



Department for  
Business, Energy  
& Industrial Strategy

# ENFORCEMENT POLICY

Offshore Petroleum Regulator for  
Environment & Decommissioning

January 2020



**OGL**

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# Introduction

The Department for Business Energy & Industrial Strategy (BEIS), through its Offshore Petroleum Regulator for Environment and Decommissioning (OPRED), regulates the environmental aspects of offshore oil and gas exploration and production, offshore gas unloading and storage and offshore carbon dioxide storage activities, from exploration through production and/or storage to decommissioning.

OPRED also forms part of the Competent Authority (CA), established to implement the Offshore Safety Directive (OSD), in partnership with the Health and Safety Executive (HSE). The Offshore Safety Directive Regulator (OSDR) is the CA responsible for implementing the requirements of the EU Directive on the safety of offshore oil and gas operations. OPRED and HSE work in partnership as the OSDR to deliver the CA functions as required under the Directive.

OPRED and HSE have existing enforcement policies covering safety and the environment. Further information on the OSDR can be found at; [Offshore Safety Directive Regulator \(OSDR\)](#)

OPRED's vision is for a UK offshore oil and gas industry that works for everyone and minimises the impact on the environment and the taxpayer, which we will achieve through consistent, transparent and proportionate regulation of the offshore oil and gas industry throughout its lifecycle. Further details can be found at;

<https://www.gov.uk/government/organisations/offshore-petroleum-regulator-for-environment-and-decommissioning>.

The Regulations that OPRED enforces on behalf of the Secretary of State for BEIS apply to a variety of organisations. These include appointed installation and well operators, non-production installation owners and operators of oil handling facilities (pipelines). Installation and well operators are also typically permit holders, or holders of consents, while undertaking certain offshore oil and gas activities. For the purposes of this document they will be collectively referred to as "Operators" unless specifically referred to otherwise.

OPRED monitors compliance with the requirements imposed on Operators by the relevant primary legislation and statutory instruments (Regulations). A list of the typical inspection powers available to OPRED Inspectors is provided within [Appendix 1](#): "Powers of OPRED Inspectors". Please refer to the individual regulations for specifics, as these powers can vary from regulation to regulation.

The enforcement methods available to OPRED are detailed in the relevant legislation and include: the serving of an Enforcement, Improvement or Prohibition Notice, revocation of a permit, the imposition of a Civil Sanction (which is distinct from a Civil Penalty available under the European Union Emissions Trading Scheme (EU ETS) or the Fluorinated Greenhouse Gases (Amendment) Regulations 2018) and referral for prosecution. OPRED also has a range of enforcement powers available to it under The Offshore Installations (Offshore Safety Directive) (Safety Case etc) Regulations 2015 and The Works Detrimental to Navigation (Powers and Duties of OPRED Inspectors) Regulations 2018.

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This Policy sets out the general principles that OPRED will follow when considering enforcement action, including prosecution. It covers the key areas of:

- (i) Appointment and powers of OPRED Inspectors;
- (ii) Purpose and scope of enforcement;
- (iii) Principles of enforcement;
- (iv) Methods of enforcement;
- (v) Prosecution and Civil Sanctions;
- (vi) Inspectors from other Regulators;
- (vii) Concurrent use of enforcement methods and communicating outcomes;
- (viii) Publicity and provision of information; and
- (ix) Appeals, complaints or comments.

This Policy is written in the context of the regulatory regime existing at the time of publication. The principles of this Policy will apply to any future relevant legislation which contains enforcement powers. OPRED will update and re-issue this Policy where there are significant changes to the legislative regime or, the manner in which OPRED enforces the Regulations.

OPRED expects compliance with the requirements of the regulatory regime. In the event of non-compliance, OPRED will not hesitate to use its enforcement powers when and where appropriate in accordance with this Policy.

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# Appointment and Powers of OPRED Inspectors

OPRED Inspectors are appointed by the Secretary of State and carry identification cards as evidence of that appointment. They have a number of powers under the legislative regime, which include the authority to:

- Investigate whether the requirements, restrictions or prohibitions imposed by the regulatory regime have been, or are being, complied with;
- Monitor the use, discharge or release of any offshore chemicals;
- Monitor any discharge or release of oil; and
- Report on the condition or operation of, or any discharges or releases from, any qualifying offshore combustion installation, as defined by the Regulations.

OPRED Inspectors exercise their powers by undertaking regulatory interventions, such as inspections or investigations, in order to gather evidence and form an opinion as to whether Operators have contravened the legislation, or are likely to do so.

An important aspect of gathering evidence is speaking to onshore and offshore personnel. On occasions, OPRED Inspectors may exercise their powers to conduct interviews with any person whom they have reasonable cause to believe is able to provide information relevant to any examination or investigation, and to require that person to sign a declaration as to the truth of their answers. OPRED Inspectors often refer to the information provided during the interview<sup>1</sup> as a witness statement. OPRED Inspectors will explain to the interviewee the purpose and nature of such interviews. If during this interview it becomes apparent that the individual may have committed an offence, the interview will be suspended and the individual will be advised to seek legal advice. Further information in respect of the prosecution of an individual is provided later in this policy.

In addition to interviews, OPRED Inspectors have the legal authority to take copies of documents and pieces of equipment, relevant to any examination or investigation, into their possession for examination. A full description of the typical powers available to an OPRED Inspector is detailed in [Appendix 1](#). However, it should not be assumed that if an OPRED Inspector exercises these powers that this will inevitably lead to enforcement. Rather, it is a matter of ensuring that the OPRED Inspector applies appropriate rigour and quality to the evidence gathering process.

A number of offences may arise where Operators or other persons fail to comply with the requirements of an OPRED Inspector. For example, failure to provide an OPRED Inspector with any information they have required which is relevant to any examination or investigation; wilfully obstructing an OPRED Inspector appointed by the Secretary of State; or knowingly or

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<sup>1</sup> A declaration may be admissible against that person in a Criminal Court subject to the discretion of the Court to exclude it on the basis of applicable rules of evidence.

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recklessly making a statement which the person knows to be false or misleading, may amount to separate offences under the Regulations.

## Purpose and Scope of Enforcement

OPRED Inspectors exercise their enforcement powers for the purpose of securing compliance with the regulatory regime. The various statutory instruments detail the extent of that regulatory regime and the scope of likely enforcement activities.

### Purpose of Enforcement

Enforcement, including prosecution, has three key purposes. It is to ensure that those, who have duties under the law:

- take preventative or remedial measures to prevent pollution<sup>2</sup>;
- put in place measures to achieve compliance; and
- are held to account when failures to comply occur.

### Scope of Enforcement

The scope of enforcement is limited to the contraventions that are stipulated as offences by the legislation that make up the regulatory regime. However, it is important to highlight two areas that are out with the scope of this Policy: certain decisions and recommendations by the Oslo-Paris Convention, and various other pollution related requirements imposed upon Non-Production Installations (NPIs) while they are in transit.

The 1992 Oslo-Paris Convention (OSPAR) is for the protection of the marine environment of the North East Atlantic. The OSPAR Commission is a body of representatives of Governments of the fifteen contracting parties. It is UK Government policy to implement and apply all the OSPAR Commission's decisions and recommendations. However, this Policy only applies to those decisions or recommendations in so far as they have been incorporated into UK legislation, or form conditions attached to permits.

This Policy does not apply to NPIs in transit as they are treated as vessels. During this time, they are subject to other pollution related statutory requirements that are out with the jurisdiction of OPRED (e.g. having a Shipboard Oil Pollution Emergency Plan (SOPEP) and requirements of The International Convention for the Prevention of Pollution from Ships (MARPOL)).

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<sup>2</sup> According to the Offshore Chemicals Regulations 2002 and the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, 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 ecosystem, damage to amenities or interference with other legitimate uses of the sea.

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# Principles of Enforcement

Key to this Policy are the principles of:

- (i) Proportionality in the method of enforcement used;
- (ii) Targeting of enforcement;
- (iii) Consistency of approach;
- (iv) Transparency in the implementation of the Policy; and
- (v) Accountability of OPRED for its actions.

## Proportionality

Proportionality means relating the method of enforcement to the seriousness of any alleged offence, the potential for pollution, or actual pollution caused. In practice, this means that OPRED will take particular account of how far those who have duties under the law have fallen short of what the law requires and the extent of the risk of, or actual, pollution and or any breach of the relevant legislation.

Repeated incidents or contraventions of legislation may be as a result of:

- Ongoing technical problems of a complex nature; or
- The unwillingness of an Operator, which has a duty under the law to change behaviour, to negate or reduce incidents, or put in place measures to achieve compliance with permit conditions.

This may require a review of an Operator's actions, which may have a corresponding impact upon the method of enforcement (escalation or de-escalation), the approach taken by OPRED Inspectors and the frequency, depth, and scope of future regulatory interventions.

## Targeting

Targeting means making sure that regulatory enforcement effort is directed primarily towards those whose activities:

- Give rise to, or create a risk of, serious pollution;
- Have the potential to affect the environment, damage amenities or interfere with other uses of the sea;
- Historically have given rise to non-compliance with the Regulations;
- Have taken place, or are ongoing, in the absence of a required permit;
- Have given rise to previous warnings or enforcement with no evidence of improvement;



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- Give rise to, or there is a likelihood of, non-compliance with permit conditions where a permit has been granted;
  - Have given rise to previous reportable incidents; and
  - Give rise to inspection/investigation findings.

In addition, failure by a Responsible Person to submit, maintain or implement an Oil Pollution Emergency Plan (OPEP) is also likely to attract an enforcement response.

OPRED's Inspection and Investigation Policies are integral tools for ensuring inspection and investigation effort is properly targeted.

## Consistency

Consistency means taking a similar approach in similar circumstances to achieve similar ends. OPRED aims to achieve consistency in relation to:

- Advice to those who have duties under the law;
- The response to pollution and other incidents;
- The exercise of powers by OPRED; and
- Decisions on whether to pursue enforcement action.

OPRED recognises that consistency cannot be as simple as uniformity. When determining whether enforcement action is appropriate, OPRED Inspectors consider many factors including, but not limited to the:

- Scale of any actual/risk of pollution and or breach of the relevant legislation;
- Location of the incident;
- Amount of emissions, oil or offshore chemical released or discharged out with the conditions of a permit;
- Type and nature of the emission, release, oil or offshore chemical discharged out with the terms and conditions of a permit;
- Implementation of the OPEP;
- Number, or significance, of permit conditions that have not been complied with;
- Causal factors and circumstances that have given rise to consideration of enforcement, including those that:
  - arose as a result of something which could not reasonably have been prevented<sup>3</sup>; or

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<sup>3</sup> This is a statutory defence under the relevant legislation.

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- were due to something done as a matter of urgency for the purpose of securing the safety of any person.
  - The measures and robustness of arrangements, or lack of them, that the Operator has in place to achieve compliance;
  - Likelihood of recurrence;
  - Actions of the Operator's management, including their level of cooperation with any investigation undertaken by the Department;
  - Operator's previous history of incidents, compliance record and enforcement;
  - Evidence available and gathered to pursue the appropriate enforcement in line with this Policy; and
  - Any potential conflict of enforcement with other statutory provisions.

The process of making enforcement decisions can be complex. Each situation is unique. OPRED Inspectors have discretion, within the framework of this Policy, to exercise their professional judgement so that the appropriate action is taken. OPRED have in place robust internal governance arrangements for enforcement decisions, which ensure that decisions about the use of enforcement action are made at an appropriate level in the organisation. Initial enforcement action recommendations will be made by OPRED Inspectors, advised by trained investigations officers with extensive knowledge of the criminal justice system and the associated legal and evidential requirements. These decisions will be subject to internal scrutiny by managers not directly involved in the investigation, and in some cases, to additional scrutiny by lawyers external to OPRED. As well as ensuring that liability has been established to the required legal standard, this scrutiny will also ensure that the requirements of the [Regulators' Code](#) have been followed and that the decision in relation to liability is proportionate, fair and consistent with decisions taken in relation to similar cases.

## Transparency

Transparency is vital in maintaining public and industry confidence in OPRED's ability to regulate. It means helping those being regulated to understand what is expected of them and what they in turn can expect from OPRED.

Transparency is an integral part of the role of an OPRED Inspector. OPRED has arrangements to ensure that:

- Where remedial action is required, it is clearly explained why the action is necessary and by when it must be carried out;
- In the case of an Enforcement / Improvement Notice, that the recipient understands its content and consequences;
- In the case of a Prohibition Notice, explaining why the prohibition is deemed necessary;
- Where a permit is revoked, explaining the rationale for the revocation;
- Where OPRED is considering the imposition of a Civil Penalty, a Notice of Intent will be issued to the recipient setting out the rationale behind the proposed action;

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- Where a matter is referred for consideration of prosecution, the Operator will, where it would not prejudice the outcome of an investigation, be advised; and
  - That publicity and provision of information to the public is undertaken in accordance with the relevant legislation.

In order to facilitate the final aim set out above, OPRED publishes a register of Enforcement Activity at [<https://www.gov.uk/oil-and-gas-BEIS-public-registers-of-enforcement-activity>]

In addition, OPRED Inspectors will clearly distinguish between regulatory requirements, and advice on what is desirable or good practice.

## Accountability

OPRED, through the functions and roles undertaken by its staff, is accountable to the Secretary of State, Parliament, and to the public for its actions. This means that OPRED must have policies and standards against which it can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints. The arrangements for handling complaints are described later in this Policy.

OPRED has arrangements in place so that the Secretary of State and other relevant stakeholders are provided with information when necessary. In addition, the actions of OPRED are subject to review by the courts by means of judicial review or statutory appeal processes established within the Regulations. Further information in respect of the appellate system is provided later in this policy.

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# Methods of Enforcement

Enforcement action can be prompted as a result of inspections, investigations, or other regulatory contacts where there has been, or is likely to be, a contravention of legislation. The methods of enforcement are detailed in the applicable legislation and include:

- Providing written information regarding breaches, or potential breaches, of a permit, consent or the Regulations;
- Enforcement/Improvement Notices;
- Prohibition Notices;
- Civil Sanctions / EU ETS civil penalties;
- Revocation of a Permit; and
- Prosecution.

In addition to the enforcement methods listed above, OPRED will raise concerns arising from an inspection or investigation by way of a letter to the Operator.

The first three methods detailed above will be used where a non-compliance, in the opinion of the Department, does not warrant more severe enforcement action. They are forward looking and are focussed on achieving regulatory compliance. OPRED have arrangements in place to ensure compliance with these Notices. Further enforcement can involve OPRED revoking a permit, issuing a civil sanction or penalty or a referral to the relevant authorities for consideration of prosecution. Concurrent use of these methods of enforcement is described later in this Policy.

## Letter

Where there has been a minor contravention, or where action is required to achieve compliance and a Notice is inappropriate for reasons of proportionality, then an OPRED Inspector will write a letter to the Operator. This letter will confirm the matters requiring attention and will specify actions to be taken.

## Enforcement Notice

An Enforcement Notice may be served when an OPRED Inspector is of the opinion that an Operator has, is or is likely to, contravene the relevant legislation.

The Notice will specify:

- The matters which gave rise to that opinion;
- The steps that must be taken to remedy or to prevent the contravention; and
- The period within which those steps must be taken.

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The compliance period specified in the Enforcement Notice will be discussed with the recipient. However, it is for OPRED to specify the compliance date.

An OPRED Inspector may revoke an Enforcement Notice for the following reasons:

- Where a Notice has been served in error. Where a Notice contains an error, the original Notice will be revoked, and a new Notice served with the error corrected; or
- An occasion where, for well justified reasons, an Operator cannot achieve compliance within the period specified. The original Notice will be revoked, and a new Notice served specifying a revised compliance date. However, it is for the Operator to bring this situation to OPRED attention at the earliest opportunity and to put forward, in writing, the reasons why compliance cannot be achieved within the period specified; or
- The requirements of a notice have been complied with to the satisfaction of OPRED.

Failure to comply with the requirements of an Enforcement Notice is a criminal offence. In addition, where an Operator to whom an Enforcement Notice is addressed has failed to take the action required within the specified time, and the Notice has not been revoked, the Secretary of State may undertake any action (e.g. remedial works) so required. The associated costs will be recoverable as a debt from that Operator. Where this power is exercised, the person will afford such assistance as the Secretary of State may reasonably require.

The recipient of an Enforcement Notice can appeal against the decision to serve the Notice. Arrangements for this are described later in this Policy.

## Improvement Notice

For the purposes of The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 and The Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995 and the Health and Safety at Work etc Act 1974, an Improvement Notice may be served when an OPRED Inspector is of the opinion that a person:

- (a) is contravening one or more of the relevant statutory provisions; or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated.

The Notice will specify:

- The provision or provisions as to which they are of that opinion;
- The particulars of the reasons why they are of that opinion;
- The steps that must be taken to remedy the contravention; and
- The period within which those steps must be taken.

The period specified in the Improvement Notice in which the contravention is to be remedied will be discussed with the recipient but cannot be earlier than the period within which an appeal against the notice can be brought. However, it is for the OPRED Inspector serving the Notice to specify the date by which the contravention must be remedied.

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An OPRED Inspector will extend a notice where, for well justified reasons, a person on whom the notice has been served cannot remedy the contravention within the period specified. The original Notice will be extended, and a new compliance date provided. However, it is for the recipient to bring this situation to the OPRED Inspector's attention at the earliest opportunity and to put forward in writing the reasons why compliance with the notice cannot be achieved within the period specified.

An OPRED Inspector may withdraw an Improvement Notice. Circumstances that give rise to this include:

- Where a Notice has been served in error. Where a Notice contains an error, the original Notice will be withdrawn, and a new Notice served with the error corrected; or
- The requirements of a notice have been complied with to the satisfaction of the OPRED Inspector.
- Failure to comply with the requirements of an Improvement Notice is a criminal offence.
- The recipient of an Improvement Notice can appeal against the decision to serve the Notice. Arrangements for this are described later in this Policy.

## Prohibition Notice

With the exception of The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 and The Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995 and the Health and Safety at Work etc Act 1974, a Prohibition Notice may be served when an OPRED Inspector is of the opinion that there is the imminent risk of serious pollution as a consequence of any:

- Discharge or release of oil;
- Use of, discharge, or release of offshore chemicals; or
- Operation of a qualifying offshore combustion installation.

The Notice will prohibit the activity giving rise to the risk and:

- State that the Secretary of State is of the opinion that there is an imminent risk of serious pollution<sup>4</sup>;
- Detail the matters giving rise to the Secretary of State's opinion, describing the risk involved in the activity to which the Prohibition Notice relates;
- Specify steps that must be taken to remove the risk and the period within which they must be taken; and
- May direct that any Permit cease to have an effect until the Prohibition Notice is withdrawn or impose conditions to be observed in carrying out an operation which is authorised under a relevant permit.

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<sup>4</sup> The phrase 'serious pollution' is not defined in legislation.

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An OPRED Inspector may, by notice in writing, withdraw a Prohibition Notice wholly, or in part, at any time and shall withdraw a Notice when OPRED is satisfied that the steps required by the Prohibition Notice have been taken to achieve compliance.

In respect of a contravention of the Offshore Installations (Offshore Safety Directive) (Safety Case etc) Regulation 2015 or The Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, OPRED Inspectors may serve Prohibition Notices under the Health and Safety at Work etc. Act 1974.

In these circumstances, a Prohibition Notice can be served when an OPRED Inspector is of the opinion that there is a risk of serious pollution from an installation in external waters associated with a particular work activity or process or, if a serious deficiency in measures is identified, to prevent or mitigate the effects of major hazards which may give rise to serious pollution. There does not need to be a breach of the law.

The Notice will prohibit the particular work activity or process giving rise to the risk and:

- State that the OPRED Inspector is of the said opinion;
- Specify the matters which in their opinion give or, as the case may be, will give rise to the said risk;
- Where in their opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions, state that they are of that opinion, specify the provision or provisions as to which they are of that opinion, and give particulars of the reasons why they are of that opinion; and
- Direct that the activities to which the notice relates will not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice and any associated contraventions of provisions have been remedied.

The phrase ‘serious pollution’ is not defined in legislation. It is not necessarily related to the size of any release, discharge or emission. For example, a relatively small release of a hazardous substance may have a significant negative impact on a protected habitat or species and could result in a beach being closed to the public. In contrast, a large release of a relatively benign substance may have little or no measurable impact on the environment.

Whether the pollution is serious or not, and therefore could result in the service of a Prohibition Notice, will depend on the individual facts of the case. It would not be possible for this policy to provide an exhaustive list of situations which would amount to “serious pollution”. This approach is consistent with that followed by other UK environmental regulators. However, all enforcement action, including any use of Prohibition Notices, will be taken in accordance with the principals of proportionality discussed elsewhere in this Policy

The recipient of a Prohibition Notice may appeal against the decision to serve the Notice. Arrangements for this are described later in the Policy.

## Revocation of a Permit

The Secretary of State will, by a notice in writing, revoke a permit issued under the legislation where they are of the opinion that:



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- Any application or information or statement made in connection with a permit was false or misleading in a material particular; or
  - The Operator has been guilty of a breach of any condition(s) attached to a permit.

An Operator may re-apply for a Permit after it has been revoked. However, the Permit would only be granted if OPRED was satisfied that the information in connection with the application was not misleading or false, or that the Operator had put in place arrangements, such that they will be able to comply with the conditions on the granting of the Permit.

## Civil Sanctions

Where OPRED is satisfied that there is sufficient evidence to prove, beyond reasonable doubt, an offence which gives rise to a civil sanction under the Offshore Environmental Civil Sanctions Regulations 2018 (the 2018 Regulations), OPRED must consider whether the imposition of a civil sanction is appropriate. To do this OPRED will refer to the principles of enforcement previously mentioned in this Policy.

Civil sanctions under the 2018 Regulations are distinct from the civil penalties available in relation to breaches of the EU ETS, which is primarily implemented into UK law by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (the 2012 Regulations). The 2012 Regulations allow for the imposition of civil penalties in respect of breaches of the trading system. OPRED will apply the civil standard of proof when determining whether there has been a contravention of the 2012 Regulations. As such, before considering whether to impose a penalty, OPRED must be satisfied, on the balance of probabilities, that a breach has occurred.

A civil penalty may also be applied in relation to breaches of The Fluorinated Greenhouse Gas Regulations 2015, as set out in The Fluorinated Greenhouse Gases (Amendment) Regulations 2018. OPRED will apply the civil standard of proof when determining whether there has been a contravention of the 2015 Regulations. As such, before considering whether to impose a penalty, OPRED must be satisfied, on the balance of probabilities, that a breach has occurred.

## Prosecution

Before a prosecution can take place, the legislation must stipulate the offence and there must be evidence that an offence has been committed. In considering and recommending this method of enforcement, OPRED will take account of the principles of enforcement and, in particular, the principle of proportionality. They will also abide by the Code for Crown Prosecutors (or the relevant code for the jurisdiction).

Further detail in relation to prosecution and civil sanctions is provided below.



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# Prosecution and Civil Sanctions

## Prosecution

Prosecution is a punitive form of enforcement. It draws attention to the need for compliance with the law, and conviction may deter others from a similar failure to comply. Different arrangements exist in Scotland as compared to England, Wales and Northern Ireland for pursuing a prosecution.

In Scotland, the Crown Office and Procurator Fiscal Service (COPFS) decide whether to bring a prosecution. This will usually be on the basis of a recommendation by OPRED following an investigation. OPRED, using evidence gathered and in line with this Policy, will decide whether to report an incident with a view to prosecution by COPFS. COPFS may decide to investigate the circumstances independently of OPRED and thereafter decide whether to institute proceedings.

In Scotland, before prosecutions can be instituted, COPFS will need to be satisfied that there is sufficient corroborated admissible evidence, and that prosecution is in the public interest.

In England and Wales, any decision to proceed with a court case rests with the relevant independent prosecuting agency. In Northern Ireland, the decision will be taken in accordance with the policy and provisions for that jurisdiction for certain offences. Proceedings cannot be brought without the consent of the Secretary of State, or the Director of Public Prosecutions (or in Northern Ireland, the Director of Public Prosecutions for Northern Ireland).

The decision to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors (or the Northern Irish equivalent). No prosecution will go ahead unless the prosecutor is of the view that there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest.

## Civil Sanctions

The Offshore Environmental Civil Sanctions Regulations 2018 (The 2018 Regulations) give OPRED the regulatory power to impose financial Civil Sanctions, ranging from £500 to £50,000, on offshore oil and gas companies contravening specified provisions in some existing environmental legislation. OPRED must be satisfied, on completion of an investigation, that an offence has been committed. OPRED operate to the criminal standard of proof, whereby it needs to be satisfied beyond reasonable doubt that a breach of legislation occurred and that it is in the public interest. The 2018 Regulations allow for the imposition of both fixed and variable monetary penalties.

A fixed monetary penalty is appropriate for offences where a low-level monetary penalty is more likely to change an offender's behaviour and encourage future compliance.

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A variable monetary penalty is appropriate for serious offences under the 2018 Regulations where the imposition of the variable penalty may change the offender's behaviour, deter others and/or lead to a faster resolution. A variable monetary penalty may be appropriate in cases where there is evidence of negligence or mismanagement, or where fixed monetary penalties have been issued in response to previous breaches but have failed to change the offender's behaviour.

The monetary Civil Penalties are designed to be imposed instead of, rather than in addition to, criminal prosecution. Sanctions will be imposed in line with this policy and will depend upon the regulation being breached and the nature of the contravention.

Criminal prosecutions will be retained for the most serious breaches.

## Managing the Decision to Pursue Prosecution<sup>5</sup> or impose a Civil Sanction

The decision to either submit a case to the relevant prosecuting agency or to impose a civil sanction is not taken by the individual investigating OPRED Inspector. OPRED have in place robust internal governance arrangements for enforcement decisions, which ensure that decisions about the use of enforcement action are made at an appropriate level in the organisation. These decisions will be subject to internal scrutiny by managers not directly involved in the investigation, and in some cases, to additional scrutiny by lawyers external to OPRED. As well as ensuring that liability has been established to the required legal standard (beyond reasonable doubt) this scrutiny will also ensure that the requirements of the Regulators' Code have been followed and that the decision regarding liability is proportionate, fair and consistent with decisions taken in relation to similar cases.

OPRED shall consider the following factors when considering referring a case for prosecution or to impose a civil sanction:

- The gravity of the alleged offence, taken together with the seriousness of any actual or potential pollution, justifies this approach;
- The general record and approach of the alleged offender warrants it;
- There has been reckless disregard of requirements imposed by the legislation;
- A significant discharge of oil or offshore chemical into the sea, or under the seabed, arising from an activity;

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<sup>5</sup> In England and Wales, when OPRED have reached the final stages of its investigation into an alleged criminal offence it may provide "a body corporate" (i.e. a company)] with the opportunity to (a) respond to questions pertaining to alleged criminal offences that OPRED suspects the company has committed and (b) make representations with a view to influencing OPRED's decision-making with regard to the instigation of criminal proceedings. The company would be invited to nominate a senior representative to attend a tape-recorded interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE)] and Codes. The company is not obliged to participate in the interview.

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- Where a permit has not been granted; or
  - Which is not in accordance with the terms of, and conditions attached to a permit;
  - There has been a significant release of oil or offshore chemical into the sea;
  - A significant breach, or repeated breaches, of a permit condition(s) has occurred;
  - A spill of oil or chemical that has, or has the potential to have, an effect on the environment, damage amenities or interfere with other users of the sea;
  - There has been a significant failure and/or absence of controls to prevent an unpermitted discharge or release of offshore chemicals or oil; and
  - A failure without reasonable cause, by the Responsible Person, to implement its oil spill contingency plan in the event of an oil pollution incident.

Other examples of occasions where a prosecution or the imposition of a Civil Penalty may arise include where an Operator, in OPRED's opinion, has:

- Failed to comply with formal remedial requirements such as those set out in an Enforcement, Improvement or a Prohibition Notice;
- Failed to supply information without reasonable excuse, or knowingly or recklessly supplied false or misleading information;
- Intentionally obstructed OPRED Inspectors in the lawful execution of their duties, or failed to comply with any requirements imposed by an OPRED Inspector;
- Knowing or recklessly made a statement misleading in a material particular in respect of an application for a permit etc., or for the purposes of satisfying a requirement imposed by the Regulations;
- Committed an offence due to the act or default of some other company (where this occurs, then that other company (e.g. the duty holder under the Safety Case Regulations) may be subject to legal proceedings whether or not proceedings for the offence are taken against the first mentioned company (e.g. Operator)); and
- Without reasonable cause, failed to submit, resubmit or maintain an OPEP, failed to undertake exercises or retain evidence of such exercises, commences with operations within 2 months of submitting their plan or, in the event of an oil spill, has not implemented this plan.

For full details of potential offences, including the defences to these offences, please refer to the relevant Regulations.

## Prosecution of Individuals

In respect of certain offences, and in exceptional circumstances, OPRED may identify and recommend prosecution of any Director, Manager, Secretary or other similar officer of the body corporate (i.e. the company) where an investigation reveals evidence that an offence may have been committed.

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Individuals being interviewed under caution in connection with offences may consult privately with a Solicitor and have a Solicitor present during an interview under caution. The interview shall take place onshore at the premises of OPRED.

OPRED Inspectors will explain to the interviewee the purpose and nature of such interviews.

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# Inspectors from other Regulators

An OPRED Inspector will liaise with Inspectors from other Regulators where both are planning to take enforcement action, following similar regulatory interventions involving the same matter.

OPRED Inspectors may provide assistance to enforcing authorities under The Control of Mercury (Enforcement) Regulations 2017 and The Transfrontier Shipment of Waste Regulations 2007. OPRED is not the competent authority for these Regulations for offshore oil and gas installations, however OPRED may provide assistance to the competent authorities.

This assistance will include seeking information from installation operators relating to mercury waste generated on, or any waste exported from, offshore installations and, if requested by the competent authorities, inspect offshore installations to investigate any alleged contraventions of these Regulations.

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# Concurrent use of Enforcement Methods and Communicating Outcomes

Circumstances could be such that different methods of enforcement may be selected at different stages during and after a regulatory intervention. OPRED is committed to communicating the outcomes of regulatory interventions to ensure that there is no uncertainty with the approach its OPRED Inspectors are pursuing.

## Concurrent Use of Enforcement Methods

Notices, Prosecutions or Civil Penalties, and other methods of enforcement can all be used in relation to the same matter. For example, a Prohibition Notice may be served to deal with an imminent risk of serious pollution, an Enforcement Notice may be served to secure wider long-term compliance and a Prosecution pursued, or a civil sanction issued, as an appropriate and proportionate regulatory response to the offence committed. Many of these actions may be taken concurrently.

## Communicating Outcomes

OPRED will write to the Operator, or individual following an investigation to advise them what enforcement action, if any, is being considered. This may include:

- Whether the service of a Notice, revocation of a permit or the imposition of a Civil Penalty is being considered;
- In Scotland, if a report has been sent to the Procurator Fiscal recommending prosecution;
- In England, Wales and Northern Ireland, if a report has been submitted to the independent prosecuting authority recommending prosecution; and
- Notification that no further legal proceedings are to be pursued.

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# Publicity and Provision of Information

Information regarding the implementation and outcomes of this enforcement policy will be subject to release and publication in accordance with:

- The Freedom of Information Act 2000; or where appropriate,
- The Environmental Information Regulations 2004.

The Freedom of Information Act<sup>6</sup> gives the public a right of access to information held by public authorities. These rights are subject to procedural and substantive limitations. The substantive limitations, or exemptions, ensure a proper balance is achieved between the right to know, the right to personal privacy, and the delivery of effective government. There are similarities between the Freedom of Information Act and the Environmental Information Regulations.

The Environmental Information Regulations oblige public authorities to look at the information they hold and identify that which falls within the definition of environmental information provided by the Regulations and, subject to exceptions, supply a copy of information if requested. An additional, but by no means lesser, responsibility is to take reasonable steps to organise and actively disseminate environmental information via electronic means on an ongoing basis. The definition of environmental information is very wide; it includes emissions, discharges and other releases into the environment. There is a presumption under the Regulations that environmental information must be released, unless there are strong public interest considerations to justify withholding it.

Public Registers of OPRED Enforcement Activity are available to access on the BEIS pages of the gov.uk website; [Oil and gas: Inspection Strategy and Enforcement Activity](#). The publication of these registers is in accordance with the principles of the Freedom of Information Act and the Environmental Information Regulations.

OPRED publishes the following information in the registers of Enforcement/Prohibition Notices:

- Notice type;
- Notice number;
- Name and registered address of the company on which the notice was served;
- A description of the circumstances of the notice;
- Legislative basis of the notice;
- Issue Date; and
- Compliance Date.

The 2018 Regulations include a requirement for publication of enforcement action. OPRED will publish information on the following cases:

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<sup>6</sup> For more information visit [www.ico.org.uk](http://www.ico.org.uk)

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- The cases in which a fixed or variable monetary penalty or a non-compliance penalty has been imposed (other than cases where the penalty has been imposed but overturned on appeal);
  - The cases in which liability for a fixed monetary penalty has been discharged by payment under regulation 5(4) of the 2018 Regulations; and
  - The cases in which an undertaking has been accepted and complied with.

The 2012 Regulations impose on the Department a requirement to publish the name of an operator against whom a civil penalty has been imposed.

Generally, OPRED will include the following information in any publication:

- the person on whom the penalty was imposed or undertaking accepted and complied with;
- details of the offence; and
- the amount of any penalty.

Information is not published until either the right of appeal period has expired, or any appeal has been disposed of.

OPRED publishes the following information in the Register of Convictions:

- Name and registered address of the company convicted;
- Details of the offence(s);
- Legislative basis of the conviction;
- Date of conviction; and
- The penalty imposed.

Details of all on-going investigation cases, on-going prosecution cases yet to be finalised and any convictions subject to appeal are not published. To take account of the right to appeal, a delay of nine weeks applies before a new case is added to the Convictions Register.



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# Appeals, Complaints, or Comments

An integral part of the accountability principle of enforcement is having arrangements in place for dealing with complaints or comments. Two methods exist: a formal appellate system using the Courts or First-tier Tribunal system, and local arrangements involving OPRED senior management.

The formal appellate system for dealing with complaints as a result of the service of an Enforcement/Improvement Notice, a Prohibition Notice, Civil Penalty or, any decision by the Secretary of State, is described in the relevant Regulations. It entitles the Operator to appeal to the High Court for England, Wales and Northern Ireland, or the Court of Session in Scotland, or the First-tier Tribunal as appropriate. Any appeal under the regulations must be made within 28 days of written notification of the decision in question.

In addition, or alternatively, where a person has a complaint or comment regarding the implementation of this policy, they should bring this to the attention of the Department by writing to the address below. The Department will investigate any complaint and review any comments received and will write back to the person addressing their concerns.

Director, Environmental Operations

Offshore Petroleum Regulator for Environment and Decommissioning

Department for Business, Energy & Industrial Strategy

AB1 Building

Crimon Place

Aberdeen

AB10 1BJ

Email: Business Support Team: [bst@beis.gov.uk](mailto:bst@beis.gov.uk)

Senior management within OPRED monitor the implementation and effectiveness of this policy.

Date of amendment: January 2020

More information is available from the OPRED internet site:

<https://www.gov.uk/government/organisations/offshore-petroleum-regulator-for-environment-and-decommissioning>

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# Appendix 1: Powers of OPRED Inspectors

1. The Secretary of State for Business, Energy & Industrial Strategy appoints offshore environmental OPRED Inspectors in accordance with the administration of relevant legislation. On appointment, OPRED Inspectors have statutory authority to perform a number of functions and duties in relation to relevant environmental Regulations, some of which are listed below:

- Investigate whether the requirements, restrictions or prohibitions imposed by the relevant Regulations have been, or are being complied with;
- Monitor the use or discharge of any offshore chemicals;
- Monitor any discharge of oil;
- Report on the condition or operation of, or discharges from, any qualifying offshore combustion installation;
- At any reasonable time (or, in a situation which in his opinion may give rise to a risk of significant pollution as a result of the discharge or release of oil, or the discharge or release of an offshore chemical, or operation of any qualifying offshore installation<sup>7</sup>, at any time board any offshore installation;
- On boarding an offshore installation, take with him any other person authorised by the Secretary of State for the purposes mentioned in paragraph (1) and any equipment or materials that he thinks he may require;
- Make such examination or investigation as he considers necessary (including any examination or investigation of the offshore installation or of the maintenance or monitoring of apparatus on the offshore installation);
- Give a direction requiring that any part of the offshore installation be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
- 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);
- Take samples of any articles or substances found on the offshore installation or take samples of the atmosphere, land, seabed (including the subsoil thereof) or water in the vicinity of the offshore installation; and
- 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, in the circumstances of the case, that is necessary).
- 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:

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<sup>7</sup> In the 2013/971 Regulations, an emergency.

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- to examine it and do to it anything which he has power to do under that sub-paragraph;
  - to ensure that it is not tampered with before his examination of it is completed; and
  - to ensure that it is available for use as evidence in any proceedings relating to an offence under the Regulations.
  - Require any person whom he has reasonable cause to believe is able to give any information relevant to any examination or investigation under sub-paragraph (c):
    - to attend at a place and time specified by the OPRED Inspector;
    - to answer (in the absence of any person other than persons whom the OPRED Inspector may allow to be present and a person nominated to be present by the person upon whom the requirement is imposed) such questions as the OPRED Inspector thinks fit to ask; and
    - to sign a declaration as to the truth of his answers.
  - Require the production of, and inspect and take copies of :
    - any records which by virtue of any provision of any permit are required to be kept; and
    - any records which he considers it necessary for him to see for the purposes of any examination or investigation under sub-paragraph (c).
  - 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 OPRED Inspector considers are necessary to enable him to exercise any of the powers conferred on him by the Regulations.

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