



CONSULTATION ON THE OFFSHORE ENVIRONMENTAL CIVIL SANCTIONS REGULATIONS 2018

Proposal to introduce civil sanctions in respect of breaches
of existing environmental regulations.

January 2018

The consultation can be found on the BEIS section of GOV.UK:

<https://www.gov.uk/government/consultations/the-proposed-introduction-of-the-offshore-environmental-civil-sanctions-regulations-2018>

© Crown copyright 2018.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to us at the Offshore Environmental Inspectorate CUBS@beis.gov.uk

Contents

General information _____	3
Purpose of this consultation _____	3
Exit from the European Union _____	4
How to Respond _____	4
Confidentiality and Data Protection _____	4
Quality Assurance _____	5
Introduction _____	6
Structure of this Document _____	7
Proposed introduction of The Offshore Environmental Civil Sanctions Regulations 2018	8
Proposed Legislative Approach _____	8
Detailed Proposal for the Introduction of Civil Sanctions _____	9
Costs to Businesses of Civil Sanctions _____	17
Next steps _____	19
Annex A: Catalogue of Consultation Questions _____	20

General information

Purpose of this consultation

This consultation is seeking stakeholders' views on proposals to introduce powers, via The Offshore Environmental Civil Sanctions Regulations 2018, to enable The Department for Business, Energy and Industrial Strategy's Offshore Petroleum Regulator for Environment & Decommissioning (OPRED) to impose civil sanctions in respect of breaches of some existing offshore oil and gas environmental regulations, which presently amount to criminal offences. The proposed sanctions would apply to offshore oil and gas operators engaged in hydrocarbon-related activities (i.e. oil and gas operations, gas unloading and storage operations and carbon dioxide storage operations) on the United Kingdom Continental Shelf. Where a civil sanction is imposed, this would be imposed instead of, rather than in addition to, criminal prosecution under the current enforcement regime.

Issued: 18 January 2018

Respond by: 15 February 2018

Enquiries to:

Offshore Environmental Inspectorate
Offshore Petroleum Regulator for Environment and Decommissioning
Department for Business, Energy & Industrial Strategy,
AB1 Building,
Crimon Place,
Aberdeen, AB10 1BJ
Tel: 01224 254043
Email: CUBS@beis.gov.uk and sarah.mclean@beis.gov.uk

Consultation reference; The Offshore Environmental Civil Sanctions Regulations 2018

Territorial extent:

The proposals for regulation set out in this consultation would only apply to offshore platforms engaged in hydrocarbon-related activities. As such, it only directly impacts the offshore oil and gas industry operating on the UK Continental Shelf or in the UK territorial sea (except that part of the territorial sea adjacent to Scotland, Wales and Northern Ireland which extends seaward for 3 miles from the landward baseline).

Information on civil sanctions for other sectors and regions can be found elsewhere:

England and Wales

The Department for Environment, Food and Rural Affairs (Defra).

Scotland

The Scottish Environment Protection Agency (SEPA).

Exit from the European Union

On 23rd June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until negotiations to exit the EU are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

How to Respond

Your response will be most useful if it is framed in direct response to the questions posed in Annex A, though further comments and evidence are also welcome. You may respond by completing an online survey at:

https://beisgovuk.citizenspace.com/energy-development/consultation-on-the-offshore-environmental-civil-s/consult_admin_view/

Alternatively you can email your responses to the above contacts. Hard copies can also be submitted to the address above.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/the-proposed-introduction-of-the-offshore-environmental-civil-sanctions-regulations-2018>

Hardcopies could be provided upon request at the above address.

Confidentiality and Data Protection

Information provided in response to this consultation 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 may 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](#).

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:

Email: enquiries@beis.gov.uk

Introduction

OPRED is seeking views via this consultation on proposals to introduce powers under The Offshore Environmental Civil Sanctions Regulations 2018 (the 2018 Regulations) to enable OPRED to impose civil sanctions on offshore oil and gas companies who are found to be in breach of some existing environmental regulations. The sanctions would only be applied in respect of contraventions which currently amount to criminal offences under some existing environmental regulations. The sanctions would be applied instead of, rather than in addition to, criminal prosecution.

There are concerns that the current enforcement measures do not provide sufficient deterrent against non-compliance. Within the current regime there are no financial sanctions available to OPRED unless the case is subject to criminal prosecution, which although they can result in substantial financial penalties being imposed by the criminal courts, are slow, resource intensive and costly to pursue.

The introduction of the 2018 Regulations will provide OPRED with a more flexible, proportionate and timely enforcement response in respect of breaches that amount to criminal offences and would otherwise be dealt with by prosecution. The 2018 Regulations also allow OPRED to accept undertakings from offshore operators to take action for the benefit of any person affected by the offence (including payment of a sum of money) and for this to be taken into account in setting the variable monetary penalty for the most serious breaches.

The 2018 Regulations will help to ensure that OPRED has the ability to provide sufficient deterrent against non-compliance and tackle the behaviour of those who continue to perform poorly or ignore their environmental responsibilities. The new enforcement measure will help to prevent the non-compliance from becoming persistent and will remove the short term financial gain to companies arising from the non-compliance.

The UK Government is committed to ensuring environmental compliance and understands that the new enforcement measures will allow OPRED to potentially impose significant financial sanctions. The proceeds from any such sanction imposed are not retained by OPRED and will be remitted to the Crown Treasury. OPRED are committed to regularly reviewing how effectively we have used these new enforcement measures and to feed any learning back into our approach.

Structure of this Document

This document is split into key sections with a list of the consultation questions included in Annex A at the end of this document.

Proposed introduction of The Offshore Environmental Civil Sanctions Regulations 2018

Proposed Legislative Approach

OPRED is proposing to introduce The 2018 Regulations, in order to allow them to impose civil sanctions on offshore oil and gas companies who are found to have breached some provisions within the following existing Regulations; The Offshore Chemicals Regulations 2002, The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013, The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 or The Offshore Installations (Emergency Pollution Control) Regulations 2002.

The Secretary of State has existing powers to create criminal offences under article 2 of The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Order 1998; sections 2 and 3 of The Pollution Prevention and Control Act 1999; and section 2(2) of The European Communities Act 1972. No changes to existing criminal offences are proposed and the Secretary of State now proposes to exercise the same powers, as expanded by section 62 of The Regulatory Enforcement and Sanctions Act 2008, to provide for civil sanctions.

Section 67 of the Regulatory Enforcement and Sanctions Act 2008 already imposes a duty upon the Secretary of State to review the Regulations as soon as practicable after the end of the period of three years beginning with the day on which the provision comes into force. This review will include all offences where section 2(2) of the European Communities Act 1972 is the enabling power. There is also requirement under the Regulations to periodically publish a report on enforcement action taken under the Regulations. Therefore the Secretary of State intends to issue a statement under section 29(2)(b) of the Small Business, Enterprise and Employment Act 2015 that provision in the Regulations for a review under that Act is not appropriate.

The detail of our proposal is set out below. We consider that by expanding existing powers to allow for the imposition of civil sanctions, we will allow for a more proportionate enforcement response by OPRED, retaining criminal prosecution for only the most serious of breaches, maintaining a consistent approach with onshore environmental regulators and encouraging greater compliance by operators.

The Government set out a clear policy, under part 3 of the Regulatory Enforcement and Sanctions Act 2008, to provide regulators like OPRED with powers to impose civil sanctions as an alternative to criminal prosecution. The position set out in a Written Ministerial Statement on 8 November 2012 is that powers to impose Fixed and Variable Monetary Penalties will, as a general rule, only be granted where their use is restricted to organisations with more than 250 employees. However, in this particular case, a sanctions regime already exists, and the Government is seeking to move to a more proportionate and flexible regime of civil sanctions. In order to maintain a consistent and proportionate approach to enforcement OPRED propose to expand the option of civil penalties to all organisations, including those with less than 250 employees. If we did not, the result might be a two-tier system where large companies could accept a civil sanction as an alternative to prosecution, whereas small companies would not benefit from the shift to civil sanctions from existing criminal sanctions.

Q1. Do you have any comments on the proposal to introduce civil sanctions through the Offshore Environmental Civil Sanctions Regulations 2018?

Q2. In these circumstances, do you support the proposal that civil sanctions should apply to all organisations including those with less than 250 employees?

Detailed Proposal for the Introduction of Civil Sanctions

The 2018 Regulations will allow OPRED to impose both “fixed” and “variable” monetary penalties, where OPRED is satisfied after investigation, and to the criminal standard of proof, that one of the provisions listed below has been contravened. Which sanction will be imposed will depend upon the nature of the contravention and the regulation being breached.

The majority of contraventions will be subject to a fixed monetary penalty of less than £2,500. In relation to some other contraventions, OPRED will have an option as to the enforcement action they take, so that a single breach with no aggravating factors can be subject to a fixed monetary penalty, whereas a breach with aggravating factors can be subject of a variable monetary penalty of up to £50,000. For the two most serious offences under The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005¹, there will not be an option for a fixed monetary penalty to be imposed, a variable monetary penalty of up to £50,000 will be applied in these cases.

A full list of the sanctions available, and their range, is provided in the table below.

¹ To contravene regulation 3(1) – no oil to be discharged except in accordance with the permit for the installation

To contravene regulation 3A – to release oil or allow a release to continue

Fixed monetary penalties

Fixed monetary penalties will range in scale from £500 to £2,500. These will apply for the majority of breaches. Where OPRED is satisfied, to the criminal standard of proof, that a contravention of one of the relevant provisions has taken place, a notice of intent will be issued setting out the grounds for imposing the civil sanction and the amount. An operator can discharge the liability by paying two-thirds of the stated amount within 28 days. Alternatively, within 28 days written representations can be made to OPRED setting out why the operator feels that the sanction should not be imposed at all.

After 28 days from the date of the notice of intent, OPRED will decide whether or not to impose the sanction, taking into account any representations received. If the sanction is imposed a final notice will be issued setting out the grounds for imposing the sanction, how payment must be made, rights of appeal and the consequences of non-payment.

Variable monetary penalties

Variable monetary penalties will be subject to a £50,000 maximum limit, which will only be applied in the most serious of cases. In deciding the amount of a variable monetary penalty, OPRED will take into account the content of the Department's enforcement policy, and in particular, will consider whether there are any aggravating or mitigating factors.

Aggravating factors will include, but not be limited to, the duration of the non-compliance, any history of non-compliance, financial gain resulting from non-compliance, the level of any harm to the environment and the conduct of the operator after the non-compliance has been identified.

Mitigating factors will include, but not be limited to, swift action being taken to return to compliance and to eliminate, reduce or repair any harm to the environment, a good compliance record and whether the breach has been reported voluntarily.

For those offences that are subject to a variable monetary penalty, the starting point for a single breach will be £5,000. This can be reduced with mitigating factors, down to the level of the fixed monetary penalty for that offence, or £2,500 where there is none. It can also be increased where there are aggravating factors. In the most serious cases, where the breach causes harm and/or is not remedied with sufficient urgency, we would expect the variable monetary penalty to increase, potentially up to the maximum amount.

Prior to issuing a variable monetary penalty, OPRED would issue a notice of intent, notifying the recipient of the nature of the alleged breach, the intention to issue a sanction and the level of the proposed penalty. The recipient would be given 28 days to respond and provide OPRED with any representations and/or mitigating factors they believe to be appropriate. Where appropriate the recipient can also offer an undertaking to take actions (including the payment of a sum of money) to benefit any person affected by the breach.

After a period of 28 days from the date of the notice of intent, OPRED will decide, taking those representations (and any undertaking) into account, whether to issue the sanction as initially proposed, reduce the amount or not issue it all. If the sanction is imposed, a final notice will be issued setting out the grounds for imposing the sanction, how and by when payment must be made, the rights of appeal and the consequences of non-payment.

Where an undertaking is accepted and taken into account in issuing a final notice, and that undertaking is breached, OPRED can impose a non-compliance penalty.

Appeals

The recipient of a civil sanction would be able to appeal against it, within 28 days of receipt, to the First Tier Tribunal (General Regulatory Chamber) of the Courts and Tribunals Service. The grounds for appeal would be that the decision to impose a civil sanction was based on an error of fact; was wrong in law or was unfair or unreasonable for any reason (including that the amount of the sanction was unreasonable). The Tribunal may do any of the following; confirm the amount of the sanction; reduce the amount of the sanction; cancel the sanction; award costs.

Enforcement

Any fixed monetary penalty, variable monetary penalty or non-compliance penalty that is not paid following the issuing of a final notice (subject to any appeal) shall be enforced by OPRED as a civil debt.

No criminal proceedings can be brought in relation to an offence for which a fixed monetary penalty has been imposed (or liability is discharged by payment within 28 days).

No criminal proceedings can be brought in relation to an offence for which a variable monetary penalty has been imposed (unless an undertaking is given to fully discharge the variable monetary penalty and that undertaking is not complied with).

Offences to which civil sanctions will apply

The list below shows the civil sanction that would be applied for each breach:

Regulation	Offence	Level of Sanction
The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013	To operate an offshore combustion installation (a) without a permit or (b) in breach of the conditions of a	£2,500 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty

	permit	up to a maximum of £50,000, where there are aggravating factors.
	To fail to comply with an information, enforcement or prohibition notice	£2,500 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty up to a maximum of £50,000, where there are aggravating factors.
	To make a false or misleading statement	£1,000 fixed monetary penalty
	To obstruct an inspector in the exercise or performance of his powers or duties.	£1,000 fixed monetary penalty
	To fail to comply with a requirement under regulation 25 - requirement to answer questions, produce records, afford facilities and assistance	£1,000 fixed monetary penalty
	To prevent a person appearing before an inspector or answering a question to which the inspector may require an answer	£1,000 fixed monetary penalty

Regulation	Offence	Level of Sanction
The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005	To contravene regulation 3(1) – no oil to be discharged except in accordance with the permit	A variable monetary penalty up to a maximum of £50,000

	for the installation	
	To contravene regulation 3A – to release oil or allow a release to continue	A variable monetary penalty up to a maximum of £50,000
	To fail to comply with the terms of an enforcement or prohibition notice	£2,500 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty up to a maximum of £50,000, where there are aggravating factors.
	To fail to supply information required to be supplied by virtue of regulation 11A – information required by the Secretary of State	£1,000 fixed monetary penalty
	To fail to supply information required to be supplied by virtue of the terms or conditions of any permit	£1,000 fixed monetary penalty
	To wilfully obstruct an inspector appointed under regulation 12	£1,000 fixed monetary penalty
	Without reasonable excuse, fail to comply with a requirement imposed under regulation 12(3) – requirement to answer questions, produce documents, afford facilities and assistance	£1,000 fixed monetary penalty
	To make a false or misleading statement	£1,000 fixed monetary penalty

Regulation	Offence	Level of Sanction
The Offshore Installations (Emergency Pollution Control) Regulations 2002	To contravene or fail to comply with a direction given to the person under regulation 3 – Secretary of State giving direction	£2,500 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty up to a maximum of £50,000, where there are aggravating factors.
	To intentionally obstruct a person who is acting on behalf of the Secretary of State in connection with giving a direction, acting in compliance with a direction, acting under regulation 3(4) or (5)	£1,000 fixed monetary penalty

Regulation	Offence	Level of Sanction
The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998	The operator of an oil handling facility or responsible person to fail to submit an Oil Pollution Emergency Plan (OPEP) in accordance with regulation 4(3), (4) or (5)	£2,500 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty up to a maximum of £50,000, where there are aggravating factors.
	The operator of an oil handling facility or responsible person to fail to implement its OPEP in	£1,000 fixed monetary penalty for a single breach with no aggravating factors.

	contravention of regulation 4(8)	Variable monetary penalty up to a maximum of £50,000, where there are aggravating factors.
	A responsible person (a) to fail to comply with a duty under regulation 4(9) or (b) to breach an obligation in regulation 4(10)	£1,000 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty up to a maximum of £50,000, where there are aggravating factors.
	An operator of an oil handling facility to breach an obligation in regulation 4(11)	£1,000 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty up to a maximum of £50,000, where there are aggravating factors.
	To fail to comply with a requirement under regulation 5 or 6 or to make a report	£1,000 fixed monetary penalty
	The operator of an oil handling facility or responsible person to fail to maintain an OPEP as approved under regulation 4(5) to (7)	£500 fixed monetary penalty

Regulation	Offence	Level of Sanction
The Offshore Chemicals Regulations 2002	To contravene regulation 3(1) – the requirement for a permit to use or discharge offshore chemicals	£2,500 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty

		up to a maximum of £50,000, where there are aggravating factors.
	To contravene regulation 3A – prohibition on the release of offshore chemicals	£2,500 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty up to a maximum of £50,000, where there are aggravating factors.
	Failure to comply with the terms of an enforcement or prohibition notice	£2,500 fixed monetary penalty for a single breach with no aggravating factors. Variable monetary penalty up to a maximum of £50,000, where there are aggravating factors.
	Failure to supply information required to be supplied by virtue of regulation 15	£1,000 fixed monetary penalty
	Failure to supply any information required to be supplied by the terms of any permit	£1,000 fixed monetary penalty
	Knowingly or recklessly makes a false statement in connection with, or for the purposes of, any permit application, permit transfer or any application under regulations 10 – renewal of a permit, or 11 – variation of a permit	£1,000 fixed monetary penalty
	Knowingly or recklessly makes a false statement for the purposes of satisfying	£1,000 fixed monetary penalty

	and requirement for the supply of information to the Secretary of State or an inspector	
	Without reasonable excuse fails to comply with a requirement imposed under regulation 16 or prevents a person from complying with regulation 16	£1,000 fixed monetary penalty
	Wilfully obstructing an inspector	£1,000 fixed monetary penalty

Q3. Do you support the introduction of powers allowing OPRED to impose civil sanctions instead of taking criminal proceedings? Please explain the reasons for your answer.

Q4. Are you content with the proposals for how the system would work and the proposed level of the civil sanctions? What, if any, changes would you propose?

Q5. Are you content with the proposed appeals process? What, if any, changes would you propose?

Costs to Businesses of Civil Sanctions

The proposed 2018 Regulations will impose no additional costs to businesses which are compliant with the 2018 Regulations. Costs will only be faced by non-compliant businesses in respect of the costs of the investigation, which will be recovered by OPRED through their existing fee recovery scheme, the cost of any civil sanction imposed by OPRED and the administrative and legal costs of responding to civil sanction notices or appealing against these.

Costs to Government of Civil Sanctions

OPRED already regulates and inspects offshore oil and gas operators. Any breaches are investigated and compliance is sought, including where appropriate considering and preparing potential prosecutions. The move to civil sanctions, with criminal proceedings reserved for only the most serious breaches, is therefore unlikely to have a significant impact on OPRED's budget.

The cost of establishing the appeals system is estimated at £42,000, this would also cover the cost of up to 10 appeals in the first year of the introduction of the 2018 Regulations. Subsequent costs are estimated at £3,500 per appeal. OPRED estimates that five appeals per year would be received.

Next steps

The consultation runs for 4 weeks. The consultation will close 15 February 2018.

Following the close of the consultation period, the Government will publish a summary of all the responses received (subject to confidentiality restrictions) and the Government's consultation responses, within 3 weeks of the close of the consultation. This response will take the form of decisions made in light of the consultation and reasons given for decisions finally taken. This document will be published on the www.gov.uk website with paper copies available on request.

This consultation is in line with the Code of practice on Consultations. This can be found at <https://www.gov.uk/government/publications/consultation-principles-guidance>

Copies of responses will be made available to the public on request. If you do not want your response to be publicly available, please say so clearly in writing when you submit your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that won't count as a confidentiality request.

Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But we cannot promise that we will always be able to keep those details confidential, as we may be legally obliged to disclose the information.

We will summarise all responses received and place this summary on our website at:

www.gov.uk/beis

Annex A: Catalogue of Consultation Questions

Consultation Questions

1.	Do you have any comments on the proposal to introduce civil sanctions through the Offshore Environmental Civil Sanctions Regulations 2018?
2.	Do you support the proposal that civil sanctions should apply to all organisations including those with less than 250 employees?
3.	Do you support the introduction of powers allowing OPRED to impose civil sanctions instead of taking criminal proceedings? Please explain the reasons for your answer.
4.	Are you content with the proposals for how the system would work and the proposed level of the civil sanctions? What, if any, changes would you propose?
5.	Are you content with the proposed appeals process? What, if any, changes would you propose?

© Crown copyright 2018

Department for Business, Energy & Industrial Strategy

www.gov.uk/beis