(d) omit paragraph (4).

6. After regulation 3 insert—

"**Prohibition on the release of oil**

3A. No person shall—

(a) release any oil; or

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

7. In regulation 4 (grant or refusal and contents of permits)—

(a) in sub-paragraph (c) of paragraph (2) for "accidents" substitute "incidents";

(b) for paragraph (3), substitute —

"(3) A permit may be granted for a period specified in the permit or without limit of time."; and

(c) after paragraph (4) insert—

"(5) Where a permit is granted, the Secretary of State must send the permit to the applicant.

(6) Where a permit is refused, the Secretary of State must send a notice of such refusal to the applicant."

8. In regulation 5 (contents of permit application)—

(a) in paragraph (1)—

(i) omit "by the operator of the offshore installation";

(ii) after sub-paragraph (b) omit "and";

(iii) in sub-paragraph (c) for "sought." substitute "sought; and"; and

(iv) after sub-paragraph (c) insert—

"(d) an assessment of the risk of harm to the environment from the proposed discharge of oil."; and

(b) in paragraph (2)—

(i) omit "in writing"; and

(ii) for "operator" substitute "applicant".

9. After regulation 5 insert—

"**Publicity for permit applications**

5A.—(1) Except where the permit application is one to which paragraph (5) applies, for a period of not less than four weeks immediately following the publication of the notice referred to in paragraph (2) (or last publication, where it is published in more than one newspaper or on more than one occasion), a permit applicant shall—

(**6**) S.I. 2008/3257, amended by S.I. 2010/897.

(a) having regard to the general whereabouts of any persons likely to be interested in, or affected by, the discharge of oil to which the application relates, make a copy of the application available for public inspection between the hours of 10 am and 4 pm on business days at an address in the United Kingdom; and

(b) subject to paragraph (4), supply a copy of the application to any person on request.

(2) A permit applicant shall publish in such newspapers on such occasions as to be likely to come to the attention of any persons likely to be interested in, or affected by, the discharge of oil to which the application relates, a notice which—

(a) describes the application;

(b) gives the address at which a copy of the application may be inspected;

(c) gives the address from which a copy of the application may be requested and specifies the amount of any payment required in accordance with paragraph (4); and

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

(3) The permit applicant shall provide the Secretary of State with copies of the newspapers in which the notice appeared.

(4) Where a copy of the application is demanded in accordance with paragraph (1)(b), the permit applicant—

(a) must supply a copy as soon as reasonably practicable; and

(b) may make the supply of a copy conditional on the payment of a sum reflecting the cost of printing and distribution, subject to a maximum of £10 per copy.

(5) This regulation does not apply to applications made—

(a) in connection with a relevant project for which the Secretary of State gives a direction, pursuant to regulation 6 of the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999(**7**), that no environmental statement need be prepared;

(b) in connection with a discharge from a pipeline, being a discharge to which the Secretary of State gives consent pursuant to an authorisation issued under Part 3 of the Petroleum Act 1998(**8**); or

(c) in connection with activities carried out in accordance with an abandonment programme approved by the Secretary of State under Part 4 of the Petroleum Act 1998(**9**).”

10. In regulation 6 (fees)—

(a) in paragraph (1) after “charge” insert “applicants for permits, permit holders or”; and

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

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

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

(**7**) S.I. 1999/360, amended by S.I. 2007/933.

(**8**) 1998 c.17. Relevant amendments to sections 26 and 28 of Part 3 were made by sections 36, 78 and 108 of, and Schedules 1 and 6 to the Energy Act 2008 (c.32), and by S.I. 2000/1937 and 2004/2043.

(**9**) Part 4 of the Petroleum Act 1998 was amended by sections 36, 72 to 74, 107 and 108 of, and Schedules 1, 5 and 6 to, the Energy Act 2008, and by section 112 of, and Schedule 8 to, the Marine and Coastal Access Act 2009 (c.23).

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

11. After regulation 6 insert—

"**Application for renewal of an existing permit**

6A.—(1) Subject to paragraph (2), a permit holder may apply in writing to the Secretary of State to renew the permit.

(2) An application for renewal of a permit pursuant to paragraph (1) shall be made no more than three months before the expiry of the permit.

(3) The Secretary of State may grant or refuse an application received under paragraph (1).

(4) Where the Secretary of State grants the renewal of a permit—

(a) the Secretary of State may make the grant subject to such further terms and conditions as the Secretary of State considers fit; and

(b) notice of the renewal and of any terms and conditions to which the renewal is subject under sub-paragraph (a) has effect once served on the applicant.

(5) Where the Secretary of State refuses an application under this regulation, notice of such refusal shall be sent to the applicant.".

12. In paragraphs (3) and (6) of regulation 7, omit "in writing".

13. For regulation 8 (assignment of permit) substitute—

"**Transfer of permit**

8. 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 under the permit, to another person.".

14. In regulation 9 (revocation and surrender of permits) omit—

(a) "in writing" in both places where it occurs; and

(b) "granted pursuant to these Regulations".

15. After regulation 9 insert—

"**Register of permits to be kept by the Secretary of State**

9A.—(1) The Secretary of State shall keep a register at a place in the United Kingdom in which shall be entered—

(a) the terms and conditions of any permits; and

(b) the results of any monitoring information required to be sent to the Secretary of State under the conditions of any permit.

(2) The register shall be open to public inspection on business days from 10 am to 4 pm.".

16. After regulation 11 (registry) insert—

"**Provision of information to the Secretary of State**

11A.—(1) A person who discharges or releases oil shall provide the Secretary of State with such information as the Secretary of State may reasonably require for the purpose of performing the Secretary of State's functions under these Regulations.