



Department for
Business, Energy
& Industrial Strategy

GOVERNMENT RESPONSE TO THE CONSULTATION ON DRAFT LEGISLATIVE PROPOSALS FOR THE INTRODUCTION OF CIVIL PENALTIES THROUGH THE OFFSHORE ENVIRONMENTAL CIVIL SANCTIONS REGULATIONS 2018



April 2018

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Exit from the European Union

In June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations 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.

Introduction

The UK government is committed to ensuring environmental compliance. Within the current enforcement regime there are concerns that the measures available do not provide sufficient deterrence against non-compliance. There are no financial sanctions available to The Department for Business, Energy and Industrial Strategy's Offshore Petroleum Regulator for Environment & Decommissioning (OPRED) and although a case which is subject to criminal prosecution can result in substantial financial penalties being imposed by the criminal courts, such cases are slow, resource intensive and costly to pursue.

The government invited comments via a 4 week consultation (18 January to 15 February 2018) on draft legislative proposals for introducing The Offshore Environmental Civil Sanctions Regulations 2018 to enable OPRED to impose civil sanctions in respect of breaches of some existing offshore oil and gas environmental regulations, which presently amount to criminal offences.

An important aim of the introduction of The Offshore Environmental Civil Sanctions Regulations 2018 is to ensure that OPRED have available to them a proportionate enforcement method, in line with the conclusions of the Macrory review "Regulatory Justice: Making Sanctions Effective" that recommended a move away from dependence on criminal prosecutions alone, which is consistent with that of onshore environmental regulators. Their introduction should also improve the level of environmental compliance through greater deterrence than is presently possible.

The consultation ran between 18 January 2018 and 15 February 2018. In total 13 responses to the consultation were received with 5 responses received through the CitizenSpace online portal and 8 responses by email or post. For email or postal responses, where respondents answered the specific consultation questions these have been included in the summaries of each of the questions. Where they provided more general comments, their views have been picked up in the additional comments section.

This document summarises the consultation responses by questions. A full list of questions can be found at [Annex A](#).

This consultation applied to England, Wales, Scotland and Northern Ireland. Of the 13 responses received, the largest number of responses was from the Offshore Oil and Gas Industry. The full list of organisations that responded can be found at [Annex B](#). Please note that the online consultation is not a representative survey and results cannot be statistically generalised to the wider population.

Summary of responses to the consultation

This section provides a summary of the responses received to each of the questions.

The Proposal to Introduce The Offshore Environmental Civil Sanctions Regulations 2018

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

We proposed that by expanding OPRED's existing powers to allow for the imposition of civil sanctions, we would allow for a more proportionate enforcement response, retaining criminal prosecution for only the most serious of breaches, maintaining a consistent approach with onshore environmental regulators and encouraging greater compliance by operators.

Of the 13 responses received, the majority supported the proposal to introduce civil sanctions through the Offshore Environmental Civil Sanctions Regulations 2018 (The 2018 Regulations).

A number of respondents provided additional comments which have been considered below.

The majority of respondents stated that the current Enforcement Policy needs to be updated, or raised detailed issues that would be dealt with within guidance published under regulation 20 of the 2018 Regulations. OPRED will be reviewing their current Enforcement Policy and once updated this will be issued in draft for consultation prior to publication. A Guidance Document will also be produced for The 2018 Regulations and again this will be issued in draft for consultation prior to publication.

There was a general concern that civil sanctions could be over used by OPRED and that their imposition would not be proportionate to the offence. In particular, comments were made that civil sanctions might routinely be applied in respect of more minor inspection findings and technical/administrative breaches of environmental, used as a revenue raising measure, or otherwise be applied over-zealously. OPRED are proposing the introduction of civil sanctions as an alternative method of enforcement to cases which would otherwise be considered for criminal prosecution. As such, civil sanctions will only be applied to the most serious of cases. More minor inspection findings and technical/administrative breaches would normally give rise to the imposition of a civil sanction. OPRED will retain their current enforcement options of letters, enforcement notices and prohibition notices, which will continue to be used as appropriate. At present only approximately 10% of all known contraventions are considered by OPRED for prosecution. We envisage that OPRED would consider imposing civil sanctions in a similar number of cases as a result of the introduction of The 2018 Regulations. To safe guard against possible misuse of The 2018 Regulations, an appeals process to the First-Tier Tribunal is built into the Regulations. In addition to this, requirements to report and review are in place. Regular reporting of the use of sanctions will take place under regulation 21. The Regulations themselves will be reviewed 3 years after their introduction as a result of section 67 of the Regulatory Enforcement and Sanction Act 2008 (RESA). Finally, OPRED routinely review their enforcement response to ensure consistency and proportionality and will continue to do so after the introduction of The 2018 Regulations.

The Governance Process will also be included in the Guidance Document and will follow the same process used for EU-ETS civil penalties in that, all cases where a civil penalty is

recommended will be reviewed by an OPRED Senior Manager to ensure consistency of approach. These are then also subject to BEIS Legal scrutiny prior to the imposition of a civil penalty. Any representations received will follow the same process ensuring impartiality, consistency and transparency of approach. OPRED will respond to operator's representations within the correspondence issued with the final civil penalty decision.

Several comments were made in relation to the individual offences that civil sanctions will be applied to. The 2018 Regulations does not create any new offences or change the substance of those offences. All the existing offences will still be subject to the criminal law. The 2018 Regulations instead give OPRED an alternative, and more proportionate, method of enforcement.

Some responses made points in relation to the standard and burden of proof. Again, nothing in RESA or the 2018 Regulations alters the position in relation to the standard or burden of proof. Before imposing a civil sanction, the Secretary of State must be satisfied that a contravention potentially giving rise to a civil sanction has been proven to the criminal standard, ie beyond reasonable doubt. Responses received suggested that this may be a concept OPRED are unfamiliar with, or that a third party should be responsible for judging whether this standard of proof has been met. In relation to 3rd party verification of whether evidential standards have been met, this is not something which is required by the parent Act (the Regulatory Enforcement and Sanctions Act 2008), nor is it a process applied by other independent regulators in this area. In relation to OPRED's ability to assess whether a contravention has been proven beyond reasonable doubt, OPRED already routinely apply the criminal standard of proof in all cases which are currently considered for prosecution. These cases are subject to scrutiny by BEIS lawyers, who ensure the processes, are applied correctly and robustly. This will continue in relation to cases considered for civil sanctions. RESA makes it clear that a criminal standard of proof is to be applied therefore no reference to this is required in The 2018 Regulations. The burden of proof remains on OPRED to prove the offence, and OPRED will be expected to do so where this is in issue in any appeal.

Guidance will confirm that when considering if a case is suitable for a civil sanction, OPRED will continue to apply a Public Interest Test as is currently applied in every case considered for enforcement action. Explicit reference to this will also be included in the updated Enforcement Policy. The assessment will be carried out by OPRED and not a third party as was also suggested by some respondees. As with the assessment regarding whether the requisite standard of proof has been met, it is not normal practice for an independent regulator to employ the services of a third party to conduct a public interest test.

Several respondees requested a full list of all aggravating and mitigating factors to be considered by OPRED when determining whether to impose a sanction and if so, the level of the sanction to be imposed. A non-exhaustive list of such factors is already included within the current Enforcement Policy. However it is impossible to provide an exhaustive list as each case will turn on its particular circumstances. In particular, OPRED acknowledge industry's desire for OPRED to consider whether any contravention has resulted in "a material or significant impact on the environment". The requirement for a contravention to result in "a material or significant impact on the environment" is not required by the relevant regulations, however, the impact (or lack thereof) of the contravention on the environment will remain as one of the many factors OPRED take into account when deciding on the appropriate enforcement method to be applied in each individual case.

One of the aggravating/mitigating factors queried was the history of non-compliance and whether this applied to an operator or individual asset. OPRED can confirm that this applies to an operator, as this is to whom any civil penalty will be applied. Civil penalties will not be

applied to assets or individuals. Further information with regards to aggravating and mitigating factors will be provided in the updated Enforcement Policy and Guidance Document.

It has been suggested that The 2018 Regulations include reference to the defences available. The 2018 Regulations make clear that the Secretary of State must not impose civil sanctions where he is satisfied that the person has a defence. Again the Regulations do nothing to alter the underlying offences or any potential defences. Although OPRED will detail any statutory defences in the Guidance Document for information, there is no requirement for these to be included in The 2018 Regulations as they are set out within the parent Regulations.

Some of the respondents requested that OPRED carry out an impact assessment. There is no requirement for an impact assessment to be conducted as The 2018 Regulations do not impose any new criminal sanctions or impose additional burdens. Civil sanctions will only be considered in the most serious of cases, which typically OPRED already considers for prosecution; therefore the burden on industry and upon OPRED is unchanged as the same standard of proof applies and the evidence gathering requirements remain the same. Currently in cases considered for prosecution the operator, as a minimum, would

conduct an internal investigation and present evidence, along with any mitigation to OPRED – this will also be the case in relation to cases being considered for the imposition of a civil sanction. Bringing a case to prosecution is more costly for both OPRED and the operator than the imposition of a fixed or variable monetary penalty; therefore the imposition of a civil penalty as an alternative to prosecution will not incur any additional cost to either.

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

In order to maintain a consistent and proportionate approach to enforcement OPRED proposed to expand the option of civil penalties to all organisations, including those with less than 250 employees.

Of the 13 responses received, 92% supported the proposal that civil sanctions should apply to all organisations, including those with fewer than 250 employees.

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.

Of the 13 responses received, 85% supported the proposal to introduce powers allowing OPRED to impose civil sanctions instead of taking criminal proceedings.

The majority of respondents who provided additional comments were in favour of introducing civil penalties. Respondents said that they could see the benefit of imposing civil penalties to cases which otherwise would have been considered for prosecution and overall welcomed the reduction in criminalisation that civil penalties will bring. One respondent felt it was unclear how civil penalties would be applied, how the appropriate level of penalty would be determined and perceived the civil sanctions conditions as lacking in transparency. OPRED's current Enforcement Policy, includes considerations designed to ensure transparency, proportionality and accountability, and will be updated to include the operation of the civil sanctions regime which will be consulted on separately with the responses used to help develop and finalise OPRED's Enforcement Policy. As discussed in relation to Q1, specific civil sanctions Guidance Document will also be published and subject to consultation. This will set out details of how the civil sanctions will be applied and the Governance Process which will be followed.

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?

Table of offences and penalty level from the consultation document is set out below for completeness.

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 permit	£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 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 for the installation	A variable monetary penalty up to a maximum of £50,000
	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 contravention of regulation 4(8)	£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.
	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.

Regulation	Offence	Level of Sanction
	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 upto £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 upto £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

Regulation	Offence	Level of Sanction
	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 and requirement for the supply of information to the Secretary of State or an inspector	£1,000 fixed monetary Penalty
	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

Of the 13 responses received, 85% were content with proposals for how the system would work and the level of civil sanctions, with some respondents feeling the proposed level to be too high and some considers them too low. OPRED are therefore content with the level of civil sanctions proposed. In relation to responses referring to fines imposed by a court under summary conviction being limited to £5,000, OPRED would state that all of the offences listed above are capable of being tried and sentenced at summary and indictment level, where unlimited fines can potentially be awarded by the criminal courts. As such, our proposed upper limit of £50,000 for a variable penalty reflects this. Further information on the levels of fine which could be awarded by a criminal court in respect of breaches of environmental legislation can be found in the Sentencing Council's, Environmental Sentencing Guidelines Document.

The upper limit of £50,000 for a variable penalty is set out at regulation 11 of the 2018 Regulations; in response to consultees' comments there will now be no lower limit for a variable penalty.

The general feeling was that the proposed system would work well if OPRED do not always resort to civil penalties to bring operators into compliance. The introduction of civil penalties does not mean they will be used in every instance and OPRED reiterate that civil penalties will only be considered in the more serious of cases, which currently would be considered for prosecution. For the most serious cases criminal prosecution remains available. Furthermore OPRED cannot impose civil sanctions in relation to incidents that do not give rise to a criminal offence and are listed in the table of offences above. OPRED currently have a range of enforcement measures, proportionate to the offence, to bring an operator into compliance and

these alternative measures will continue to be used alongside civil penalties. These measures include issuing letters, enforcement notices and prohibition notices. Details of these are provided in OPRED's Enforcement Policy which will be updated to include the civil sanctions regime. Civil sanctions will sit alongside these existing measure, not replace them.

There was a general concern around undertakings and imposition of non-compliance penalties when an undertaking is breached. The requirement to include provision to accept an undertaking in the form proposed in the 2018 Regulations is contained within RESA. This undertaking is set out at regulation 12(4), whereby a person upon whom a notice of intent has been served may offer an undertaking, including a sum of money, to any person affected by the breach. If accepted by the Secretary of State, the undertaken will be taken into account when the Secretary of State decides whether or not to impose a variable monetary penalty, and if so, whether to impose a penalty of the amount stated in the notice of intent, or a lower amount. If the undertaking is breached by the operator, although still not subject to a civil penalty, a non-compliance penalty, which will have an upper limit of £50,000, will apply. The only purpose of the non-compliance penalty in the 2018 Regulations is to ensure that undertakings are not accepted but then left unfulfilled. As the offences will be taking place at sea, it is unlikely that undertakings, and any resulting non-compliance penalties, will be a common feature of the OPRED's enforcement activities. Further information on undertakings and the calculation and imposition of non-compliance penalties will be included in the Guidance Document.

Some consultees queried whether wider use should be made of stop notices and enforcement undertakings under sections 46-50 of RESA. There is no requirement for any further provisions of RESA to be included in The 2018 Regulations and OPRED do not propose to incorporate stop notices or any further undertakings into the 2018 Regulations. OPRED's existing powers include a range of enforcement mechanisms, many of which have similarities to stop notices and enforcement undertakings. The introduction of these additional enforcement tools is therefore unnecessary.

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

We proposed that 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.

Of the 13 responses received, the majority were content with the proposed appeals process. Of those not content the comments received have been considered below;

Some respondents felt that 28 days to lodge an appeal was not sufficient time and that this should be extended. The 28 day deadline is the standard time limit to appeal to the First-Tier Tribunal and is mandated under the Tribunal Procedure Rules, which OPRED has no control over. The overriding objective of the Tribunal Procedure (First-tier Tribunal) (Regulatory Chamber) Rules 2009 is to deal with cases fairly and justly. The Rules provide extensive case management powers which can be used to extend the application time limit, or to expedite an application or appeal hearing where necessary in the interests of justice. It must balance this against the need to allow the parties a reasonable time to prepare their cases.

It was suggested that the 28 day deadline be included in the 2018 Regulations but taking into account the above OPRED feel that it is unnecessary to include a time limit within the 2018 Regulations and doing so could arguably mean that the Tribunal would lose its power to extend the time limit.

It was suggested that the time given to respond to a Notice of Intent be extended from 28 days. OPRED is content with this and will (where possible) extend the time given to 35 days. It is not possible under RESA to extend the period for Fixed Monetary Penalties. This will be included in the Guidance Document.

It was suggested that the grounds of appeal set out in regulations 9 and 16 both include the right of appeal “for any other reason”. OPRED is content with this and will include this amendment within the final version of the the 2018 Regulations.

Three respondents requested the creation of an internal appeal process through OPRED itself, before any appeal to the Tribunal. As discussed in Q1, OPRED will follow a published Governance Process, before any sanction is imposed. There is no additional recourse for any internal appeal over and above that already provided through the opportunity to submit representations to OPRED prior to a final decision on the imposition of a civil penalty being made. This process is consistent with that of civil sanctions regimes already in operation.

As discussed in Q1, there are questions about the burden of proof and OPRED are clear that the burden has not changed. This will be confirmed in the Guidance Document. This concern was repeated in relation to appeals, in particular if an appeal raises a question on whether or not there has been a breach of Regulations, where the burden of proof lies. OPRED are clear that the burden of proof lies with the regulator. However to make this clear, and ensure consistency with other civil sanction regimes, the 2018 Regulations will contain an explicit provision stating; “In any appeal where the commission of an offence is an issue requiring determination, the regulator must prove that offence according to the same burden and standard of proof as in a criminal prosecution”.

One respondent queried the cost of establishing the appeals procedure. OPRED consulted with the Ministry of Justice to arrive at the cost of establishing this.

Additional comments

General comments/observations were provided and included;

Where a civil penalty has been imposed and complied with there will be no subsequent criminal proceedings as set out in the 2018 Regulations. The comment was made that the converse is not set out in the Regulations. Both RESA and the 2018 Regulations make clear that a civil sanction cannot be imposed where a person would not, by reason of any defence, be liable for conviction. Procedural defences prevent multiple proceedings in relation to the same offence (subject to very narrow exceptions that are not likely to be relevant here). It will therefore not be possible for civil sanctions to be imposed where there has already been a criminal prosecution. The Enforcement Guidance and Guidance Document will reaffirm that where criminal proceedings are taken, regardless of the outcome, no civil penalty will be applied; there are no circumstances in which both a civil penalty and criminal proceedings can be applied.

With regards to any overlap between OPRED and the Offshore Safety Directive Regulator, there is no intention to impose civil sanctions in cases where an OPEP is included in a safety case. OPRED will liaise with HSE and provide further detail in the Guidance Document.

All civil penalties imposed will be published on the website. The details published will mirror those already published in respect of EU-ETS civil sanctions. Further detail will be given in the Guidance Document, which will be issued for consultation prior to publication.

OPRED recover fees for all investigations from operators regardless of the outcome of the investigation. That is the position now and will not change. There are two stages of the process, i) investigation and ii) enforcement. Investigations will continue as they do now and will not change. The outcome of that investigation is not relevant. Fees for investigations that result in civil sanctions will therefore follow the same approach as those of all other investigations. At present action taken in respect of formal enforcement is not chargeable under current Treasury policy. This will not change. OPRED has chosen not to take additional powers, available under RESA, to seek recovery of enforcement costs for civil sanctions. Therefore no additional fees will be incurred by industry for investigations as a result of the introduction of The 2018 Regulations.

Appeal costs will be dealt with by the Tribunal in the usual way. Therefore legal costs of the appeal (and only the appeal) will normally be recoverable by the successful party to that appeal.

The power to impose fixed and variable monetary penalties under The 2018 Regulations may be exercised only in relation to offences constituted by acts or omissions occurring on or after their commencement date. Therefore no current investigations will be subject to civil penalties under The 2018 Regulations.

OPRED were concerned to receive responses from several consultees which suggested that as a result of the Offshore Environmental Civil Sanctions Regulations 2018 coming into effect, elements of industry may take the decision to no longer self-report contraventions as required by legislation. OPRED do not consider these to be the actions of a responsible operator, or industry, and note that deliberate evasion of legal reporting requirements in order to evade possible sanction is likely to give rise to more serious, criminal, offences.

Government response

The following paragraphs outline our response to the consultation.

The government's usual practice is to prepare regulatory guidance after Regulations have been finalised. The Offshore Environmental Civil Sanctions Regulations 2018 are to be finalised and the intention is to lay them before Parliament at the end of March 2018, following which they will be subject to debate in both Houses of Parliament before they come into force. It is envisaged that they will come into force on the next common commencement date, likely to be 1 October 2018. The regulator will, formulate, publish and consult on guidance before any civil sanctions are imposed.

The Offshore Environmental Civil Sanctions Regulations 2018 Regulations take the form of a domestic Statutory Instrument, which will continue to apply after the UK exits the EU. Any future changes in the law would be subject to Parliamentary scrutiny.

Annex A: Full table of questions

No.	Question
1.	Do you have any comments on the proposal to introduce civil sanctions through the Offshore Environmental Civil Sanctions Regulations 2018?
2.	In these circumstances, 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?

Annex B: Organisations that responded

Apache North Sea Limited

British Rig Owners' Association

Chevron North Sea Limited

EnQuest Plc

Health and Safety Executive

Hurricane Energy Plc

International Association of Drilling Contractors North Sea Chapter

Nexen Petroleum UK Limited

Oil and Gas UK

Shell U.K. Limited

Spirit Energy

Two individuals also responded in a personal capacity.



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