



Energy Act 2023

2023 CHAPTER 52

PART 13

OFFSHORE WIND ELECTRICITY GENERATION, OIL AND GAS

CHAPTER 2

OIL AND GAS

Environmental protection

296 Arrangements for responding to marine oil pollution

- (1) The Secretary of State may, by regulations, make provision—
 - (a) requiring a person responsible for infrastructure or a place to which [subsection \(2\)](#) applies to have an emergency plan setting out arrangements for responding to incidents which cause, or may cause, marine oil pollution,
 - (b) in connection with that requirement, and
 - (c) about the reporting of such incidents.
- (2) [This subsection](#) applies to—
 - (a) an offshore installation, or an offshore well, that is used for or in connection with—
 - (i) offshore oil and gas operations, or
 - (ii) offshore production or storage of gas;
 - (b) offshore infrastructure, including pipelines, connected to such an installation or well;
 - (c) a harbour;
 - (d) a facility, that is not offshore, for handling or storing oil or gas;

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- (e) infrastructure or a place described in any of paragraphs (a) to (d) that is being decommissioned or has been decommissioned or abandoned.
- (3) Regulations under subsection (1) may, in particular, make provision in connection with the implementation, maintenance and review of an emergency plan, including provision requiring—
- (a) a person to refrain from carrying out activities that may cause marine oil pollution unless and until an emergency plan is in place;
 - (b) an emergency plan to be reviewed in accordance with the regulations;
 - (c) the amendment or replacement of an emergency plan in circumstances specified in the regulations;
 - (d) a person to ensure readiness to carry out an emergency plan;
 - (e) a person to carry out an emergency plan.
- (4) Regulations under subsection (1) about the reporting of incidents may, in particular—
- (a) set out—
 - (i) circumstances in which a report must be made;
 - (ii) by whom a report must be made;
 - (iii) to whom a report must be made;
 - (b) make provision as to the content and form of a report and the time by which a report must be made.
- (5) The Secretary of State may, by regulations, make provision enabling the inspection of infrastructure or a place to which subsection (2) applies.
- (6) Regulations under subsection (1) or (5) may, in particular, make provision—
- (a) about the meaning which any expression used in subsection (1), (2), (3), (4) or (5) is to have for the purposes of regulations under subsection (1) or (5);
 - (b) conferring functions on any person;
 - (c) providing for the charging of fees (but see subsection (7));
 - (d) authorising or requiring, or restricting or prohibiting, the supply or keeping of information (including provision authorising or requiring the supply or keeping of information that would not otherwise be permitted);
 - (e) creating criminal offences or impose civil penalties (but see subsection (8));
 - (f) for the purpose of securing compliance with requirements imposed by or under regulations under subsection (1) or (5).
- (7) Regulations under subsection (1) or (5) which provide for a fee to be charged in respect of a person performing a function or doing any other thing must secure that, taking one year with another, the income from the fees does not exceed the cost of performing the function or doing the thing.
- (8) Regulations under subsection (1) or (5) may not provide—
- (a) for a criminal offence to be punishable with imprisonment;
 - (b) for a civil penalty to exceed £50,000.
- (9) Where regulations under subsection (1) or (5) provide for the imposition of a civil penalty, they must also include provision for a right of appeal against the imposition of the penalty.
- (10) Regulations under subsection (1) or (5) containing any of the following (with or without other provision) are subject to the affirmative procedure—

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- (a) provision creating a criminal offence or civil penalty (but excluding provision modifying the circumstances in which a person is guilty of an existing offence or liable for an existing civil penalty);
 - (b) provision specifying a civil penalty amount.
- (11) Any other regulations under [subsection \(1\)](#) or [\(5\)](#) are subject to the negative procedure.
- (12) In [this section](#)—
- “gas” means—
 - (a) “gas” within the meaning of section 2 of the Energy Act 2008,
 - (b) carbon dioxide, and
 - (c) hydrogen;
 - “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products.

297 Habitats: reducing effects of offshore oil or gas activities etc

- (1) The Secretary of State may, by regulations, make provision requiring the Secretary of State to take into account the implications for relevant sites when deciding whether, or how, to carry out a function (including a function under other regulations under this section) which relates to—
- (a) offshore oil and gas activities, or
 - (b) offshore production or storage of gas.
- (2) The Secretary of State may, by regulations, make provision—
- (a) prohibiting a specified description of activities from being carried out unless the consent of the Secretary of State has been obtained, and
 - (b) requiring a person who has obtained such a consent to carry out any activity to which the consent relates in accordance with the consent (and any conditions to which the consent is subject).
- (3) The Secretary of State may, by regulations, make provision preventing a specified description of licence from being granted unless the Secretary of State has or Scottish Ministers have—
- (a) carried out a specified description of assessment, and
 - (b) confirmed that the outcome of that assessment does not prevent the licence from being granted.
- (4) The Secretary of State may, by regulations, make provision—
- (a) authorising the Secretary of State to give a person directions to take steps, or to refrain from taking steps, and
 - (b) requiring a person given such a direction to comply with it.
- (5) The Secretary of State may make regulations under [subsection \(2\)](#), [\(3\)](#) or [\(4\)](#) only if the Secretary of State considers that the regulations would contribute to the protection of relevant sites from adverse effects of—
- (a) offshore oil and gas activities, or
 - (b) offshore production or storage of gas.
- (6) For the purposes of regulations made under another provision of this section, “relevant site” has the meaning determined in accordance with the regulations; and those regulations—

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- (a) must be framed so that relevant sites consist of natural habitats or habitats of species;
 - (b) may, where they are framed by reference to provision made by other legislation, be framed so as to include natural habitats or habitats of species that are likely to fall within that provision of that other legislation.
- (7) Regulations under this section may—
- (a) make provision about the meaning which any expression used in this section is to have for the purposes of regulations under this section;
 - (b) confer functions on any person (including a function of giving advice in relation to the application or exercise of any other function, whether exercisable by that or another person, under regulations under this section);
 - (c) provide for the modification or revocation of any consent given under regulations under subsection (2);
 - (d) provide for the charging of fees;
 - (e) authorise, or restrict or prohibit, the supply or keeping of information (including authorisation of the supply or keeping of information that would not otherwise be permitted);
 - (f) create criminal offences or impose civil penalties (but see subsection (8));
 - (g) make other provision for the purpose of securing compliance with requirements imposed by or under regulations under this section.
- (8) Regulations under this section may not provide—
- (a) for a criminal offence to be punishable with imprisonment or, on summary conviction, to a fine exceeding the statutory maximum;
 - (b) for a civil penalty of a fixed amount to exceed £2,500 or of a variable amount to exceed £50,000.
- (9) Where regulations under this section provide for the imposition of a civil penalty, they must also include provision for a right of appeal against the imposition of the penalty.
- (10) Regulations under this section are subject to the affirmative procedure.
- (11) In [this section](#)—
- “licence” means anything (however described) which permits a person to do something;
 - “specified” means specified in regulations under this section.

298 Regulations under sections 296 and 297: procedure with devolved authorities

Regulations under section 296

- (1) Before making regulations under section 296 that contain provision within devolved competence, the Secretary of State must give notice to each relevant devolved authority—
- (a) stating that the Secretary of State proposes to make regulations under that section,
 - (b) setting out or describing the provision that is within the relevant devolved competence, and
 - (c) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to that provision,

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and must consider any representations duly made and not withdrawn.

- (2) The Secretary of State need not wait until the end of the period specified under subsection (1)(c) before making regulations if, before the end of that period, each relevant devolved authority to which the notice was given has confirmed that it has made any representations it intends to make with respect to the provision referred to in subsection (1)(b).
- (3) The Secretary of State must, if requested to do so by a relevant devolved authority, give the authority a statement setting out whether and how representations made by the authority with respect to the provision referred to in subsection (1)(b) have been taken into account in the regulations.
- (4) In subsections (1) to (3), “relevant devolved authority”, in relation to regulations, means—
 - (a) the Scottish Ministers, if the regulations contain provision within Scottish devolved competence;
 - (b) the Welsh Ministers, if the regulations contain provision within Welsh devolved competence;
 - (c) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, if the regulations contain provision within Northern Ireland devolved competence;

and “the relevant devolved competence”, in relation to a relevant devolved authority, is to be construed accordingly.

Regulations under section 297

- (5) The Secretary of State may not make regulations under section 297 containing provision within Scottish devolved competence unless the Scottish Ministers have consented to that provision.
- (6) The Secretary of State may not make regulations under section 297 containing provision within Welsh devolved competence unless the Welsh Ministers have consented to that provision.

Devolved competence

- (7) For the purposes of this section, provision—
 - (a) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) is within Welsh devolved competence if it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
 - (c) is within Northern Ireland devolved competence if it—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998;

and references to provision being within devolved competence are to provision that is within Scottish, Welsh or Northern Ireland devolved competence.