

Draft Regulations laid before Parliament under section 2(8) of the Pollution Prevention and Control Act 1999 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2001 No.

ENVIRONMENTAL PROTECTION

**The Offshore Combustion Installations (Prevention
and Control of Pollution) Regulations 2001**

Made - - - - *2001*

Coming into force in accordance with regulation 1

Whereas the Secretary of State has consulted the persons required to be consulted by section 2(4) of the Pollution Prevention and Control Act 1999(1);

And whereas a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament pursuant to sections 2(8) and 2(9) of that Act;

Now, therefore, the Secretary of State in exercise of the powers conferred on him by sections 2 and 7(9) of that Act hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“address” in relation to electronic communication, includes any number or address used for the purposes of such communications;

“best available techniques” means, having regard to the matters set out in Schedule 1 to these Regulations, the most effective and advanced stage in the development of combustion installations and their methods of operation which can be practically applied on platforms and which allows the setting of emission limit values to reduce or, where possible, eliminate emissions into, and effects on, the environment as a whole from the operation of such installations, and for the purposes of this definition—

- (a) “available techniques” means those techniques which can be implemented on platforms under economically and technically viable conditions, balancing the costs of their implementation against the benefits to the environment;
- (b) “best” means, in relation to techniques, the most effective in achieving a high general level of protection of the environment as a whole; and
- (c) “techniques” includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;

“business day” means any day except a Saturday, Sunday, Christmas Day, Good Friday or a day which is a Bank Holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971(2);

“change in operation” means a change in the nature or functioning, or an extension, of a combustion installation which may have consequences for the environment;

“combustion installation” means any technical apparatus in which fuels are oxidised to use the heat thus generated and includes gas turbines and diesel and petrol-fired engines and any equipment on a platform connected to such apparatus which could have an effect on emissions from that apparatus or could otherwise give rise to pollution but does not include any apparatus the main use of which is the disposal of gas by flaring or incineration;

“EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(3);

“electronic communication” means the same as in the Electronic Communications Act 2000(4);

“emission value limit” in relation to a polluting substance includes any limit expressed in terms of the emission of a mass of that substance over any given period;

“environmental statement” means an environmental statement within the meaning of regulation 2(1) of the Offshore Petroleum and Pipe-lines (Assessment of Environmental Effects) Regulations 1998(5) or regulation 3(1) of the Offshore Petroleum and Pipe-lines (Assessment of Environmental Effects) Regulations 1999(6);

“existing qualifying offshore combustion installation” means any qualifying offshore combustion installation which—

- (a) was in operation on any platform before 30th October 1999; or
- (b) is in, or was put into, operation before 1st November 2000 in accordance with a consent granted by the Secretary of State pursuant to any licence granted or having effect as if granted under the provisions of the Petroleum Act 1998(7), the application for such consent having been made before 30th October 1999;

“the Gazettes” means the London, Edinburgh and Belfast Gazettes;

“medium” means the air, water or, as the case may be, land or the seabed (including its subsoil);

“notice” means notice in writing or by such means of electronic communication as the Secretary of State may decide;

“operator” means any person who operates a qualifying offshore combustion installation;

(2) 1971 c. 80.

(3) Cm 2703 and Cm 2183.

(4) 2000 c. 7.

(5) S.I. 1998/968.

(6) S.I. 1999/360. These latter Regulations revoke S.I. 1998/968 although S.I. 1998/968 remains in force for certain transitional cases (see regulation 2 of S.I. 1999/360).

(7) 1998 c. 17.

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

“platform” means any fixed or floating structure situated in the relevant area which—

- (a) is used for the purposes of or in connection with the production of petroleum; and
- (b) in the case of a floating structure, is maintained on a station during the course of production,

but does not include any structure where the principal purpose of the use of the structure is the establishment of the existence of petroleum or the appraisal of its characteristics, quality or quantity or the characteristics or extent of any reservoir in which it occurs;

“pollution” includes in particular the discharge or emission into the environment of those substances listed in Schedule 2 to these Regulations;

“prescribed date” means the date after the day on which the period of five months commencing on the day on which these Regulations come into force expires, save that where an application for a permit is made under regulation 5 before that date it means—

- (a) the date on which the permit is granted whether in pursuance of the application or, on an appeal under regulation 17, of an order of the court; or
- (b) where a permit is refused and the applicant appeals under regulation 17 the date on which the court upholds that refusal; or
- (c) the date after the day on which the period provided for under regulation 17(6) expires, as the case may be;

“qualifying offshore combustion installation” means any combustion installation (other than one which has been rendered inoperable by being wholly or partially dismantled) which—

- (a) is permanently installed on a platform; and
- (b) on its own or together with any other combustion installation installed on the same site (excluding any installation that has been rendered inoperable by complete or partial dismantling) has a rated thermal input exceeding 50 megawatts;

“relevant area” means the area (together with places above and below it) comprising—

- (a) those parts of the sea adjacent to England and Wales from the low water mark to the landward baseline of the United Kingdom territorial sea;
- (b) the United Kingdom territorial sea apart from those areas comprised in Scottish controlled waters; and
- (c) those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964⁽⁸⁾;

“relevant environmental statement” means in relation to a qualifying offshore combustion installation, an environmental statement which contains information regarding the effects on the environment of the operation of the installation in question;

“Scottish controlled waters” means any waters which are controlled waters within the meaning of section 30A(1) of the Control of Pollution Act 1974⁽⁹⁾; and

“substantial change” means a change in operation which may have significant negative effects on people or the environment.

⁽⁸⁾ 1964 c. 29.

⁽⁹⁾ 1974 c. 40; the provisions of section 30A(1) were inserted into the 1974 Act by section 169 of, and Schedule 23 to, the Water Act 1989 (1989 c. 15).

Requirement for permit to operate combustion installation

3.—(1) Subject to paragraph (2) below, no person shall operate a qualifying offshore combustion installation after the prescribed date otherwise than in accordance with the terms of, and conditions attached to, a permit granted in accordance with these Regulations.

(2) Paragraph (1) above shall not apply to the operation of an existing qualifying offshore combustion installation before 30th October 2007 except where that installation is the subject of a change which in the opinion of the Secretary of State is a substantial change.

Grant of permit; contents of permit; publication of grant of permit

4.—(1) Subject to paragraph (3) below, where the Secretary of State receives an application for a permit in accordance with regulation 5 below, he may grant that application provided that he—

- (a) has taken into account any relevant environmental statement and any representations regarding the application made by the public or made by any EEA State affected by the operation of the combustion installation; and
- (b) is satisfied that there has been substantial compliance with the requirements of regulation 7 below.

(2) Subject to paragraphs (3) and (4) below, the Secretary of State shall attach to every permit granted by him pursuant to paragraph (1) above conditions which in his opinion are framed in such a way as to ensure that—

- (a) all appropriate measures are taken to prevent pollution, in particular through application of best available techniques;
- (b) no significant pollution is caused;
- (c) where possible the production of non-gaseous waste is avoided by—
 - (i) the use of clean technologies more sparing in their use of natural resources; or
 - (ii) the use of products designed to reduce the amount or harmfulness of waste,and that where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of in such a way as to avoid or reduce any impact on the environment;
- (d) subject to the attainment of the objective set out in sub-paragraph (a) above, energy is used efficiently;
- (e) necessary measures are taken to prevent accidents affecting the environment or where they occur to limit their consequences in relation to the environment;
- (f) necessary measures are taken upon the final cessation of use of the combustion installation to avoid any pollution risk and to decommission and remove the installation;
- (g) taking into account the technical characteristics of the installation concerned, its geographical location, local environmental conditions and best available techniques and having regard to the potential for the transfer of the pollution in question from one medium to another, there are controls on the emission of pollutants likely to be emitted from the combustion installation in significant quantities in the form of—
 - (i) emission value limits for such pollutants;
 - (ii) where the Secretary of State considers this to be more appropriate, equivalent parameters or technical measures; or
 - (iii) a combination of emission value limits and equivalent parameters and technical measures;

without in any case prescribing the use of any technique or specific technology;

- (h) where necessary, appropriate requirements ensuring protection of the soil and ground water and measures concerning waste generated by the installation;
- (i) there are suitable release monitoring requirements relating to the release of pollutants, specifying measurement methodology and frequency, evaluation procedure and an obligation to supply the Secretary of State with data required for checking compliance with the permit;
- (j) there are appropriate provisions to minimise long-distance or transboundary pollution; and
- (k) where in the opinion of the Secretary of State there is a risk to the environment from these, there are measures relating to conditions other than normal operating conditions including start-up, leaks, malfunctions, momentary stoppages and definitive cessation of operations.

(3) Paragraph (2) above shall not apply to the extent that the Secretary of State is satisfied that the matters referred to in it are adequately dealt with by or under the provisions of any other enactment.

(4) Where an application for a permit includes details of any plan designed to reduce pollution from the combustion installation in question, the Secretary of State may include derogations from any condition imposed in compliance with paragraph (2)(c) above provided that such derogations are limited to the period of six months following the grant of the permit.

(5) In addition to any conditions required to be attached to any permit by virtue of paragraph (2) above, the Secretary of State may attach to a permit such other conditions as he thinks fit.

(6) Where the Secretary of State grants a permit he shall send it to the applicant.

(7) Where the Secretary of State refuses an application for the grant of a permit he shall give notice of such refusal to the applicant.

(8) The Secretary of State shall publish in the Gazettes notice of the granting of any permit.

Contents of application for permit

5.—(1) An application for the grant of a permit under regulation 4 above shall be in writing and shall contain a description of—

- (a) the installation and its activities;
- (b) the materials, substances and energy used in or generated by the installation;
- (c) the sources of emissions from the installation;
- (d) the conditions of the site of the installation;
- (e) the nature and quantities of foreseeable emissions from the installation into each medium as well as identification of significant effects of the emissions on the environment;
- (f) the proposed technology and other techniques for preventing or, where this is not possible, reducing emissions from the installation;
- (g) where necessary, measures for the prevention and recovery of waste generated by the installation;
- (h) measures planned to deal with the matters referred to in regulation 4(2) above; and
- (i) measures planned to monitor emissions into the environment.

(2) An application for a permit shall also include a non-technical summary of the details referred to in paragraph (1) above.

(3) Where any of the information referred to in paragraph (1) above is contained in a relevant environmental statement an application for a permit need not specify that information provided that it is accompanied by a copy of the environmental statement.

Fees

6. Every application for a permit shall be accompanied by a fee of £2,000.

Publicity regarding application for permit

7.—(1) Where the Secretary of State receives an application for a permit accompanied by the fee prescribed by regulation 6 above he shall publish a notice in the Gazettes which—

- (a) states that a copy of the application may be obtained on request;
- (b) specifies an address from which such a copy may be obtained;
- (c) specifies a date not less than 4 weeks after the date of publication or (if the notice is not published on the same day in each Gazette) last publication of the notice by which persons may make representations regarding the application; and
- (d) specifies an address to which such representations are to be sent.

(2) Subject to paragraph (5) below, where the Secretary of State receives a request pursuant to paragraph (1) above in relation to an application for a permit prior to the granting of that permit, he shall forthwith supply to the person requesting it a copy of the application in question.

(3) Subject to paragraph (5) below, where the Secretary of State is aware that the operation of an offshore combustion installation is likely to have a significant effect on the environment of an EEA State, or where that State so requests, the Secretary of State shall forward a copy of the application to the State in question as soon as possible and no later than the date it is made available to the public (except in a case where a request is made by the EEA State after that date).

(4) Where the Secretary of State has supplied a copy of an application for a permit pursuant to paragraph (3) above, he shall indicate to the EEA State in question the date on which the decision in relation to the granting of the permit is likely to be made and an address to which any representations should be sent.

(5) Subject to paragraph (6) below, nothing in this regulation shall require the disclosure of any information which is by virtue of the law of any part of the United Kingdom subject to an obligation of confidentiality and—

- (a) which relates to an individual; or
- (b) the disclosure of which might adversely affect the interests in a business of any person carrying on that business.

(6) Nothing in paragraph (5) above shall prevent the disclosure of other information included with information to which that paragraph applies where that other information can be separated from the information to which that paragraph applies.

Variation of conditions of permit on application of operator

8.—(1) An operator shall apply in writing for a variation of the terms and conditions relating to a qualifying offshore combustion installation where he proposes to make a change in the operation of that installation and the operation of the installation after the making of that change would no longer be in accordance with the terms and conditions relating to that permit.

(2) Where the Secretary of State determines that the change planned by the operator would not be a substantial change he may grant the application and vary the terms and conditions of the permit accordingly.

(3) Where the Secretary of State grants an application pursuant to paragraph (2) above he may make the granting of the application subject to such further conditions as he shall think fit.

(4) Where the Secretary of State determines that the change would be a substantial change he shall refuse the application and serve a notice in writing on the applicant which states that—

(a) the proposed change would be in the opinion of the Secretary of State a substantial change; and

(b) the application is refused.

(5) Where an application made pursuant to paragraph (1) above is granted, the Secretary of State shall issue to the applicant a revised permit.

Reconsideration and updating of permit conditions

9.—(1) The Secretary of State shall at such intervals as he shall think fit review the conditions attached to every permit granted under these Regulations.

(2) The Secretary of State shall review the conditions of a permit where in his opinion—

(a) the pollution caused by the installation is of such significance that all or any emission limit values of the permit need to be revised;

(b) substantial changes in best available techniques make it possible to reduce emissions significantly without incurring excessive costs; or

(c) the operational safety of the process or activity requires other techniques to be used.

(3) Where the Secretary of State considers that the conditions of a permit should be revised, he shall not less than 14 days prior to the day on which such notice states that the revised permit will have effect (“the relevant day”), give notice to the operator of the installation concerned of his intention to issue the operator with a revised permit and of its terms.

(4) The operator shall be entitled to make representations, either in writing or by such electronic means as the Secretary of State may determine, as to whether such a revised permit should be issued and as to its terms.

(5) If no representations are received prior to the relevant day, the revised permit shall be issued and shall come into effect on that day.

(6) If representations are received prior to the relevant day the Secretary of State shall consider them in determining whether the revised notice should be amended, withdrawn or issued as originally notified under paragraph (3) above and may determine that the revised notice should come into effect on a later day than the relevant day.

Revocation, surrender and assignment of permit

10.—(1) The Secretary of State may by notice revoke a permit granted pursuant to these Regulations where he is of the opinion that the application for the permit in question contained any information or statement which was false or misleading in a material particular or where the operator in question has been guilty of a breach of any condition attached to the permit.

(2) An operator may by notice surrender a permit granted to him.

(3) A permit may with the consent of the Secretary of State be assigned to another person but where the Secretary of State consents to such assignment it shall not take effect until he has issued to the person to whom the permit is to be assigned a permit in that person’s name.

Register to be kept by the Secretary of State

11.—(1) The Secretary of State shall keep a register at a place in the United Kingdom in which he shall cause to be entered—

(a) the provisions of any permit granted under these Regulations; and

(b) the results of the monitoring of any releases required to be sent to him under the conditions of any permit.

(2) The register referred to in paragraph (1) above shall be open to public inspection on business days between the hours of 10 a.m. and 4 p.m.

Provision of information to the Secretary of State

12.—(1) The operator shall forthwith provide to the Secretary of State details of any incident or accident involving a qualifying offshore combustion installation where there has been a significant negative effect on the environment.

(2) The operator shall forthwith provide to the Secretary of State details of any planned changes in the nature or functioning or any planned extension of a qualifying offshore combustion installation which may have consequences for the environment.

(3) For the purposes of the discharge by the Secretary of State of any obligation of the United Kingdom under Council Directive 96/61 of September 24th 1996⁽¹⁰⁾ concerning Integrated Pollution Prevention and Control, the Secretary of State may, by notice served on any person, require that person to furnish such information as may be specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(4) The information which a person may be required to furnish by a notice served under paragraph (3) above includes information on emissions which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to compile for the purpose of complying with the notice.

Appointment of inspectors

13.—(1) The Secretary of State may, if he thinks fit, appoint in writing any person as an inspector to report to him—

- (a) whether the requirements, restrictions or prohibitions imposed by or under these Regulations have been complied with; and
- (b) as to the condition or operation of, or discharges from, any qualifying offshore combustion installation.

(2) An inspector appointed under paragraph (1) above may for any of the purposes mentioned in that paragraph—

- (a) at any reasonable time (or, in a situation which in his opinion may give rise to a risk of significant pollution to the environment as a result of the operation of any qualifying offshore combustion installation, at any time) board any platform;
- (b) on boarding a platform take with him any other person authorised by the Secretary of State for the purposes mentioned in paragraph (1) above and any equipment or materials that he requires;
- (c) make such examination and investigation as he considers necessary (for which purpose he may install or maintain monitoring or other apparatus on a platform);
- (d) give a direction requiring that any part of the platform be left undisturbed (whether generally or in particular respects) for so long as reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c) above;
- (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c) above;
- (f) take samples of any articles or substances found on the platform and of the atmosphere or any land, seabed (including the subsoil thereof) or water in the vicinity of the platform;

⁽¹⁰⁾ OJNo. 257, 10.10.96, p. 26.

- (g) in the case of any article or substance which he finds on the platform and which appears to him to have caused or to be likely to cause significant pollution, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless, in the circumstances of the case, that is necessary);
- (h) may in the case of any such article or substance as is mentioned in sub-paragraph (g) above, take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it and do to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before his examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
- (i) may require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under sub-paragraph (c) above—
 - (i) to attend at a place and time specified by the inspector;
 - (ii) to answer (in the absence of any person other than persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask, and
 - (iii) to sign a declaration of the truth of his answers;
- (j) may require the production of, and inspect and take copies of or of any entry in—
 - (i) any records which by virtue of any provision of any permit granted under these Regulations are required to be kept;
 - (ii) any records which he considers it necessary to see for the purposes of any examination or investigation under sub-paragraph (c) above; and
- (k) may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this regulation.

(3) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) above shall be admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings, or in Scotland against that person in criminal proceedings.

(4) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure or discovery in an action in the High Court or the High Court in Northern Ireland or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

Enforcement notices

14.—(1) If the Secretary of State is of the opinion that the operator of an installation has contravened or is contravening any condition of his permit, or is likely to contravene any such condition, the Secretary of State may serve on him a notice (“an enforcement notice”) which—

- (a) states that the Secretary of State is of such an opinion;
- (b) specifies the matters which constitute, constituted or, as the case may be, are likely to constitute the contravention;
- (c) specifies the steps that must be taken to remedy or, as the case may be, prevent the contravention; and
- (d) specify the period within which those steps must be taken.

(2) The steps that may be specified under paragraph (1)(c) above, in addition to steps that must be taken to remedy or prevent any contravention, may include steps that must be taken to remedy any pollution caused by a contravention.

(3) Where the Secretary of State serves an enforcement notice on an operator it shall be the duty of the operator to comply with its terms unless the permit has been revoked or surrendered.

(4) The Secretary of State may by notice revoke an enforcement notice.

(5) The service of an enforcement notice shall be without prejudice to the exercise of any other power under any other provision of these Regulations.

Prohibition notices

15.—(1) If the Secretary of State is of the opinion that the operation of a qualifying offshore combustion installation involves an imminent serious risk of pollution, the Secretary of State may serve a notice (“a prohibition notice”) on the operator of the installation.

(2) A prohibition notice may be served whether or not the manner of operating the combustion installation in question contravenes a condition of the permit and may relate to any aspects of the operation of the combustion installation, whether regulated by the conditions of the permit or not.

(3) A prohibition notice shall—

- (a) state that the Secretary of State is of the opinion mentioned in paragraph (1) above;
- (b) specify the risk involved in the operation of the installation;
- (c) specify the steps that must be taken to remove it and the period within which they must be taken; and
- (d) direct that the permit shall, until the notice is withdrawn, wholly or to the extent specified in the notice, cease to have effect to permit the operation of the installation,

and where the direction applies to part only of the operation of the installation it may impose conditions to be observed in carrying on the part which is authorised to be carried on.

(4) The Secretary of State may by notice withdraw a prohibition notice at any time and shall withdraw a notice when he is satisfied that the steps required by the notice have been taken.

(5) It shall be the duty of the person to whom the prohibition notice is addressed to comply with its terms save to the extent that it is withdrawn wholly or in part.

(6) The service of a prohibition notice shall be without prejudice to the exercise by any person of any power under any other provision of these Regulations.

Power of Secretary of State to take action

16.—(1) Where a person to whom an enforcement notice or a prohibition notice is addressed has failed to take the action required by it within such time as may be specified in it or, in default of any time being specified, within a reasonable time of service of that notice, and such a notice has not been withdrawn, the Secretary of State may himself undertake any action required and the cost of so doing shall be recoverable from the person on whom the notice was served.

(2) The person to whom such a notice as is referred to in paragraph (1) above has been addressed shall afford such assistance as the Secretary of State may reasonably require for the purpose of facilitating the exercise of any powers conferred on the Secretary of State by that paragraph.

(3) The exercise by the Secretary of State of any power conferred on him by paragraph (1) above shall be without prejudice to any consequences that may arise in respect of any non-compliance with an enforcement notice or a prohibition notice.

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

17.—(1) Subject to paragraph (6) below, any applicant for a permit or any operator aggrieved by a decision of the Secretary of State made under these Regulations may appeal to the court.

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

- (a) in respect of a decision relating to the operation of an offshore combustion installation in the English area, the High Court;
- (b) in respect of a decision relating to the operation of an offshore combustion installation in the Scottish area (excluding Scottish controlled waters), the Court of Session; or
- (c) in respect of a decision relating to the operation of an offshore combustion installation in the Northern Irish area, the High Court in Northern Ireland.

(3) In this regulation the expressions “the English area”, “the Scottish area” and “the Northern Irish Area” shall have the same meaning as in the Civil Jurisdiction (Offshore Activities) Order 1987⁽¹¹⁾.

(4) Where the combustion installation is situated in more than one of the areas referred to in paragraphs (2) and (3) above, any of the courts having jurisdiction in those areas shall have jurisdiction in relation to the decision in question.

(5) Unless the court otherwise orders, any decision of the Secretary of State which is the subject of an appeal under paragraph (1) above shall remain in force pending the final disposal of that appeal.

(6) An appeal under this regulation shall be made within 28 days of written notification of the decision in question.

Offences

18.—(1) Subject to paragraph (2) below, a person is guilty of an offence if he—

- (a) operates a combustion installation without a permit;
- (b) operates a combustion installation in breach of the terms of any condition attached to any permit;
- (c) fails to comply with the terms of an enforcement notice or a prohibition notice;
- (d) fails to supply any information required to be supplied by virtue of regulation 12 above, or by virtue of a notice served thereunder;
- (e) fails to supply any information required to be supplied by virtue of the terms of any permit granted under these Regulations;
- (f) knowingly or recklessly makes a statement which he knows to be false or misleading in a material particular where such a statement—
 - (i) is made in connection with, or for the purposes of, any application for a permit or the variation of a permit; or
 - (ii) is made for the purposes of satisfying any requirement under these Regulations for the supply of information to the Secretary of State or an inspector appointed pursuant to regulation 13(1) above;
- (g) wilfully obstructs an inspector appointed under regulation 13(1) above; or
- (h) without reasonable excuse fails to comply with an obligation imposed in pursuance of regulation 13(2) above or prevents another person from complying with such a requirement.

⁽¹¹⁾ S.I. 1987/2197.

(2) It shall be a defence to a charge under paragraph (1)(b) or (1)(c) above if the person charged with an offence shows that the contravention—

- (a) arose as a result of something which could not have been reasonably prevented by him; or
- (b) was due to something done as a matter of urgency for the purposes of securing the safety of any person.

(3) A person guilty of an offence under this section shall on summary conviction be liable to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(4) Where an offence under this regulation by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, paragraph (4) above shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

(7) Proceedings for an offence under this regulation may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom.

(8) Section 3 of the Territorial Waters Jurisdiction Act 1878 (restriction on prosecutions)⁽¹²⁾ shall not apply to any proceedings for an offence under this regulation.

Service of notices

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

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

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

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

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

- (a) in the case of a body corporate or their secretary or clerk, the address of the registered office or principal office of the body corporate;
- (b) in the case of an unincorporated association (other than a partnership) or their secretary or clerk, the address of the principal office of the association; and

(12) 1878 41 & 42 Vict. c. 73.

(c) in the case of a partnership (including a Scottish partnership) or a person having control or management of the partnership business, the address of the principal office of the partnership,
and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be its principal office within the United Kingdom.

2001

Department of Trade and Industry

SCHEDULE 1

Regulation 2

MATTERS TO BE TAKEN INTO ACCOUNT WHEN DETERMINING BEST AVAILABLE TECHNIQUES BEARING IN MIND THE LIKELY COSTS AND BENEFITS OF A MEASURE AND THE PRINCIPLES OF PRECAUTION AND PREVENTION

1. The use of low waste technology;
2. the use of less hazardous substances;
3. the furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate;
4. comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;
5. technological advances and changes in scientific knowledge and understanding;
6. the nature, effects and quantity of emissions concerned;
7. the commissioning dates for new or existing installations;
8. the length of time needed to introduce the best available technique;
9. the consumption and nature of raw materials (including water) used in the process and their energy efficiency;
10. the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it;
11. the need to prevent accidents and to minimise the consequences for the environment; and
12. the information published by the Commission of the European Communities pursuant to Article 16(2) of Council Directive 96/61/EC of 24th September 1996 concerning integrated pollution prevention and control(13) or by international organisations.

SCHEDULE 2

Regulation 2

MAIN POLLUTING SUBSTANCES

SUBSTANCES AFFECTING AIR

1. Sulphur dioxide and other sulphur compounds;
2. oxides of nitrogen and other nitrogen compounds;
3. carbon monoxide;
4. volatile organic compounds (including methane);
5. metals and their compounds;
6. dust;
7. asbestos (suspended particulates, fibres);
8. chlorine and its compounds;
9. fluorine and its compounds;

(13) OJ No. L257, 10.10.96, p. 26.

10. arsenic and its compounds;
11. cyanides; and
12. substances and preparations which are capable of passing through the air and which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction.

SUBSTANCES AFFECTING WATER

1. Organohalogen compounds and substances which may form such compounds in the aquatic environment;
2. organophosphorus compounds;
3. organotin compounds;
4. substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction in or via the aquatic environment;
5. persistent hydrocarbons and persistent bioaccumulable organic toxic substances;
6. cyanides;
7. metals and their compounds;
8. arsenic and its compounds;
9. biocides;
10. materials in suspension;
11. substances which contribute to eutrophication (in particular, nitrates and phosphates); and
12. substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters including Biological Oxygen Demand or Chemical Oxygen Demand).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2 of the Pollution Prevention and Control Act 1999. They establish a pollution control regime for the purpose of implementing the Integrated Pollution Prevention and Control Directive (Council Directive 96/61 EC) in relation to offshore qualifying combustion installations (defined in regulation 2). Regulations have already been made (the Pollution Prevention and Control Regulations (England & Wales) 2000, S.I.2000/1973) which implement the Directive in relation to activities carried out onshore as referred to in those Regulations.

The Regulations apply in relation to the sea adjacent to England and Wales, to the United Kingdom territorial sea apart from those areas comprised in Scottish controlled waters and to those areas of sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964.

Regulation 2 (and Schedule 1 to the Regulations) deals with definitions. Regulation 3 deals with the need for a permit in order to operate a combustion installation covered by the Regulations; regulations 4 to 9 deal with the procedure for granting permits, the content of permits, the publication

of the grant of a permit and also make provision for the variation, reconsideration and updating of permit conditions. Provision is made for the revocation, surrender and assignment of permits by regulation 10. Under regulation 11 the Secretary of State is required to maintain a public register of the provisions of permits and of certain information required to be supplied to him under those provisions. Regulation 12 imposes obligations upon operators of combustion installations to provide information to the Secretary of State. Regulations 13 to 16 deal with enforcement and give the Secretary of State power to appoint inspectors, to serve enforcement and prohibition notices and to take further action in the event of a failure to comply with such a notice.

Regulation 17 gives a right to appeal to the court against the Secretary of State's decisions under the Regulations. Regulation 18 creates offences. Regulation 19 deals with the service of notices and other documents.

Coming into force and transitional provisions

These Regulations come into force on . After the prescribed date (regulation 2) a permit will be required in order to operate an offshore combustion installation with an input of more than 50 megawatts (regulation 3). An existing qualifying combustion installation (defined in regulation 2) will not require a permit until 30th October 2007 unless, prior to that date, it is subject to a change which is a substantial change in the opinion of the Secretary of State (regulation 3(2)).

A regulatory impact assessment has been prepared and copies can be obtained from Oil and Gas Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET (Tel. 020 7215 5151).