

PROPOSALS FOR REGULATIONS TO BE KNOWN AS
THE OFFSHORE PETROLEUM ACTIVITIES
(CONSERVATION OF HABITATS) REGULATIONS 2001

The Secretary of State being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers conferred upon him by that section hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 and shall come into force on [.]

Interpretation

2. In these Regulations—

“the 1998 Act” means the Petroleum Act 1998(c) ;

“appropriate assessment” means in relation to a relevant project, an assessment to determine whether an adverse effect on the integrity of a relevant site has been or is likely to be caused;

“approval” means approval of an abandonment programme pursuant to Part IV of the 1998 Act;

“authorisation” means an authorisation granted pursuant to section 14 of the 1998 Act relating to the construction or use of a pipe-line;

“consent” means a consent granted pursuant to a UKCS licence, including any consent required pursuant to the Offshore Petroleum

(a) S.I. 1992/2780.

(b) 1972 c.68.

(c) 1998 c.17.

Production and Pipe-lines (Assessment of Environmental Effects)
Regulations 1999(d);

"conservation objectives" has the meaning which it bears in Article 3 of the Habitats Directive;

"the Directives" means the Habitats Directive and the Wild Birds Directive;

"the Habitats Directive" means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;

"Natura 2000" means the European network of special areas of conservation, and special protection areas under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive;

"petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

"platform" means any fixed or floating structure used in connection with the exploration for, or production of, petroleum;

"relevant powers" means any powers exercisable in relation to or in connection with UKCS oil and gas activities including, without limitation, powers exercisable under the 1998 Act or any licence granted or having effect as if granted under that Act and any power exercisable by virtue of regulation 4 of these Regulations;

"relevant project" means a project in any area designated under section 1(7) of the Continental Shelf Act 1964(a) which relates to UKCS oil and gas activities;

"relevant site" means—

(d) S.I. 1999/360.

(a) 1964 c.29.

- (a) a site which, in the opinion of the Secretary of State, is one which would be likely to be transmitted as a site of community importance pursuant to Article 4(1) of the Habitats Directive or classified as a special protection area pursuant to Article 4 of the Wild Birds Directive ; or
- (b) a site which has been so transmitted; or
- (c) a site which appears on the list of sites of Community importance adopted by the Commission pursuant to Article 4(2) of the Habitats Directive or is classified as a special protection area pursuant to Article 4 of the Wild Birds Directive (including a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994(a)).

“UKCS licence” means a licence which is granted under or has effect as if granted under the 1998 Act or, as the case may be, a licence which is to be granted under that Act which relates to an area wholly or partly in any area for the time-being designated under section 1(7) of the Continental Shelf Act 1964;

“UKCS oil and gas activities” means any activities for or in connection with the exploration for or production of petroleum where that petroleum is situated in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964;

“UKCS pipe-line” means a pipe-line any part of which is situated in any area for the time-being designated under section 1(7) of the Continental Shelf Act 1964;

“the Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds**(b)**

Application of the Directives

3. - (1) Subject to paragraph (4) below, the Secretary of State shall exercise relevant powers conferred on him in such manner and to such extent as he shall

(a) S.I. 1994/2716. This S.I. was amended by the Conservation (Natural Habitats, & c) (Amendment) (England) Regulations 2000, S.I 2000/192.

(b) O.J. No. L103, 25.4.79, p.1.

consider necessary to secure that UKCS oil and gas activities are carried out in a manner that is consistent with the requirements of the Directives.

(2) Subject to paragraph (6) below, the Secretary of State shall, before granting any UKCS licence, any consent pursuant to such a licence, any authorisation for the execution of works for the construction of a UKCS pipeline, or any approval of an abandonment programme, where he considers that anything that might be done or any activity which might be carried on pursuant to such a licence, consent, authorisation or approval is likely to have a significant effect on a relevant site, whether individually or in combination with any other plan or project, including but not limited to any other relevant project, make an appropriate assessment of the implications for the site in view of the site's conservation objectives.

(3) Notwithstanding any provision in any UKCS licence the following activities or procedures shall not be carried out without the prior written consent of the Secretary of State granted in accordance with these regulations—

- (a) prospecting or carrying out geological surveys by physical or chemical means; or
- (b) drilling for the purpose of obtaining geological information about strata.

(4) The Secretary of State shall for the purposes of the assessment consult the appropriate nature conservancy body and have regard to any representations made by that body within such reasonable time as the Secretary of State may specify and shall also, if he considers appropriate, take the opinion of the general public.

(5) In the light of the conclusions of the assessment and subject to paragraph (6) below, the Secretary of State shall grant any such licence, consent, authorisation or approval only after having ascertained that nothing that might be done and no activity that might be carried out pursuant thereto would have an adverse effect on the integrity of a relevant site.

(6) Subject to paragraph (7) below, paragraphs (1) to (5) above shall not apply to the doing of anything in connection with the carrying out of any relevant project—

- (a) which has been the subject of an appropriate assessment;

- (b) the carrying out of which will adversely affect the integrity of a relevant site;
- (c) to which, in the opinion of the Secretary of State there is no satisfactory alternative; and
- (d) which the Secretary of State has certified in writing as a project which should be carried out for imperative reasons of overriding public interest of a social or economic nature.

(7) The Secretary of State shall not give a certification pursuant to paragraph (6)(d) above in respect of a project that is likely to have an adverse effect on the integrity of a site hosting a priority natural habitat type or a priority species unless

- (a) the reason for so certifying relates to human health or public safety, or to beneficial consequences of primary importance for the environment; or
- (b) he has obtained the opinion of the European Commission as to whether the project might be carried out for imperative reasons of overriding public interest other than those referred to in paragraph (a) above and has taken account of that opinion.

(8) Where the Secretary of State has given a certification pursuant to paragraph (6)(d), he shall secure that any necessary compensatory measures are taken to ensure that the overall aims and objectives of Natura 2000 are protected.

(9) The Secretary of State shall—

- (a) at such intervals as he shall think fit carry out or cause to be carried out such investigation as he shall consider appropriate in relation to the effects of UKCS oil and gas activities on the conservation status of relevant sites; and
- (b) in the light of the results of such investigation consider whether he ought to exercise any relevant power for the purposes of protecting relevant sites.

Control of activities under licences

4. - (1) Where the Secretary of State is satisfied that anything done, being done or proposed to be done pursuant to a UKCS licence, authorisation or approval—

- (a) has had, is having or, as the case may be, may have an adverse effect on the integrity of a relevant site; or
- (b) has caused, is causing or, as the case may be, may cause deterioration of a relevant site or significant disturbance of species for which that site may be has been designated or classified pursuant to either of the Directives; and
- (c) steps can reasonably be taken to reverse, reduce or eliminate those effects or that deterioration or disturbance, as the case may be,

he shall subject to paragraphs (3) (4) and (5) below, issue a direction in writing requiring the person to whom it is addressed to take such steps or refrain from taking such steps as may be specified in the direction.

(2) Without prejudice to the generality of the powers conferred by paragraph (1) above, a direction given pursuant to that paragraph may require within such period as may be specified in the direction —

- (a) the submission to the Secretary of State for his approval of a plan of the steps to be taken with a view to minimising or, where possible, eliminating the adverse effect on the integrity of a site;
- (b) the carrying out of a plan of the kind referred to in subparagraph (a) above which has been approved by the Secretary of State;
- (c) the installation on a platform of such equipment as may be specified in the direction; or
- (d) the carrying out of a modification to a platform or the manner in which it is operated.

(3) Without prejudice to the powers conferred by paragraph (1) above, any direction given pursuant to that paragraph may revoke or modify the terms and conditions of a consent, authorisation or approval.

(4) Subject to paragraph (6) below, any direction given pursuant to this regulation shall be in writing and shall not have effect unless it has been served on the person to whom it is addressed.

(5) Subject to paragraph (6) below, the Secretary of State shall not give a direction to any person pursuant to paragraph (1) above or (7) below unless—

- (a) he has served on that person in question a copy of a draft of the direction that he is proposing to give;
- (b) that person has been afforded a reasonable opportunity of making representations regarding the content of the proposed direction; and
- (c) the Secretary of State has taken into account any representations made by that person.

(6) Paragraphs (4) and (5) shall not apply in a case of urgency where the Secretary of State is of the opinion that the service of a direction is necessary to prevent or reduce imminent adverse effect on the integrity of a relevant site.

(7) A direction given pursuant to this regulation may be modified or revoked by a further direction given by the Secretary of State.

Review of Directions Given by the Secretary of State

5.- (1) Subject to paragraph (2) below, where a direction pursuant to regulation 4 above has been served on a person by the Secretary of State, the Secretary of State shall review the appropriateness of the direction if requested to do so by that person.

(2) The Secretary of State shall only be bound to carry out a review pursuant to a request of the kind referred to in paragraph (1) above, where, in the case of the first request to review it, that request is made no earlier than the first anniversary of the giving of the direction and in relation to any subsequent request, the period of one year has elapsed since a request was last made.

(3) Where, having carried out a review of a direction pursuant to paragraph (1) above, the Secretary of State is satisfied that the direction is no longer appropriate, he shall modify or revoke it.

(4) The Secretary of State shall give notice in writing to the applicant in question of any decision made under this regulation.

Appeal to High Court, High Court of Northern Ireland or Court of Session

6. - (1) Subject to paragraph (6) below, any person aggrieved by a direction given to him pursuant to regulation 4 above (or any decision in relation to that direction) may appeal to the court.

(2) Subject to paragraph (4) below, the expression “the court” means—

- (a) in respect of a direction or decision relating to the English area, the High Court;
- (b) in respect of a direction or decision relating to the Scottish area, the Court of Session; or
- (c) in respect of a direction or decision relating to 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 meaning as in the Civil Jurisdiction (Offshore Activities) Order 1987(a).

(4) Where the direction or decision relates to activities in more than one of the areas referred to in paragraphs (2) and (3) above, then any of the courts having jurisdiction in those areas 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) above shall remain in force pending the 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.

(a) S.I. 1987/2197.

Prevention of Deliberate Disturbance

7. - (1) Subject to paragraphs (3) and (4) below, a person shall not carry out UKCS oil and gas activities in such a way so as to—

- (a) deliberately capture or kill any creature which is a member of any species listed in Annex IV(a) of the Habitats Directive;
- (b) deliberately disturb any such creature as is mentioned in (a) above;
- (c) deliberately destroy or take eggs from the wild; or
- (d) cause deterioration or destruction of breeding sites or resting places of any such creature as is mentioned in (a) above.

(2) Subject to paragraphs (3) and (4) below, a person shall not carry out UKCS oil and gas activities in such a way so as deliberately to pick, collect, uproot or destroy any plant which is a member of a species listed in Annex IV(b) of the Habitats Directive.

(3) Nothing in paragraph (1) above shall make unlawful anything which was the incidental result of an otherwise lawful operation and could not reasonably have been avoided.

(4) Paragraph (1) above shall not apply to any activity which would otherwise contravene its provisions where—

- (a) the Secretary of State is of the opinion that the carrying out of the activity is necessary for imperative reasons of overriding public interest, that there is no satisfactory alternative to the carrying out of the activity and that the carrying out of the activity is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range; and
- (b) he has consented in writing to the carrying out of the activity.

Offences

8. - (1) A person is guilty of an offence if he—

- (a) without reasonable excuse fails to comply with a direction given in accordance with regulation 4(1) or (2); or
- (b) contravenes regulation 7.

(2) 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.

(3) 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.

(4) Where the affairs of a body corporate are managed by its members, paragraph (3) 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.

(5) 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.

(6) 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.

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

(8) No prosecution shall be commenced in England and Wales or Northern Ireland except by the Secretary of State or with his consent.

(a) 1878 41&42 Vict c.73.

Service of notices

9. - (1) Any notice or other document required or authorised to be given to, or served on, any person under these Regulations may be given or served by—

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

(2) Any notice or other document required or authorised to be served on, or given to, any body corporate or unincorporated association other than a partnership shall be duly given to, or served on, the secretary or clerk or other similar officer of that body.

(3) Any notice or other document required or authorised to be served on, or given to, any partnership (including a Scottish partnership) shall be duly given or served on, or given to, a partner or a person having the control or management of the partnership business.

(4) For the purpose of this regulation, the proper address of any person on whom or to whom any such notice or document is to be served or given shall be his last known address except that such address shall be—

- (a) in the case of a body corporate or their secretary or clerk, the address of the registered office or principal office of the body corporate;
- (b) in the case of an unincorporated association (other than a partnership) or their secretary or clerk, the address of the principal office of the association; and
- (c) in the case of a partnership (including a Scottish partnership) or a person having control or the management of the partnership business, the address of the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be its principal office within the United Kingdom.

