



CONSULTATION ON THE GUIDANCE DOCUMENT FOR THE OFFSHORE ENVIRONMENTAL CIVIL SANCTIONS REGULATIONS 2018

November 2018

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

<https://www.gov.uk/government/consultations/the-offshore-environmental-civil-sanctions-regulations-2018-draft-guidance>

© 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 _____	6
Proposed Guidance Document for the Offshore Civil Sanctions Regulations 2018 _____	7
Summary of the Proposed Guidance Document _____	7
Determining Whether a Civil Sanction is Appropriate _____	8
Fixed Monetary Penalties _____	9
Variable Monetary Penalties _____	9
Variable Monetary Penalty Undertakings and Non-Compliance Penalties _____	10
Appeals _____	10
Next Steps _____	11
Annex A; Guidance Document _____	12
Annex B; Consultation Questions _____	13

General information

Purpose of this consultation

This consultation is seeking stakeholders' views on the proposed Guidance Document to accompany 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 entered into force on 01 October 2018.

Issued: 20 November 2018

Respond by: 18 December 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; Guidance Document for The Offshore Environmental Civil Sanctions Regulations 2018

Territorial extent:

The proposed Guidance Document 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).

The civil penalties in this proposed Guidance Document are distinct from the civil penalties available under the European Union Emissions Trading Scheme (EU ETS). Further information on offshore oil and gas regulation can be found in OPRED's Enforcement Policy. Guidance on the implementation of civil sanctions for other sectors and regions can be found elsewhere:

England and Wales

Environment Agency (EA)

Natural Resources Wales (NRW).

Scotland

The Scottish Environment Protection Agency (SEPA).

Exit from the European Union

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the EU. The United Kingdom will leave the EU on 29 March 2019, until then 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 Government has entered into negotiations with the Union on the terms of its withdrawal, and future relationship with, the Union. 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/offshore-environmental-civil-sanctions-regulations>

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-offshore-environmental-civil-sanctions-regulations-2018-draft-guidance>

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 2018 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 the proposed Guidance Document to accompany The Offshore Environmental Civil Sanctions Regulations 2018 (the 2018 Regulations) which will 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 2018 Regulations will enter into force on 01 October 2018 and OPRED will consider the imposition of a civil penalty for relevant offences committed on or after 01 November 2018.

The introduction of the 2018 Regulations do not create any additional offences or burdens for the offshore oil and gas industry. Rather, they will provide OPRED with a more flexible, proportionate and timely enforcement response in respect of breaches that already 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.

The 2018 Regulations will help to ensure that OPRED has the ability to provide sufficient deterrence against non-compliance and tackle the behaviour of those who continue to perform poorly or ignore their environmental responsibilities and are in line with the Government's commitment to move away from unnecessary criminal offences and shift to civil sanctions in accordance with the Macrory principles on regulatory enforcement. The new enforcement measure will help to prevent the non-compliance from becoming persistent and will seek to remove any short-term financial gain to companies arising from the non-compliance.

The UK Government is committed to ensuring environmental compliance and understands that the 2018 Regulations will allow OPRED to potentially impose significant, but proportionate, financial sanctions. OPRED have produced a detailed Guidance Document to ensure that those potentially affected by the introduction of civil sanctions under 2018 Regulations understand the processes OPRED will follow when applying these.

OPRED are committed to regularly reviewing how effectively we use our enforcement measures and to feed any learning back into our approach.

Structure of this Document

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

Proposed Guidance Document for The Offshore Environmental Civil Sanctions Regulations 2018

General Considerations

In March 2018 OPRED published the Government Response to the consultation into the introduction of the 2018 Regulations where we stated publicly that we would produce and consult on a Guidance Document to accompany the 2018 Regulations.

In addition to the statutory requirement to consult on and publish a Guidance Document, OPRED consider it fair and transparent for us to set out how we will approach the imposition of civil sanctions and acceptance of undertakings under the 2018 Regulations.

As the 2018 Regulations apply to offshore oil and gas installations only, this Guidance Document is only relevant to offshore oil and gas installations.

OPRED's aim is to ensure compliance with current environmental regulation for the benefit of both people and the environment. We will utilise our full range of enforcement options, where appropriate, to achieve this. OPRED adopt a firm but fair enforcement approach which is underpinned by the principles of proportionality, consistency, transparency, targeting of approach and accountability. These principles are fully explained in the proposed Guidance Document

Summary of the proposed Guidance Document

OPRED do not intend to change our enforcement approach with the introduction of civil sanctions under the 2018 Regulations and will continue to adopt a firm but fair approach to regulation. The general aims and principles which currently apply will continue to do so and are set out in OPRED's Enforcement Policy and in the proposed Guidance Document.

We will maintain the safeguards already in place when establishing liability in relation to the imposition of a proposed civil penalty. For example, decisions relating to the liability of the potential recipient of a sanction will be made by trained investigations officers with extensive knowledge of the criminal justice system and the associated legal and evidential requirements. These decisions will be subject to internal scrutiny by managers not directly involved in the investigation, and in some cases, to additional scrutiny by lawyers external to OPRED. As well as ensuring that liability has been established to the required legal standard (beyond reasonable doubt) this scrutiny will also ensure that the requirement of the Regulators Code have been followed and that the decision re liability is proportionate,

fair and consistent with decisions taken in relation to similar cases. These will be further enhanced by the additional safeguards relating to the imposition of a fixed or variable monetary penalty, all of which are set out in the proposed Guidance Document. Where a notice is served on a party, if they disagree with the finding of liability by OPRED, then they may appeal that decision to an independent Tribunal. All the above safeguards will ensure that the approach we take when establishing liability for a proposed civil sanction is balanced and fair.

Q1. Are you content with the safeguards in place for OPRED establishing liability for a proposed civil penalty?

Determining whether a civil sanction is appropriate

When we are satisfied that the evidential requirements have been met, OPRED will consider whether enforcement action is appropriate in the circumstances of the case. When determining whether the imposition of a civil sanction would be appropriate, OPRED will continue to have consideration for our key principles of proportionality, consistency, transparency, targeting of enforcement response and accountability as set out in the Guidance Document. OPRED will also undertake a public interest test taking into account many factors which will include, but not be limited to, the following; intent, foreseeability, environmental impact, nature of the offence, financial implications, previous history and attitude of the offender. These are all explained in detail within the Guidance Document. Only once we have considered all of the above will OPRED decide whether to impose a civil sanction.

Prior to imposing any sanction, OPRED will send a notice of intent to potential recipients, setting out the rationale behind our provisional decision that a civil sanction would be appropriate in this case. The potential recipient will have the opportunity to submit written representations to OPRED, setting out why they feel a sanction would not be appropriate, which OPRED will consider fully before coming to a final decision.

As with the decision establishing liability, the decision as to whether a civil sanction is appropriate will be subject to internal scrutiny by managers not directly involved in the investigation, and in some cases, to additional scrutiny by lawyers external to OPRED, before a final decision is made.

Q2. Are you content with OPRED's approach to determining whether a civil sanction is an appropriate enforcement response?

Fixed monetary penalties

There are three levels of fixed monetary penalties which OPRED may impose those being; £500, £1,000 and £2,500. Fixed monetary penalties are not available for all offences. The offences for which a fixed monetary penalty can be imposed are set out in the Guidance Document. The amount of the penalty which may be imposed in relation to a particular offence, is fixed and is detailed within Annex A of the Guidance Document There are also instances when a fixed monetary penalty is not appropriate, and these are set out in Annex A of the Guidance Document.

Where OPRED is satisfied, beyond reasonable doubt, that an offence has been committed, a notice of intent will be issued setting out the grounds for imposing the civil penalty and the amount. An operator can discharge the liability by paying two-thirds of the stated amount within 28 days. Alternatively, within 28 days of receipt of the notice written representations can be made as to why the sanction should not be imposed.

As soon as practicable, following the expiry of the 28 days from the date the notice of intent was received, OPRED will decide whether to impose the sanction, taking account of any representations submitted. 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.

Q3. Are you content with the level of detail on the process for imposing fixed monetary penalties contained within the Guidance Document?

Variable monetary penalties

Variable monetary penalties will be subject to a £50,000 maximum limit with no minimum limit. The starting point for a variable monetary penalty is £5,000, and when deciding on the final amount OPRED will take into account all the circumstances of the offence, including whether there are any aggravating or mitigating factors. These have been included in the Guidance Document

Prior to issuing a variable monetary penalty, OPRED would issue a notice of intent, notifying the recipient 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.

As soon as practicable after the expiry of the period of 28 days from receipt of the notice of intent, OPRED will decide, taking those representations into account, whether to issue the sanction as initially proposed, reduce the amount or not issue it at 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.

Q4. Are you content with the level of detail on the process for calculating and imposing variable monetary penalties contained within the Guidance Document?

Variable monetary penalty undertakings and non-compliance penalties

In response to OPRED issuing a VMP notice of intent, an offer of a variable monetary penalty undertaking can be made. This sets out what action the recipient of the proposed VMP will take (including the payment of a sum of money) to benefit any person affected by the offence. The undertaking is designed to make amends for non-compliance and its effects and to prevent recurrence. On receipt of an undertaking offer, OPRED will decide whether to accept the offer, and if it does, it will take into account the undertaking when deciding whether to impose a VMP; to impose a VMP of the amount stated in the notice of intent; or to impose a VMP for a lower amount. Full details of the process to follow and OPRED's decision making process in deciding whether to accept an offer of an undertaking is contained within the Guidance Document.

If an accepted undertaking is not complied with, either fully or partly, OPRED can issue a non-compliance penalty up to a maximum of £50,000. Details relating to the imposition and calculation of non-compliance penalties are included in the Guidance Document.

Q5. Are you content that the Guidance Document contains enough information on variable monetary penalty undertakings and non-compliance penalties?

Appeals

The recipient of a civil sanction (fixed, variable or non-compliance penalty) will be able to appeal against it, within 28 days of receipt, to the First Tier Tribunal (General Regulatory Chamber). The grounds for appeal are that the decision 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) or for any other reason.

Where an undertaking is not accepted by OPRED there is no right of appeal.

Q6. Are you content that the Guidance Document contains enough information regarding the right to appeal?

Q7. Do you have any other comments on the content of the Guidance Document for the Offshore Environmental Civil Sanctions Regulations 2018?

Next steps

The consultation runs for 4 weeks. The consultation will close 18 December 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. 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 Consultation Principles. These 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:

<https://www.gov.uk/government/consultations/the-offshore-environmental-civil-sanctions-regulations-2018-draft-guidance>

Annex A: Guidance Document

The Offshore Environmental Civil Sanctions Regulations 2018 – Draft Guidance is available on the consultation page:

<https://www.gov.uk/government/consultations/the-offshore-environmental-civil-sanctions-regulations-2018-draft-guidance>

Annex B – Consultation Questions

Consultation Questions

1.	Are you content with the safeguards in place for OPRED establishing liability for a proposed civil penalty?
2.	Are you content with OPRED's approach to determining whether a civil sanction is an appropriate enforcement response?
3.	Are you content with the level of detail on the process for imposing fixed monetary penalties contained within the Guidance Document?
4.	Are you content with the level of detail on the process for calculating and imposing variable monetary penalties contained within the Guidance Document?
5.	Are you content that the Guidance Document contains enough information on variable monetary penalty undertakings and non-compliance penalties?
6.	Are you content that the Guidance Document contains enough information regarding the right to appeal?
7.	Do you have any other comments on the content of the Guidance Document for the Offshore Environmental Civil Sanctions Regulations 2018?

© Crown copyright 2018

Department for Business, Energy & Industrial Strategy

www.gov.uk/beis