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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (“the 2005 Regulations”), which regulate the emission of oil from offshore installations. The 2005 Regulations were amended by the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010 ([S.I. 2010/1513](#)) to extend those Regulations to the discharge of oil in offshore gas storage and unloading activities.

Under the 2005 Regulations, it is an offence to discharge oil without a permit, and a discharge is defined as a release from an offshore installation. *Regulation 4(a)* of these Regulations inserts a narrower definition of ‘discharge’ into regulation 2 of the 2005 Regulations, so that a discharge requires the intentional emission of oil. Any other emission will be a ‘release’, which is prohibited by new regulation 3A of the 2005 Regulations (inserted by *regulation 6*). The effect of these changes is to clearly distinguish unlawful releases of oil from discharges, which may be lawful if made in accordance with the terms and conditions of a permit.

*Regulation 4(h) and (i)* makes amendments to the 2005 Regulations to exclude their application in relation to offshore petroleum activities to Welsh controlled waters from the low water mark out to three nautical miles from the baseline of the territorial sea. For those purposes, responsibility has transferred to the Welsh Ministers by virtue of the National Assembly for Wales (Transfer of Functions) Order 2005 ([S.I. 2005/1958](#)) and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

*Regulation 7* amends regulation 4 to clarify the procedural requirements relating to the grant of a permit, and to ensure that conditions of permits can require necessary measures to be taken to prevent or limit the consequences of any incidents affecting the environment, not merely those arising by accident.

*Regulation 8(a)(iv)* amends regulation 5 to require that an application for a permit to discharge oil must include an assessment of the risk of harm to the environment from the proposed discharge.

*Regulation 9* inserts a new regulation 5A which requires applicants for permits to satisfy certain publicity requirements (except where their application comes within paragraph (5) of the new regulation). Applicants must publish details of their application in newspapers likely to come to the attention of persons likely to be interested in or affected by the discharge of oil to which the application relates. They must also make copies of the application available for public inspection, and provide copies of the application on request.

*Regulation 10* makes changes to clarify who can be charged fees under the 2005 Regulations, and what those fees can cover.

*Regulation 11* inserts a new regulation 6A so as to establish a process for the renewal of a permit, and *regulation 12* substitutes a new regulation 8 which creates a simpler process for the transfer of permits.

*Regulation 15* inserts a new regulation 9A, which requires the Secretary of State to keep a public register of the terms and conditions of any permits and the results of monitoring information obtained under the conditions of any permit.

*Regulation 16* inserts a new regulation 11A, which extends the circumstances in which a person may be required to provide information to the Secretary of State about emissions of oil.

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, *The Offshore Petroleum Activities (Oil Pollution Prevention and Control) (Amendment) Regulations 2011* ISBN 978-0-11-150562-5

*Regulations 18 and 19* extend the circumstances in which enforcement and prohibition notices can be served to include any release of oil or its discharge without a permit. These regulations also make amendments to provisions about the specification of the period within which remedial steps are to be taken under an enforcement or prohibition notice, and who can be served with such notices.

*Regulation 21* amends regulation 16 to make the release of oil an offence. It also inserts a requirement into regulation 16 for proceedings to be brought in England and Wales and in Northern Ireland for an offence under this regulation only by or with the consent of the Secretary of State or the relevant Director of Public Prosecution (offences in Scotland can in any event only be prosecuted by or on behalf of the Lord Advocate).

*Regulation 22* amends regulation 18, which provides that the Prevention of Oil Pollution Act 1971 (c.60) shall not apply to discharges regulated under the 2005 Regulations, so that the Act is also disapplied in relation to releases regulated under those Regulations.

*Regulation 23* makes transitional provision to make clear that the changes made to the provisions of the 2005 Regulations concerning criminal offences do not have retrospective effect.

The Regulations also make a number of changes to the 2005 Regulations which are consequential on the changes described above, as well as a number of minor changes, including changes to ensure that the 2005 Regulations are consistent with the Offshore Chemicals Regulations 2002 (S.I. 2002/1355, amended by S.I. 2005/2005 and 2010/1513).

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.