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(**a**).

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(**b**).

Amendment of the 2002 Regulations

3. The 2002 Regulations are amended as follows.

(**a**) 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)).

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

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(**a**) 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(**b**).";

(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;

(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—

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

"**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;

(b) specifies the matters which constituted, constitute, or are likely to constitute the release, use or discharge;

(c) specifies the remedial steps that must be taken; and

(d) specifies the period within which those steps must be taken.

(1B) The Secretary of State may serve a notice on the permit holder to vary the period within which remedial steps must be taken under an enforcement notice.";

(c) for paragraph (2) substitute—

"(2) The steps that may be specified under paragraphs (1)(c) and (1A)(c) include steps that must be taken to remedy any pollution caused by a contravention, release, use or discharge.";

(d) in paragraph (5), omit "served under paragraph (1)"; and

(e) in paragraph (6), after "paragraph (1)" insert ", (1A)".

18. In regulation 16B (prohibition notices)—

(a) in paragraph (1), for "any use or discharge" to the end, substitute "any use, discharge or release of an offshore chemical, the Secretary of State or an inspector appointed under regulation 16 may serve a notice on the permit holder or, if there is no permit holder, the operator.";

(b) in paragraph (2) after "conditions" insert "of"; and

(c) in paragraph (3)—

(i) in sub-paragraph (c) omit "and the period within which they must be taken"; and

(ii) after sub-paragraph (c)—

(aa) omit "and"; and

(bb) insert—

"(ca) may specify the period within which such steps must be taken; and".

19. In regulation 17 (appeal to High Court, Court of Session or High Court in Northern Ireland)—

(a) in paragraph (1), for "any permit applicant or any operator" substitute "any permit applicant, permit holder or operator".

(b) in paragraph (2)—

(i) in each of sub-paragraphs (a), (b) and (c), for "use or discharge" substitute "use, discharge or release"; and

(ii) in sub-paragraph (b) omit "(excluding Scottish controlled waters)"; and

(c) in paragraph (4)—

(i) where "used or discharged" appears for the first and third time, substitute "used, discharged or released"; and

(ii) for "paragraphs (2) and (3)" substitute "paragraph (2)".

20. In regulation 18 (offences)—

(a) in paragraph (1)—

(i) for sub-paragraph (b) substitute—

"(b) contravenes regulation 3A;";

(ii) in sub-paragraph (c) omit "3(3) or";

(iii) in sub-paragraph (d) omit "granted under these Regulations"; and

(iv) in sub-paragraph (e)(i) after "permit application" insert ", permit transfer";

(b) after paragraph (2) insert—

"(2A) A person does not have the defence provided by paragraph (2)(b) if the court is satisfied—

(a) that the thing done was not a reasonable step to take in the circumstances; or

(b) that it was a reasonable step to take for the purpose mentioned in that paragraph but the necessity of taking that step was due to the fault of the defendant."; and

(c) after paragraph (8) insert—

"(9) Proceedings in England and Wales for an offence under this regulation may be brought only by, or with the consent of, the Secretary of State or the Director of Public Prosecutions.

(10) Proceedings in Northern Ireland for an offence under this regulation may be brought only by, or with the consent of, the Secretary of State or the Director of Public Prosecutions for Northern Ireland."

Transitional provision

21.—(1) Sub-paragraph (a)(i) of regulation 20 does not have effect in relation to a contravention which occurred before the coming into force of these Regulations.

(2) Sub-paragraph (c) of regulation 20 does not have effect in relation to proceedings which are commenced before the coming into force of these Regulations.

Name
Minister of State
Date Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Offshore Chemicals Regulations 2002 ("the 2002 Regulations"). The 2002 Regulations implement the United Kingdom's obligations under the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) Decision 2002/2 on a Harmonised Mandatory Control System for the Use and Reduction of the Discharge of Offshore Chemicals in relation to offshore activities. The 2002 Regulations were amended by the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (S.I. 2005/2055), and by the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010 (S.I. 2010/1513), which extended the 2002 Regulations to the use and discharge of chemicals in offshore gas storage and unloading activities.

The principal changes made by these Regulations are to insert a new regulation 3A into the 2002 Regulations, which prohibits any person from releasing an offshore chemical or allowing such a release to continue (*regulation 6*), and to make the contravention of this provision an offence under regulation 18 of the 2002 Regulations (*regulation 20(a)*). A definition of 'release' is inserted into the 2002 Regulations (*regulation 4(f)*), along with a revised definition of 'discharge' (*regulation 4(a)*). Under these new definitions, a 'discharge' involves an intentional emission of an offshore chemical, while any other emission of an offshore chemical will be a 'release'. Prior to these amendments, the emission of an offshore chemical without a permit could only be prosecuted under the 2002 Regulations if made for operational reasons. The effect of these changes is therefore to widen the circumstances in which a person can be prosecuted for emitting an offshore chemical, so that an intentional emission (i.e. a discharge) will only be lawful if made within the terms and conditions attached to a permit, and any other emission (i.e. a release) will be unlawful (although in both cases a defence may be available under regulation 18(2) of the 2002 Regulations).

These Regulations also make a number of other amendments to the 2002 Regulations. In particular—

Regulation 4(g) and (h) makes amendments to the 2002 Regulations to exclude their application in relation to offshore petroleum activities to Welsh controlled waters from the low water mark out to three nautical miles from the baseline of the territorial sea. For those purposes, responsibility has transferred to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958) and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

Regulation 7(b) amends regulation 5(2)(d) so that conditions of permits can require necessary measures to be taken to prevent or limit the consequences of any incidents affecting the environment, not merely those arising by accident.

Regulation 8 makes changes to clarify who can be charged fees under the 2002 Regulations, and what those fees can cover.

Regulations 9(b) and 10(b)(ii) remove the requirements to consult the Centre for Environment, Fisheries and Aquaculture Science, the Fisheries Research Service and states who are party to the Convention for the Protection of the Marine Environment of the North-East Atlantic 1992 in relation to the renewal or variation of a permit.

Regulation 12 inserts a new regulation 12A to establish a process for the transfer of a permit from one holder to another.

Regulation 15 extends the circumstances in which a person may be required to provide information to the Secretary of State about the emission and use of offshore chemicals.

Regulations 17 and 18 extend the circumstances in which enforcement and prohibition notices can be served to include any release of an offshore chemical or its use or discharge without a permit. These regulations also make amendments to the provisions about the period within which remedial steps are to be taken under an enforcement or prohibition notice, and who can be served with such notices.

Regulation 20 amends regulation 18, which makes provision in relation to offences. It qualifies the defences available to a person charged with an offence under paragraph (2)(b) of that regulation so that a person cannot rely upon circumstances caused by their own unreasonable action or fault. It also provides that proceedings may only be brought in England and Wales and in Northern Ireland for an offence under this regulation by or with the consent of the Secretary of State or the relevant Director of Public Prosecution (offences in Scotland can in any event only be prosecuted by or on behalf of the Lord Advocate).

Regulation 21 makes transitional provision to make clear that a person cannot be guilty of an offence under new regulation 3A of the 2002 Regulations in respect of a release of chemicals that took place before the coming into force of these Regulations, and to ensure that the requirement for the consent of the Secretary of State or the relevant Director of Public Prosecutions for an offence does not apply in respect of proceedings which commenced before the Regulations' coming into force.

The Regulations also make a number of changes to the 2002 Regulations which are consequential on the changes described above, as well as a number of minor changes, including changes to ensure that the 2002 Regulations are consistent with the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

© Crown copyright 2010

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

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

£5.75

E8146 10/2010 108146T 19585