



Department
of Energy &
Climate Change

CHANGES TO REGULATIONS TO RECOVER COSTS
OF SERVICES UNDER OFFSHORE PETROLEUM
ACTIVITIES (OIL POLLUTION PREVENTION AND
CONTROL) REGULATIONS 2005 (AS AMENDED); AND
OFFSHORE CHEMICALS REGULATIONS 2002 (AS
AMENDED)

6th July 2016

Changes to regulations to recover costs of services under Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as amended); and Offshore Chemicals Regulations 2002 (as amended)

The consultation can be found on DECC's website:

<https://www.gov.uk/government/consultations/changes-to-regulations-to-recover-costs-of-services-under-offshore-petroleum-activities-oil-pollution-prevention-and-control-regulations-2005-as-am>

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Foreword / Introduction

DECC Foreword

Offshore (oil and gas) installations and pipelines have an important role in supplying the nation's current and future energy needs and meeting our objectives for security of supply. Exploitation of the offshore energy resource also brings with it statutory regulatory functions to minimise the environmental impact of these activities.

In 2015, following a review of its fee charging regime for the environmental regulation of the offshore oil and gas industry, DECC introduced secondary legislation incorporating a new method of charging based on application of an hourly rate system. The purpose of introducing the hourly rate system was to ensure that the cost recovery system was compliant with HMT guidance on Managing Public Money.

The new system has been operating since 22nd July 2015 and, following a further review, it has been identified that DECC has not been recovering the cost of certain services provided to industry as part of carrying out its statutory regulatory functions under the Offshore Petroleum Activities (Oil Pollution Prevention And Control) Regulations 2005 (as amended) – “OPPC” – and the Offshore Chemicals Regulations 2002 (as amended) – “OCR”. Under the relevant primary legislation for these Regulations, the Pollution Prevention and Control Act 1999, the Secretary of State has the power to make regulations which authorise the Secretary of State to make charging schemes. Before making such regulations, the Secretary of State must engage in consultation.

Both the OPPC and OCR already authorise the Secretary of State to make a charging scheme, but there are limitations on what these Regulations permit DECC to charge for under the charging scheme. The Department therefore proposes to make changes to the OPPC and OCR to enable charging for providing certain services to industry under these Regulations. If, following the consultation, it is decided to proceed with amending these Regulations, their corresponding charging schemes would also be amended.

The aim of this consultation is to formally seek views from stakeholders, such as offshore oil and gas operators and other companies and bodies with an interest in environmental regulation, on the proposal for amendment of the charging powers under OPPC and OCR. The Department would also be interested to hear whether you prefer any of the listed options or whether you wish to propose an alternative option(s).

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General information

Purpose of this consultation

The Government is seeking the views of the oil and gas industry and other interested stakeholders, particularly those upon whom the new charges would apply, namely installation and well operators, on its proposal to amend OPPC and OCR to permit charging for certain regulatory services where there is not currently the power to charge.

Issued: 6th July 2016

Respond by: 5:00pm on 6th September 2016

Enquiries to:

Richard Brooks
Offshore Oil and Gas Environment and Decommissioning
Department of Energy & Climate Change,
2nd Floor, AB1 Building
48 Huntly Street
Aberdeen
AB10 1SH

Tel: 01224 254131

Email: richard.brooks@decc.gsi.gov.uk

Consultation reference: URN **16D/065**

Title; Changes to the regulations to recover the costs of services under the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as amended); and the Offshore Chemicals Regulations 2002 (as amended).

Territorial extent:

OPPC and OCR have UK extent. Changes to fees powers would only apply to services carried out by DECC under OPPC and OCR.

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and opinions are also welcome. Please send your response (preferably in electronic format) by 5:00pm on 6th September 2016 to:

Richard Brooks
Offshore Oil and Gas Environment and Decommissioning

Department of Energy and Climate Change
2nd Floor, AB1 Building
48 Huntly Street
Aberdeen
AB10 1SH

E-mail: richard.brooks@decc.gsi.gov.uk

Additional copies:

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Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

General information

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator

3 Whitehall Place

London SW1A 2AW

Email: consultation.coordinator@decc.gsi.gov.uk

Executive Summary

1.1 This consultation relates to proposed changes to regulation 6 of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as amended) – “OPPC”; and regulation 8 of the Offshore Chemicals Regulations 2002 (as amended) – “OCR”. The changes if taken forward would enable the Department to charge Industry a fee for providing certain services under these Regulations. The Department would not be seeking to make a profit from such a fee but merely recover its costs in carrying out the regulatory services.

1.2 Current charging schemes relating to these regulations are available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446290/OPPC_2015 - 2016 Charging Scheme 16 July.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446290/OPPC_2015_-_2016_Charging_Scheme_16_July.pdf)

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446287/OCR_2015 - 2016 Charging Scheme 16 July.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446287/OCR_2015_-_2016_Charging_Scheme_16_July.pdf)

Subject to the outcome of this consultation and the Parliamentary process, if a decision is taken where regulations are made to implement any proposals set out in this consultation document, the Department will update the charging schemes to reflect the changes.

1.3 The purpose of this consultation (closing at 5:00pm on 6th September 2016), is to seek the views of relevant stakeholders on the proposals to charge a fee for providing certain services under OPPC and OCR. All comments received on this consultation will be taken into consideration. The Department would also be interested to hear whether you wish to propose an alternative option(s).

1.4 OCR and OPPC have UK extent. Changes to fees powers would only apply to services carried out by DECC under the OCR and OPPC.

Catalogue of consultation questions

Consultation Questions

1.	Do you have any comments on the Department's proposal to charge a fee for certain regulatory services under the Offshore Petroleum Activities (Oil Pollution Prevention And Control) Regulations 2005 (as amended); and the Offshore Chemicals Regulations 2002 (as amended) as set out at sections 3.9 and 3.10 of this Consultation Document?
2.	Do you have any comments regarding the other options that the Department is considering as discussed under sections 3.13, 3.14 and 3.15?
3.	Do you have an alternative option(s) that you wish the Department to consider?

Main Document

3.1 The Offshore Oil and Gas Environment and Decommissioning Unit (OGED) in the Department of Energy and Climate Change (DECC) carries out environmental regulation functions for the offshore oil and gas industry, and for offshore gas and carbon dioxide storage industries. It charges fees to operating companies, which cover the resource cost of activities it carries out under various statutory regimes. OGED first introduced a fees scheme in 2001, and over time further schemes were subsequently introduced under different sets of regulations.

3.2 In line with Government policy, DECC has sought to recover the cost of implementing environmental regulation from industry where this is considered to be a practical option. This is consistent with the 'polluter pays' principle of environmental law.

3.3 The policy objective in charging these fees is to ensure that the costs of environmental regulatory services, which are provided by DECC to operating companies, continue to be fully recovered from industry. The measures relieve the burden on the taxpayer and are designed to ensure that those companies directly benefiting from the services pay for them.

3.4 The principle of cost recovery is set out in the "[Managing Public Money](#)" guidance which makes clear that Government should, where possible, recover the costs of the services it provides. In particular it states that: "This [cost recovery] can be a rational way to allocate resources because it signals to consumers that public services have real economic costs. Charging can thus help prevent waste through badly targeted consumption. It can also make comparisons with private sector services easier, promote competition, develop markets and generally promote financially sound behaviour in the public sector."

3.5 The guidance makes clear that charges for services provided by public sector organisations should normally pass on the full costs of provision. Charging for services therefore relieves the general taxpayer of costs that should be properly borne by users who benefit directly from a service. This allows for a more equitable distribution of public resources and enables lower public expenditure and borrowing.

3.6 This consultation relates to proposed changes to charging under regulation 6 of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as amended) – "OPPC"; and regulation 8 of the Offshore Chemicals Regulations 2002 (as amended) – "OCR". The changes if taken forward would enable the Department to charge Industry a fee for providing certain services under these regulations. The Department would not be seeking to make a profit from such a fee but merely recover its costs in carrying out the regulatory services.

3.7 Current charging schemes relating to these regulations are available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446290/OPPC_2015 - 2016 Charging Scheme 16 July.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446290/OPPC_2015_-_2016_Charging_Scheme_16_July.pdf)

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446287/OCR_2015 - 2016 Charging Scheme 16 July.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446287/OCR_2015_-_2016_Charging_Scheme_16_July.pdf)

Subject to the outcome of this consultation and the Parliamentary process, if a decision is taken where regulations are made to implement any proposals set out in this consultation document, the Department will update the charging schemes to reflect the changes.

3.8 The purpose of this consultation (closing at 5:00pm on 6th September 2016), is to seek the views of relevant stakeholders on the proposals to charge a fee for providing certain services under OPPC and OCR, which are set out in sections 3.9 and 3.10 below. The Department would also be interested to hear whether you wish to propose an alternative option(s).

Charging for advice

3.9 The OPPC and OCR, and their accompanying charging schemes, currently provide DECC with the power to charge permit applicants, permit holders and operators fees in respect of the following:

- (i) an application for the grant or renewal of a permit;
- (ii) 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;
- (iii) a request for the Secretary of State's consent to the transfer of a permit;
- (iv) the revocation or surrender of a permit;
- (v) the subsistence of a permit;
- (vi) the testing or analysis of substances;
- (vii) the validating of, or of the results of, any testing or analysis of substances; and
- (viii) assessing how the environment might be affected by the release into it of any oil/ substance.

(For clarity, DECC may only charge in relation to points (vi), (vii) and (viii) in cases where the testing, analysis, validating or assessment is in any way in anticipation of, or otherwise in connection with, the making of permit applications or is carried out in pursuance of conditions to which the permit is subject.)

DECC considers that these powers are wide enough to cover charging for advice in relation to the above activities in the majority of cases. However, DECC's view is that the above powers are not broad enough to cover situations where advice is given in relation to a proposed application or process, but then the application or the process does not proceed. In order to illustrate this, examples have been provided below:

Examples:

- (i) an application for the grant or renewal of a permit;

Prior to an application being submitted the operator may seek advice on whether an application is required; the type of application required (e.g. Production, Drilling, etc.); and the content, level of detail and any supporting documentation to be provided. If the operator does not then proceed to the stage of submitting an application, this advice would not be chargeable.

- (ii) 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;

Where a permit holder is planning to undertake an activity which may be outside the scope of the current permit, such as changing the point of discharge, increasing the use and/or discharge quantities, or changing the treatment process prior to discharge, the operator may seek advice on whether an application for a variation is required or on the information required to support the application. If it is decided following advice that a variation is not needed, the permit holder would not proceed to make an application for variation and the advice would not be chargeable.

(iii) a request for the Secretary of State's consent to the the transfer of a permit;

A request could be made where a licensee proposes to appoint a new operator, or proposes to sell an asset to another licensee who would wish to appoint a different operator. In such cases any current permits held by the existing operator would require to be transferred to the new installation operator, and the current operator and / or the new operator may seek advice from DECC. If the proposed appointments then fall through, the advice would not be chargeable.

(iv) the revocation or surrender of a permit;

Where an operator holds permits for facilities serving a field which is ceasing production the operator should surrender the permits as they are no longer needed. The operator may therefore seek advice from DECC in relation to the surrender process. If it is then decided that the cessation of production can be deferred and the operator maintains the permit, this advice would not be chargeable.

(v) the subsistence of a permit;

DECC's view is that it has the power to charge for all advice provided with respect to the subsistence of a permit, so it does not propose to make any changes in relation existing charging powers.

(vi) the testing or analysis of substances;

Where a permit holder is required to undertake sampling and analyses to satisfy the conditions attached to a permit, such as the reporting requirements for discharges of oils or drilling fluids, it may seek advice as to the use of a new testing method. If the permit holder does not proceed with that testing method, the advice given would not be chargeable under point (vi).

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

Following on from the above example regarding testing and analysis, if a permit holder proposed a new testing method, validation of the method may also be required, such as sending samples to third party laboratories for independent analysis. The permit holder may therefore seek advice on the validation process. If validation does not proceed because the permit holder decides against using that testing method, the advice given would not be chargeable under point (vii).

(viii) assessing how the environment might be affected by the release into it [of oil or any (chemical) substance];

Following a discharge that is not undertaken in accordance with the terms of a permit, the Department may require that the permit holder undertakes an assessment to determine the potential or actual effects in the receiving environment, and the permit holder may seek advice in relation to the scope of the assessment and the bodies capable of undertaking the work. If the assessment is then not conducted, this advice would not currently be chargeable under point (viii). However, even if the assessment is conducted, the OCR and

OPPC currently only refer to assessing a 'release', which is defined in the OPPC and OCR and does not include discharges. This advice would therefore still not be chargeable under point (viii). This is therefore another limitation that DECC proposes should be addressed through amendments to the OPPC and OCR, as discussed in paragraph 3.10 below.

In all of the above scenarios the advice would be specific to a particular situation and would often be detailed and technical – and would be given with the intention of enabling permit applicants, permit holders and operators to satisfactorily comply with their obligations in relation to OPPC and OCR. Without such advice, it would likely be more difficult for permit holders to fulfil their obligations in relation to the activities set out in section 3.9. This could lead to remedial action being required. DECC therefore views the advice as necessary to reduce costs and increase efficiency and so it sees these services as an integral part of the way that it carries out its statutory functions. As a result, our initial view is that it is appropriate to introduce new powers to charge for this advice.

Assessments which relate to a discharge

3.10 As explained above, the OPPC and OCR currently only provide the power to charge for assessments relating to 'release', which is defined in the OPPC and OCR so that it does not include discharges. DECC's initial view is that it should amend the secondary legislation to provide a power to charge for assessing discharges. For example, as indicated above, if a permit holder allows a discharge that is not authorised under the permit to occur, DECC might wish to conduct an assessment into how the environment might be affected by that discharge. Alternatively it might require a permit holder to conduct an assessment, and the permit holder may require advice on this. Therefore, DECC's initial view is that it should also amend the OPPC and OCR to provide a power to charge for advice with respect to assessing how the environment might be affected by such a discharge, as outlined in the scenario given in section 3.9 (viii) above.

Financial impact

3.11 DECC now operates a recording system to generate the relevant information on time spent by officials on statutory regulatory activity under individual regulations, and it is the output of the recording system that identified the services provided to industry listed in sections 3.9 and 3.10 above for which fees have not been chargeable.

3.12 The anticipated cost across the offshore oil and gas industry of the additional charging for the above regulatory services is likely to be in the region of £50,000 per annum. It is anticipated that there will be no transitional or recurring annual costs to DECC.

Options considered

Three main policy options have been considered:

3.13 Option 1: The 'do nothing' baseline option would constitute a continuation of current arrangements under which central government would fund the cost of the above regulatory services from general taxation. Our initial view is that this option would not achieve the policy objective outlined in sections 3.1-3.5 above.

3.14 Option 2: Introduce amendments to the current secondary legislation to capture those elements of the services provided to industry described in sections 3.9 and 3.10 above. This is currently the preferred option as it will ensure companies directly benefiting from the regulatory services meet the cost associated with its provision.

3.15 Option 3: DECC could cease to provide advice to permit applicants, permit holders and operators. However, this is likely to reduce the quality of the applications that are submitted to DECC and make it more difficult for the permit applicants, permit holders and operators to fulfil their obligations in relation to the activities set out in section 3.9. This could lead to remedial action being required by the permit applicants, permit holders and operators, which ultimately would increase the cost to industry, and in parallel reduce the efficiency of the processes for the relevant activities.

What Happens Next?

4.1 The deadline for responses to this consultation is 5:00 pm on 6th September 2016.

4.2 The Department will review the responses to the consultation and will consider whether to lay new regulations in respect of making changes to charge industry a fee for providing the relevant services under OPPC and OCR.

4.3 Decisions resulting from this consultation will be made public with a summary of the views expressed and the reasons for the decisions finally taken. The summary of views, and the Government's response, will be published on the Department's website. We will review consultation responses throughout the consultation, with the aim of publishing a response within four weeks of the closure of consultation, in order to ensure certainty for industry. If you would like to be notified by e-mail when these are published please indicate this in your response.

