This draft supersedes the draft laid on 10th February 2005 and is being issued free of charge to all known recipients of the earlier draft.
Draft Regulations laid before Parliament under section 2(8) of the Pollution Prevention and Control Act 1999, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No.

ENVIRONMENTAL PROTECTION

The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005

Made - - - - 2005

Coming into force in accordance with regulation 1

Whereas the Secretary of State has consulted the persons required to be consulted by section 2(4) of the Pollution Prevention and Control Act 1999(**1**)

And whereas a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 2(8) and (9) of that Act;

Now, therefore, the Secretary of State in exercise of the powers conferred on her by sections 2 and 7(9) of that Act hereby makes the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 and shall come into force on the thirtieth day after the day on which they are made.

Interpretation

2. In these Regulations —

"discharge", in relation to oil, means its release from an offshore installation;

"emission" means the direct or indirect release of substances from individual or diffuse sources into the air or into relevant waters;

(**1**) 1999 c.24; the provisions of paragraph 21A of Part II of Schedule I were inserted into the 1999 Act by section 38 of the Waste and Emissions Trading Act 2003 (c.33).

"existing exemption" means an exemption granted by the Secretary of State pursuant to section 23 of the Prevention of Oil Pollution Act 1971(**2**), being an exemption which is in force on the day before the day on which these Regulations come into force;

"offshore installation" has the same meaning as in section 44 of the Petroleum Act 1998(**3**);

"oil" means any liquid hydrocarbon or substitute liquid hydrocarbon, including dissolved or dispersed hydrocarbons or substitute hydrocarbons that are not normally found in the liquid phase at standard temperature and pressure, whether obtained from plants or animals, or mineral deposits or by synthesis;

"operator" means any person who operates an offshore installation;

"permit holder" means the holder from time to time of a permit granted under these Regulations;

"pollution" means the introduction by man, directly or indirectly, of substances or energy into relevant waters which results, or is likely to result, in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea;

"relevant waters" has the same meaning as in section 44 of the Petroleum Act 1998(**3**) save that it:—

(a) does not include Scottish controlled waters; and

(b) includes places below relevant waters;

"Scottish controlled waters" means any waters which are controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974(**4**).

Discharge permits

3.—(1) Subject to paragraphs (2) and (3), no oil shall be discharged into relevant waters save in accordance with the terms of, and conditions attached to, a permit granted in accordance with these Regulations.

(2) There shall be exempt from the requirement for a permit under these Regulations discharges regulated by —

(a) the Offshore Chemicals Regulations 2002 (**5**);

(b) the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996(**6**); or

(c) the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1998(**7**).

(3) Where a person is carrying on a discharge of oil to which an existing exemption applies paragraph (1) shall not apply in respect of that discharge until—

(a) such time as the Secretary of State may specify by notice in writing to that person; or

(b) (if no notice is given by the Secretary of State in accordance which sub-paragraph (a)) the date after the day on which the period of two years commencing on the date these Regulations come into force expires.

(**2**) 1971 c.60.
(**3**) 1998 c.17.
(**3**) 1998 c.17.
(**4**) 1974 c.40; the provisions of section 30A(1) were inserted in the 1974 Act by section 169 of, and Schedule 23 to, the Water Act 1989 (c.15).
(**5**) S.I. 2002/1355.
(**6**) S.I. 1996/2154.
(**7**) S.I. 1998/1377.

(4) A person who discharges oil into relevant waters shall provide the Secretary of State with such information as the Secretary of State may reasonably require for the purpose of performing her functions under these Regulations.

Grant or refusal and contents of permits

4.—(1) Where the Secretary of State receives an application for a permit pursuant to regulation 5, she may either grant or refuse the application.

(2) The Secretary of State may attach conditions to any permit granted by her pursuant to paragraph (1) which are calculated to ensure that —

(a) the concentration, frequency, quantity, location or duration of any discharge is subject to appropriate restrictions;

(b) appropriate measures are taken to minimise pollution including, in particular, the appropriate use of technology to limit discharges;

(c) necessary measures are taken to prevent accidents affecting the environment or, where they occur, to limit their consequences in relation to the environment;

(d) there is carried out appropriate monitoring of the discharges to which the permit relates, and such conditions may include —

(i) provisions relating to measurement techniques, the frequency of measurement and evaluation procedures; and

(ii) obligations to supply the Secretary of State with data required for checking compliance with the permit, including any data setting out the actual concentration, frequency, quantity, location or duration of any discharges which have occurred during a specified period.

(3) A permit shall specify the period for which it is to have effect.

(4) In addition to any conditions that may be attached to any permit by virtue of paragraph (2), the Secretary of State may attach to a permit such other conditions as she thinks fit.

Contents of permit application

5.—(1) An application for the grant of a permit shall be made in writing by the operator of the offshore installation and shall contain—

(a) a description of the offshore installation from which the discharge is to take place, including the location of the offshore installation;

(b) a description of the oil to which the application relates and of the circumstances in which it is to be discharged; and

(c) a description of the measures planned to monitor the discharge in relation to which a permit is sought.

(2) For the purpose of considering an application under this regulation, the Secretary of State may by notice in writing require the operator to provide such other information as may be specified in the notice.

Fees

6.—(1) The Secretary of State may, in accordance with a charging scheme made by her for this purpose, charge operators fees in respect of any of the matters to which this paragraph applies.

(2) The matters to which paragraph (1) applies are —

(a) the grant of a permit;

(b) the variation of a permit or of the conditions to which it is subject;

(c) the assignment of a permit;

(d) the surrender of a permit;

(e) the subsistence of a permit;

(f) the testing or analysis of substances;

(g) the validating of, or of the results of, any testing or analysis of substances; and

(h) the assessment of the effect upon the environment of the release into it of any oil,

but paragraph (1) only applies to the matters referred to in sub-paragraphs (f) to (h) in cases where the testing, analysis, validating or assessment is in any way in anticipation of, or otherwise in connection with, the making of permit applications or is carried out in pursuance of conditions to which the permit is subject.

(3) A charging scheme made under this regulation shall be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure as may be incurred by or on behalf of the Secretary of State in connection with any of the matters to which paragraph (1) applies.

Variation of permit terms and conditions

7.—(1) The Secretary of State may, whenever she thinks fit, review the terms and conditions attached to any permit and, when an application is made in accordance with paragraph (2), she shall review the terms and conditions attached to the permit in question.

(2) A permit holder may apply in writing for a variation of the terms and conditions of a permit.

(3) Where, having conducted a review in accordance with paragraph (1), the Secretary of State considers that the terms and conditions of a permit should be varied, she shall give notice to the permit holder in writing of her intention to vary those terms and conditions.

(4) Subject to paragraph (5), a notice given by the Secretary of State pursuant to paragraph (3) shall —

(a) provide details of the proposed variation; and

(b) specify the date ("the relevant date") on which the proposed variation is to take effect.

(5) Where the Secretary of State proposes to vary the terms and conditions of a permit otherwise than in accordance with an application made under paragraph (2) —

(a) the relevant date shall be not less than 14 days after the date on which notice is given pursuant to paragraph (3);

(b) the permit holder shall be entitled to make representations in writing as to whether, and if so, how the terms and conditions should be varied;

(c) where no representations under sub-paragraph (b) are received prior to the relevant date, the variation shall have effect on that date; and

(d) where representations under sub-paragraph (b) are received prior to the relevant date, the Secretary of State shall consider them in determining whether or not to vary the terms and conditions as originally notified pursuant to paragraph (3) and may determine that revised terms and conditions shall come into effect on a date later than the relevant date.

(6) Where an application is made under paragraph (2) and the Secretary of State decides not to vary the terms and conditions of the permit in question, she shall give notice in writing of her decision to the permit holder.

Assignment of permit

8.—(1) Where a permit holder wishes to assign his permit to another person ("the proposed assignee") the permit holder and the proposed assignee shall each make an application to the Secretary of State to effect the assignment.

(2) The Secretary of State shall effect the assignment provided she is satisfied that the proposed assignee will become the operator of the installation to which the permit relates after the assignment is effected.

(3) The Secretary of State shall effect an assignment under this regulation by causing the permit to be endorsed with the name and other particulars of the proposed assignee as the permit holder.

(4) The Secretary of State may, by notice, require the permit holder or the proposed assignee to furnish such further information specified in the notice, within the period so specified, as the Secretary of State may require for the purpose of determining an application under this regulation.

Revocation and surrender of permits

9.—(1) The Secretary of State may by notice in writing revoke a permit granted pursuant to these Regulations where she is of the opinion that —

(a) any application made under these Regulations in connection with that permit contained or was supported by any information or statement which was false or misleading in a material particular; or

(b) any person has been guilty of a breach of any term or condition attached to the permit.

(2) A permit holder may surrender his permit by notice in writing to the Secretary of State.

Allowance Trading

10.—(1) The making by the Secretary of State of the following is hereby authorised —

(a) a plan or plans for the allocation of allowances in relation to specified emissions ("allocation plans"); and

(b) one or more emissions trading schemes ("the trading schemes") for the purpose of facilitating the trading of allowances allocated under the allocation plans.

(2) The Secretary of State may include in the rules of the trading schemes—

(a) provision for penalties in respect of contraventions of the terms and conditions of the trading scheme; and

(b) provision for the amount of any penalty under the trading scheme to be such as may be set out in or calculated in accordance with the scheme.

Registry

11.—(1) The Secretary of State shall for the purposes of the trading schemes establish and maintain one or more registries in which there shall be recorded —

(a) allocations;

(b) adjustments of allocations;

(c) trades;

(d) transfers;

(e) withdrawals; and

(f) surrenders

of allowances.