

## **Offshore Chemicals Regulations 2002**

### **Consolidated Text**

This document is an unofficial, consolidated version of the Offshore Chemicals Regulations 2002 produced by the Department of Energy and Climate Change.

It incorporates amendments made to Offshore Chemicals Regulations 2002 by:

- The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005;
- The Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010; and
- The Offshore Chemicals (Amendment) Regulations 2011.

While the Department has sought to ensure the accuracy of this text, it is not a substitute for the unconsolidated statutory instruments published by Her Majesty's Stationery Office, from which these consolidations are compiled. These can be accessed at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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2002 No 1355

## ENVIRONMENTAL PROTECTION

# Offshore Chemicals Regulations 2002

Made 14th May 2002

Coming into force 15th May 2002

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;

And whereas a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament pursuant to sections 2(8) and 2(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:--

### 1 Citation and commencement

These Regulations may be cited as the Offshore Chemicals Regulations 2002 and shall come into force on the day after the day on which they are made.

### 2 Interpretation

(1) In these Regulations--

"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;

"consultation parties" means, having regard to the part of the relevant area to which any permit would relate--

- (a) the Centre for Environment, Fisheries and Aquaculture Science;
- (b) the Fisheries Research Services,

together with any Contracting State which the Secretary of State considers may be affected by the use or discharge of any offshore chemical to which an application under these Regulations relates;

"Contracting State" means a State which the Secretary of State considers to be a contracting party to the Convention;

"Convention" means the Convention for the Protection of the Marine Environment of the North-East Atlantic 1992;

"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;

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

"the Gazettes" means the London, Edinburgh and Belfast Gazettes;

"installation" includes any floating structure or device maintained on a station by whatever means;

"notice" means notice in writing;

"offshore activities" means—

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(a) offshore petroleum activities; or

(b) offshore storage or unloading activities;

"offshore chemical" means any chemical, whether comprising a substance or a preparation, used or intended to be used, in connection with offshore activities;

"offshore installation" means an installation or pipeline which is used for the purposes of, or in connection with, offshore petroleum activities or offshore storage and unloading activities;

"offshore petroleum activities"—

(a) means any activities in respect of which the Secretary of State exercises functions under the Petroleum Act 1998, being activities carried out in the relevant area; but

(b) does not include activities ("decommissioning activities") carried out in connection with the abandonment of an offshore installation that, at the time of that abandonment, had last been used for the purposes of or in connection with offshore storage or unloading activities, unless those decommissioning activities are carried out in the reserved area;

"offshore storage or unloading activities" means any activities in respect of which the Secretary of State exercises functions under Part 1 of the Energy Act 2008, being activities carried out in the reserved area;

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

"permit" means an authorisation granted by the Secretary of State pursuant to these Regulations to use or discharge any offshore chemical in the relevant area;

"permit application" means an application for a permit, being an application which satisfies the requirements of regulation 6(1) and "permit applicant" shall be construed accordingly;

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

"pollution" means the introduction by man, directly or indirectly, of substances or energy into the relevant area 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;

"preparation" means a mixture or solution composed of two or more substances;

"prescribed date" means the date after the day on which the period of three months commencing on the day on which these Regulations come into force expires, save that when a permit application is made before that date it means--

(a) the date on which the permit is granted, whether in pursuance of the application or, on an appeal under regulation 17, of an order of the court; or

(b) where a permit is refused and the permit applicant appeals under regulation 17, the date on which the court upholds that refusal; or

(c) the date after the day on which the period provided for under regulation 17(6) expires,

as the case may be;

"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;

"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

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(c) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964;

"relevant project" has the same meaning as in the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999;

"reserved area" means the area (together with the 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) so much of the United Kingdom territorial sea as is adjacent to England or Northern Ireland; and

(c) those areas of sea in a Gas Importation and Storage Zone (within the meaning of section 1(5) of the Energy Act 2008);

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

"substance" means a chemical element or compound, in the natural state or obtained by any production process, including any additive necessary to preserve the stability of the product or any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

"substantial change" means a change in the type, quantity, frequency or location of the use or discharge of an offshore chemical which may have significant negative effects on people or the environment;

"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.

(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.

### **3 Requirement for permit to use or discharge offshore chemicals**

(1) Subject to paragraphs (2) and (3), no person shall use or discharge any offshore chemical after the prescribed date otherwise than in accordance with the terms of, and conditions attached to, a permit.

(2) Where a person is using or discharging any offshore chemical in connection with any offshore activity that began on or before the date on which these Regulations come into force, that person may continue to use or discharge that offshore chemical until—

(a) such time as the Secretary of State may specify by notice; or

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

### **3A Prohibition on the release of offshore chemicals**

(1) No person shall—

(a) release an offshore chemical; or

(b) allow such a release to continue.

#### **4 Grant and refusal of permits**

- (1) In considering whether to grant a permit, the Secretary of State shall have regard to any opinion expressed by--
  - (a) the consultation parties; and
  - (b) (except where the permit application is one to which regulation 7(2) applies) the general public.
- (2) The Secretary of State shall not grant a permit unless she is satisfied that there has been substantial compliance with regulation 7.
- (3) Where the Secretary of State grants a permit, she shall send it to the permit applicant.
- (4) Where the Secretary of State refuses a permit application, she shall give notice of such refusal to the permit applicant.
- (5) The Secretary of State shall publish in the Gazettes notice of the granting of any permit.

#### **5 Conditions of permits**

- (1) The Secretary of State may attach to any permit such conditions as she thinks fit.
- (2) Without prejudice to the generality of paragraph (1), the Secretary of State may attach to any permit such conditions as in her opinion are calculated to ensure that--
  - (a) the quantity, frequency, location and duration of any permitted use or discharge of offshore chemicals are subject to appropriate restrictions;
  - (b) any permit granted for the use or discharge of any offshore chemical requires the permit holder to seek a suitable, less hazardous substitute;
  - (c) all appropriate measures are taken to prevent pollution in particular through the appropriate use of technology to limit discharge, emissions and waste;
  - (d) necessary measures are taken to prevent incidents affecting the environment or, where they occur, to limit their consequences in relation to the environment;
  - (e) the appropriate monitoring of the use and discharge of offshore chemicals is facilitated, and such conditions may include--
    - (i) provisions relating to measurement techniques, technology and frequency and to 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 quantity, frequency and location of the use and discharge of any offshore chemicals which has occurred during a specified period;
  - (f) long-distance or transboundary pollution is minimised; and
  - (g) appropriate measures are taken in relation to conditions other than normal operating conditions including start-ups, leaks, malfunctions, temporary stoppages and permanent cessation of operations.

#### **6 Requirements relating to permit applications**

- (1) A permit application shall be made in writing and shall contain--
  - (a) a description of the offshore installation on or from which the offshore chemical is to be used or discharged, and the location of the offshore installation in the relevant area;
  - (b) a description of the proposed technology and other techniques for preventing or, where prevention is not possible, reducing the use or discharge of the offshore chemical from the offshore installation;

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- (c) a description of the measures planned to monitor the use or discharge of the offshore chemical; and
  - (d) an assessment of the risk of harm to the environment from the use and discharge of the offshore chemicals proposed.
- (2) The Secretary of State may by notice require a permit applicant--
- (a) to produce such evidence as the Secretary of State may reasonably call for to verify any information provided in the permit application; or
  - (b) to provide such other information as the Secretary of State may specify for the purposes of properly considering a permit application in accordance with these Regulations.

## **7 Publicity for permit applications**

- (1) Except where the permit application is one to which paragraph (2) applies, a permit applicant shall--
- (a) having regard to the general whereabouts of any persons likely to be interested in, or affected by, the use or discharge of any chemical to which the permit application relates, make a copy of the permit application available for public inspection at an address in the United Kingdom between the hours of 10 am and 4 pm on business days for a period of not less than four weeks immediately following the publication (or last publication, where it is published in more than one newspaper or on more than one occasion) of the notice referred to in sub-paragraph (d);
  - (b) make available at an address within the United Kingdom enough copies of the permit application to be likely to satisfy all reasonable demands for copies pursuant to sub-paragraph (c);
  - (c) subject to sub-paragraph (b) and paragraph (3), supply during the period mentioned in sub-paragraph (a), a copy of the permit application;
  - (d) 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 use or discharge of any chemical to which the permit application relates, a notice which--
    - (i) describes the permit application;
    - (ii) gives the address referred to in sub-paragraph (a) at which a copy of the permit application may be inspected;
    - (iii) states that a copy of the permit application may be obtained from the address referred to in sub-paragraph (b) and, subject to paragraph (3)(b), specifies the amount of any payment required to be tendered for a copy of the permit application; and
    - (iv) 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 permit application to the Secretary of State and specifies the address to which any such representations are to be sent; and
  - (e) provide the Secretary of State with copies of the newspapers in which the notice referred to in sub-paragraph (d) appeared.
- (2) This paragraph applies to permit 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, 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 a consent pursuant to an authorisation issued under Part III of the Petroleum Act 1998; or

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- (c) in connection with activities carried out in accordance with an abandonment programme approved by the Secretary of State under Part IV of the Petroleum Act 1998.
- (3) Where a permit applicant is subject to an obligation to supply a copy of a permit application pursuant to a request made under paragraph (1)(c), he--
  - (a) shall supply a copy of the permit application to the person requesting it as soon as reasonably practicable after receipt of the request; and
  - (b) may make the supply of a copy of the permit application conditional on the receipt by the permit applicant of a sum calculated by reference to the cost of printing and distributing copies of the permit application, subject to a maximum of £10 for each copy requested.

## **8 Fees**

- (1) The Secretary of State may, in accordance with a charging scheme made by her for this purpose, charge permit applicants, permit holders and operators fees in respect of any of the matters to which this paragraph applies.
- (2) The matters to which paragraph (1) applies are--
  - (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;
  - (d) the subsistence of a permit;
  - (e) the testing or analysis of substances;
  - (f) the validating of, or of the results of, any testing or analysis of substances; and
  - (g) assessing how the environment might be affected by the release into it of any substances,

but paragraph (1) only applies to the matters referred to in sub-paragraphs (e) to (g) in cases where the testing, analysis, validating or assessing 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 any 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.

## **9 Duration of permits**

A permit may be granted for a period specified in the permit or without limit of time.

## **10 Application for renewal of an existing permit**

- (1) Where a permit holder proposes to continue to use or discharge from an offshore installation an offshore chemical after the expiry of any period specified in the permit, he may, subject to paragraph (2), apply to the Secretary of State to renew the permit.
- (2) An application for renewal of a permit pursuant to paragraph (1) shall be made in writing prior to, but no more than three months before, the expiry of the permit in question.
- (3) The Secretary of State may renew a permit pursuant to an application under this regulation.
- (4) Where the Secretary of State refuses an application under this regulation she shall serve a notice on the applicant which states that the application is refused.

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(5) Where the Secretary of State grants an application pursuant to paragraph (3) she may make the granting of the application subject to such further terms and conditions as she shall think fit and, once a notice giving details of such further terms and conditions has been served on the applicant, they shall have effect.

### **11 Variation of permit**

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

(2) Where the Secretary of State determines that a variation applied for would not be a substantial change, she may grant the application and vary the terms and conditions of the permit accordingly.

(3) Where the Secretary of State grants an application pursuant to paragraph (2), she may make the granting of the application subject to such further conditions as she shall think fit.

(4) Where the Secretary of State determines that a variation of the terms and conditions as specified in the application would be a substantial change she shall refuse the application and serve a notice on the applicant which states that--

(a) the proposed change would be in the opinion of the Secretary of State a substantial change; and

(b) the application is refused.

(5) Where an application made pursuant to paragraph (1) is granted, the Secretary of State shall issue to the applicant a notice giving details of the revised terms and conditions and the revised terms and conditions shall have effect once this notice has been served on the applicant.

### **12 Reconsideration of permits and permit conditions**

(1) The Secretary of State may at such intervals as she shall think fit review any permit, together with the conditions attached to the permit.

(2) The Secretary of State shall review the conditions of a permit where in her opinion the pollution or risk of pollution caused by the use or discharge of an offshore chemical is of such significance that any existing restrictions on the quantity, frequency or location of the use or discharge of such offshore chemical contained in a permit should be revised or new restrictions on the quantity, frequency or location should be included in the permit.

(3) Where the Secretary of State considers that the conditions of a permit should be revised she shall give notice to the permit holder of her intention to revise the permit and such notice shall--

(a) give details of the conditions of the revised permit; and

(b) specify a day (not less than 14 days after the day on which such notice is given) on which the revised permit will have effect.

(4) The permit holder may make representations in writing as to whether the permit should be revised and as to the conditions of the revised permit.

(5) Where no representations are received prior to the day specified under paragraph (3)(b), the permit shall be revised with effect from that day.

(6) Where representations are received prior to the day specified under paragraph (3)(b), the Secretary of State shall consider them in determining whether or not the permit should be revised as originally notified under paragraph (3) and may determine--

(a) that the permit shall be revised with effect from a later day than the day specified under paragraph (3)(b); and

(b) that the permit shall be revised otherwise than as originally notified.



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## **12A Transfer of permit**

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 Revocation and surrender of permits**

(1) The Secretary of State may by notice revoke a permit where she is of the opinion that an application for the grant, renewal or variation of the permit in question contained any information or statement which was false or misleading in a material particular or where the permit holder has been guilty of a breach of any condition attached to the permit.

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

## **14 Register to be kept by the Secretary of State**

(1) The Secretary of State shall keep a register at a place in the United Kingdom in which she shall cause to be entered--

- (a) the terms and conditions of any permits; and
- (b) the results of any monitoring information required to be sent to her under the conditions of any permit.

(2) The register referred to in paragraph (1) shall be open to public inspection on business days from 10 am until 4 pm.

## **15 Provision of information to the Secretary of State**

(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.

(2) For the purposes of this regulation "effect" includes any direct, indirect, secondary, cumulative, short, medium or long-term, permanent or temporary, or positive or negative effect.

## **16 Appointment of inspectors**

(1) The Secretary of State may, if she thinks fit, appoint one or more inspectors--

- (a) to investigate whether the requirements, restrictions or prohibitions imposed by or under these Regulations have been, or are being complied with; or
- (b) to monitor the use, discharge or release of any offshore chemical.

(2) The inspectors shall report . . . to the Secretary of State in such manner as the Secretary of State may direct.

(3) An inspector appointed under paragraph (1) may for any of the purposes mentioned in that paragraph and on producing evidence of his appointment--

- (a) at any reasonable time (or, in a situation which in his opinion may give rise to a risk of significant pollution to the environment as a result of the use, discharge, or release from an offshore installation of an offshore chemical, at any time) board any offshore installation;
- (b) on boarding an offshore installation take with him any other person authorised for those purposes by the Secretary of State and any equipment or materials that he thinks he may require;
- (c) make such examination or investigation as he considers necessary (including any examination or investigation of an offshore installation, for which purpose he may install or maintain monitoring or other apparatus on the offshore installation);
- (d) give a direction requiring that any part of the offshore installation be left undisturbed (whether generally or in particular respects) for so long as reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
- (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) take samples of any articles or substances found on the offshore installation or in the atmosphere or any land, seabed (including the subsoil thereof) or water in the vicinity of the offshore installation;
- (g) in the case of any article or substance which he finds on the offshore installation, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that in the circumstances of the case is necessary);
- (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely--
  - (i) to examine it and do to it anything which he has power to do under that paragraph;
  - (ii) to ensure that it is not tampered with before his examination of it is completed; and
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
- (i) require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under sub-paragraph (c)--
  - (i) to attend at a place and time specified by the inspector;
  - (ii) to answer (in the absence of any person other than persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask; and
  - (iii) to sign a declaration of truth of his answers;
- (j) require the production of, and inspect and take copies of or of any entry in--
  - (i) any records which by virtue of any provision of any permit are required to be kept;
  - (ii) any records which he considers it necessary for him to see for the purposes of any examination or investigation under sub-paragraph (c); and
- (k) require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this regulation.

(4) . . .

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- (5) An answer given by a person in compliance with a requirement imposed under paragraph (3)(i) shall be admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings.
- (6) In criminal proceedings in which such person as is mentioned in paragraph (5) is charged with an offence to which this paragraph applies no evidence relating to that person's answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person.
- (7) Paragraph (6) applies to any offence other than one--
- (a) under regulation 18(1)(e)(ii);
  - (b) under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
  - (c) under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath); or
  - (d) under article 10 of the Perjury (Northern Ireland) Order 1979.
- (8) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would on ground of legal professional privilege be entitled to withhold production on an order for disclosure or discovery in an action in the High Court or the High Court in Northern Ireland or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

#### **16A Enforcement notices**

- (1) If the Secretary of State is of the opinion that any person has contravened or is contravening any condition of a permit or is likely to contravene any such condition, the Secretary of State or an inspector appointed under regulation 16 may serve on the permit holder a notice which--
- (a) states that the Secretary of State is of the opinion mentioned in paragraph (1);
  - (b) specifies the matters which constitute, constituted or, as the case may be, are likely to constitute the contravention;
  - (c) specifies the steps that must be taken to remedy or, as the case maybe, prevent the contravention; and
  - (d) may specify the period within which those steps must be taken.
- (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.
- (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.
- (3) Where a person to whom an enforcement notice is addressed has failed to take the action required by it within such time as may be specified by it and such a notice has not been revoked, the Secretary of State may undertake any action so required and the reasonable costs and expenses of the Secretary of State's so doing shall be recoverable as a debt from that person.

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(4) A person to whom an enforcement notice is addressed shall afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers conferred on the Secretary of State by paragraph (3).

(5) The Secretary of State or an inspector appointed by her under regulation 16 may revoke an enforcement notice.

(6) The exercise by the Secretary of State of any power conferred by paragraph (1), (1A) or (3) shall be without prejudice to the exercise by her of any other power under any other provision of these Regulations.

### **16B Prohibition notices**

(1) If the Secretary of State is of the opinion that the operation of an offshore installation involves an imminent risk of serious pollution as a consequence of 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.

(2) A prohibition notice may be served whether or not the risk relates to the contravention of a permit and may relate to any aspects of the operation of the offshore installation, whether or not regulated by the conditions of such a permit.

(3) A prohibition notice--

(a) shall state that the Secretary of State is of the opinion mentioned in paragraph (1) above;

(b) shall specify the risk involved in the operation of the offshore installation;

(c) shall specify the steps that must be taken to remove it;

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

(d) may direct that any permit shall, until the notice is withdrawn wholly or in part, cease to have effect and, where the direction applies to part only of the operation of the offshore installation, it may impose conditions to be observed in carrying on that part of the operation which is authorised under the relevant permit.

(4) The Secretary of State or an inspector appointed by her under regulation 16 may by notice withdraw a prohibition notice wholly or in part at any time and shall withdraw a notice when the Secretary of State is satisfied that the steps required by the notice have been taken.

(5) It shall be the duty of the person to whom the prohibition notice is addressed to comply with its terms save to the extent that it is withdrawn wholly or in part.

(6) The service of a prohibition notice shall be without prejudice to the exercise by any person of any power under any other provision of these Regulations.

### **17 Appeal to High Court, Court of Session or High Court in Northern Ireland**

(1) Subject to paragraph (6), any permit applicant, permit holder or operator aggrieved by a decision of the Secretary of State made under these Regulations may appeal to the court.

(2) Subject to paragraph (4), the expression "the court" means--

(a) in respect of a decision relating to the use, discharge or release of an offshore chemical in the English area, the High Court;

(b) in respect of a decision relating to the use, discharge or release of an offshore chemical in the Scottish area, the Court of Session;

(c) in respect of a decision relating to the use, discharge or release of an offshore chemical in the Northern Irish area, the High Court in Northern Ireland.

(3) In this regulation the expressions "the English area", "the Scottish area" and "the Northern Irish area" shall have the same meanings as in the Civil Jurisdiction (Offshore Activities) Order 1987;

*Unofficial consolidated text of the Offshore Chemicals Regulations 2002 – please consult [www.legislation.gov.uk](http://www.legislation.gov.uk) for the authoritative unconsolidated texts of the relevant statutory instruments.*

(4) Where an offshore chemical is used, discharged or released or is to be used or discharged in more than one of the areas referred to in paragraph (2), any of the courts having jurisdiction in the area or areas where the offshore chemical is used, discharged or released or is to be used or discharged shall have jurisdiction in relation to the decision in question.

(5) Unless the court otherwise orders, any decision of the Secretary of State which is the subject of an appeal under paragraph (1) shall remain in force pending a final disposal of that appeal.

(6) An appeal under this regulation shall be made within 28 days of written notification of the decision in question.

## **18 Offences**

(1) Subject to paragraph (2), a person is guilty of an offence if he--

- (a) contravenes regulation 3(1);
- (b) contravenes regulation 3A;
- (c) fails to supply any information required to be supplied by virtue of regulation 15;
- (d) fails to supply any information required to be supplied by virtue of the terms of any permit;
- (e) knowingly or recklessly makes a statement which he knows to be false or misleading in a material particular where such a statement--
  - (i) is made in connection with or for the purposes of any permit application, permit transfer or any application under regulations 10 or 11; or
  - (ii) is made for the purposes of satisfying any requirement under these Regulations for the supply of information to the Secretary of State or an inspector appointed pursuant to regulation 16;
- (f) wilfully obstructs an inspector appointed under regulation 16;
- (g) without reasonable excuse fails to comply with a requirement imposed in pursuance of regulation 16 or prevents another person from complying with such a requirement; or
- (h) fails to comply with the terms of an enforcement notice or a prohibition notice.

(2) Where a person is charged with an offence under paragraph (1)(a) or (1)(b), it is a defence to prove that the contravention--

- (a) arose as a result of something which could not have been reasonably prevented by him; or
- (b) was due to something done as a matter of urgency for the purposes of securing the safety of any person.

(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.

(3) A person guilty of an offence under this regulation shall on summary conviction be liable to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(4) Where an offence under this regulation by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

*Unofficial consolidated text of the Offshore Chemicals Regulations 2002 – please consult [www.legislation.gov.uk](http://www.legislation.gov.uk) for the authoritative unconsolidated texts of the relevant statutory instruments.*

(5) Where the affairs of a body corporate are managed by its members, paragraph (4) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

(7) Proceedings for an offence under this regulation may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom.

(8) Section 3 of the Territorial Waters Jurisdiction Act 1878 (restriction on prosecutions) shall not apply to any proceedings for an offence under this regulation.

(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.

## **19 Service of notices**

(1) In this regulation--

"electronic communication" means a communication transmitted--

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

"written document" includes an application, a permit, information, data, evidence, a representation or a notice under these Regulations.

(2) A written document may be sent, given or issued to the intended recipient by--

- (a) delivering it to him; or
- (b) leaving it at his proper address; or
- (c) sending it by post to him at that address.

(3) A written document may be sent, given or issued--

- (a) to a body corporate by being sent, given or issued to its secretary or clerk;
- (b) to a firm (including a Scottish partnership) by being sent, given or issued to a partner in the firm or to a person having management or control of the partnership business;
- (c) to an unincorporated body by being sent, given or issued to a member of its governing body.

(4) For the purposes of this regulation and of section 7 of the Interpretation Act 1978 in its application to this regulation, the proper address (except in a case falling within paragraph (7) of this regulation of--

- (a) the Secretary of State is the address of the principal office of the holder of the office of Secretary of State who for the time being exercises the functions of the Secretary of State under these Regulations;
- (b) a body corporate is the address of its registered or principal office;
- (c) a firm (including a Scottish partnership) or unincorporated body is the address of its principal office;
- (d) any other person is his last known address.

*Unofficial consolidated text of the Offshore Chemicals Regulations 2002 – please consult [www.legislation.gov.uk](http://www.legislation.gov.uk) for the authoritative unconsolidated texts of the relevant statutory instruments.*

- (5) Where, by virtue of the above provisions of this regulation, the proper address of the intended recipient of a written document is outside the United Kingdom, references in this regulation to the proper address of--
- (a) a body corporate, firm or unincorporated body include its principal office (if any) in the United Kingdom;
  - (b) any other person include his last known address in the United Kingdom (unless he is known no longer to have an address in the United Kingdom).
- (6) If the person to whom a written document is to be sent, given or issued has furnished the person by whom the written document is to be sent, given or issued with an address pursuant to any provision of these Regulations, that address shall also be treated for the purpose of this regulation as his proper address.
- (7) Where a written document is to be sent, given or issued by means of an electronic communication, the proper address of any person includes the number or address which he has indicated is to be used by him for receipt of the communication.
- (8) This regulation is without prejudice to any other lawful method of giving or serving notice.

#### **20 Amendment of the Deposits in the Sea (Exemptions) Order 1985**

- (1) The Deposits in the Sea (Exemptions) Order 1985 is amended in accordance with the following provisions of this regulation.
- (2) In paragraph 14 of the Schedule, the word "chemicals," shall be deleted.
- (3) After paragraph 15 of the Schedule, the following paragraph shall be added--

"15A Deposit for which a permit is required under the Offshore Chemicals Regulations 2002, or for which a permit would be required but for--

- (a) the provisions of regulation 3(2) of those Regulations, or
- (b) the fact that the deposit (being a deposit made on or after the day on which those Regulations came into force) was made before the prescribed date within the meaning of those Regulations."

#### **21 Amendment of the Deposits in the Sea (Exemptions) Order (Northern Ireland) 1995**

- (1) The Deposits in the Sea (Exemptions) Order (Northern Ireland) 1995 is amended in accordance with the following provisions of this regulation.
- (2) In paragraph 13 of the Schedule, the word "chemicals," shall be deleted.
- (3) After paragraph 14 of the Schedule, the following paragraph shall be added--

##### **"14A**

Deposit for which a permit is required under the Offshore Chemicals Regulations 2002, or for which a permit would be required but for--

- (a) the provisions of regulation 3(2) of those Regulations, or
- (b) the fact that the deposit (being a deposit made on or after the day on which those Regulations came into force) was made before the prescribed date within the meaning of those Regulations."

*Brian Wilson*  
Minister of State for Energy and Construction,  
Department of Trade and Industry  
14th May 2002  
*[Explanatory Note omitted]*