

2001 No. 1754

PETROLEUM

The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001

Made - - - - - *8th May 2001*

Laid before Parliament *8th May 2001*

Coming into force - - *31st May 2001*

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The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the conservation of natural habitats and of wild fauna and flora, in exercise of the powers conferred upon him by that section hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 and shall come into force on 31st May 2001.

Interpretation

2.—(1) In these Regulations—

“the 1998 Act” means the Petroleum Act 1998(c);

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

“approval” means approval of an abandonment programme pursuant to Part IV of the 1998 Act;

“authorisation” means an authorisation granted pursuant to section 14 of the 1998 Act relating to the construction or use of a pipe-line;

“consent” means a consent granted pursuant to a UKCS licence, including any consent required pursuant to the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999(d) and any consent required pursuant to regulation 4 below;

“the Directives” means the Habitats Directive and the Wild Birds Directive;

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

“the Habitats Directive” means Council Directive 92/43 of May 21, 1992 on the conservation of natural habitats and of wild fauna and flora(f);

“Natura 2000” means the European network of special areas of conservation, and special protection areas under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive;

“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;

“relevant function” means any function exercisable by the Secretary of State in relation to or in connection with UKCS oil and gas activities including, without limitation, functions exercisable under the 1998 Act or any licence granted or having effect as if granted under that Act;

“relevant power” means any power exercisable by the Secretary of State in relation to or in connection with UKCS oil and gas activities including, without limitation, powers exercisable under the 1998 Act or any licence granted or having effect as if granted under that Act;

“relevant project” means any plan or project which relates to UKCS oil and gas activities;

“relevant site” means—

(a) a special area of conservation,

(b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive,

(c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3),

(d) an area classified pursuant to Article 4(1) or (2) of the Wild Birds Directive,

(a) S.I. 1992/2870.

(b) 1972 c. 68.

(c) 1998 c. 17.

(d) S.I. 1999/360.

(e) 2000 c. 7.

(f) O.J. 1992, L206/7, as amended by the Act of Accession to the European Union of Austria, Finland and Sweden and by Council Directive 97/62/EC, O.J. 1997, L305.

- (e) a site included in the list of sites which has been transmitted to the Commission by the United Kingdom pursuant to Article 4 of the Habitats Directive, or
- (f) a site as to which the Secretary of State, having consulted the Joint Nature Conservation Committee^(a), is of the opinion that it is one which would be likely to be included in the list of sites transmitted to the Commission by the United Kingdom pursuant to Article 4 of the Habitats Directive.

A site shall cease to qualify as a site under paragraph (e) above at such time as—
the draft list of sites of Community importance is established under the first sub-paragraph of Article 4(2) of the Habitats Directive where in any case the site is not included in that list, or
the list of sites referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive is adopted by the Commission in accordance with that sub-paragraph.

A site shall cease to qualify as a site under paragraph (f) above at such time as—
the Secretary of State, having consulted the Joint Nature Conservation Committee, is of the opinion that it will not be included in the list of sites transmitted to the Commission by the United Kingdom pursuant to Article 4 of the Habitats Directive, or
it is included in the list of sites which has been transmitted to the Commission by the United Kingdom pursuant to Article 4 of the Habitats Directive;

“UKCS licence” means a licence which is granted under or has effect as if granted under the 1998 Act or a licence which is to be granted under that Act which relates to an area wholly or partly in an area for the time being designated under section 1(7) of the Continental Shelf Act 1964^(b);

“UKCS oil and gas activities” means any activities for or in connection with the exploration for or production of petroleum where that petroleum is situated wholly or partly in an area for the time being designated under section 1(7) of the Continental Shelf Act 1964;

“UKCS pipe-line” means a pipe-line any part of which is situated in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964;

“the Wild Birds Directive” means Council Directive 79/409 of April 2, 1979 on the conservation of wild birds^(c).

(2) Unless the context otherwise requires, expressions used in these Regulations and in the Habitats Directive or in the Wild Birds Directive have the same meaning as in those Directives.

Application of the Directives

3. The Secretary of State shall exercise relevant functions conferred on him in such manner and to such extent as he shall consider necessary to secure that UKCS oil and gas activities are carried out in a manner that is consistent with the requirements of the Directives.

Consent for geological surveys

4. Notwithstanding any provision in any UKCS licence the following activities or procedures shall not be carried out without the prior written consent of the Secretary of State—

- (a) prospecting or carrying out geological surveys by physical or chemical means; or
- (b) drilling for the purpose of obtaining geological information about strata.

Appropriate assessments

5.—(1) The Secretary of State shall, before granting any UKCS licence, any consent, any authorisation, or any approval, where he considers that anything that might be done or any activity which might be carried on pursuant to such a licence, consent, authorisation or approval is likely to have a significant effect on a relevant site, whether individually or in combination with any other plan or project, including but not limited to any other relevant project, make an appropriate assessment of the implications for the site in view of the site’s conservation objectives.

(a) The Joint Nature Conservation Committee was established under section 128 of the Environmental Protection Act 1990 (1990 c. 43).

(b) 1964 c. 29.

(c) O.J. 1979, L103/1.

(2) The Secretary of State shall for the purposes of the assessment consult the Joint Nature Conservation Committee and have regard to any representations made by that body within such reasonable time as the Secretary of State may specify and shall also, if he considers appropriate, take the opinion of the general public.

(3) Subject to regulation 6 below, in the light of the conclusions of the assessment the Secretary of State shall grant any such licence, consent, authorisation or approval only after having ascertained that nothing that might be done and no activity that might be carried out pursuant thereto would have an adverse effect on the integrity of a relevant site.

(4) Where the Secretary of State is of the opinion, having consulted the Joint Nature Conservation Committee, that anything that might be done or any activity which might be carried on pursuant to such a licence, consent, authorisation or approval is likely to have a significant effect, whether individually or in combination with any other plan or project, including but not limited to any other relevant project, on an area which is not a relevant site but which would be likely to be classified as a special protection area pursuant to Article 4 of the Wild Birds Directive, then paragraphs (1) to (3) above shall apply in relation to such an area.

Projects which should be carried out for imperative reasons of overriding public interest

6.—(1) Subject to paragraph (2) below, regulation 5 above shall not apply to the doing of anything in connection with the carrying out of any relevant project affecting a relevant site—

- (a) to which, in the opinion of the Secretary of State, there is no satisfactory alternative; and
- (b) which the Secretary of State has certified in writing as a project which should be carried out for imperative reasons of overriding public interest, which may include reasons of a social or economic nature.

(2) The Secretary of State shall not give a certification pursuant to paragraph (1)(b) above in respect of a project that is likely to have an adverse effect on the integrity of a site hosting a priority natural habitat type or a priority species unless—

- (a) the reason for so certifying relates to human health or public safety, or to beneficial consequences of primary importance for the environment; or
- (b) he has obtained the opinion of the European Commission as to whether the project might be carried out for imperative reasons of overriding public interest other than those referred to in sub-paragraph (a) above and his decision to give a certification is consistent with that opinion.

(3) Where the Secretary of State has given a certification pursuant to paragraph (1)(b) above, he shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected, and in determining what such necessary compensatory measures may be, he shall consult the Joint Nature Conservation Committee.

(4) The Secretary of State shall—

- (a) at such intervals as he shall think fit carry out or cause to be carried out such investigation as he shall consider appropriate in relation to the effects of UKCS oil and gas activities on the conservation status of natural habitats and species of wild fauna and flora, with particular regard to priority habitat types and priority species; and
- (b) in the light of the results of such investigation consider whether he ought to exercise any relevant power for the purposes of protecting such a natural habitat or species.

Control of activities under licence

7.—(1) Where the Secretary of State is satisfied that anything done, being done or proposed to be done pursuant to a UKCS licence, authorisation or approval—

- (a) has had, is having, or is likely to have an adverse effect on the integrity of a relevant site; or
- (b) has caused, is causing, or is likely to cause deterioration of natural habitats or the habitats of species in such a site or disturbance of species for which that site may be or has been designated or classified pursuant to either of the Directives, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive; and

- (c) steps can be taken to avoid, reverse, reduce or eliminate that effect, deterioration or disturbance,

he shall, subject to paragraphs (3), (4), (5) and (6) below, give a direction in writing requiring the person to whom it is addressed to take such steps or refrain from taking such steps as may be specified in the direction.

(2) Without prejudice to the generality of paragraph (1) above, a direction given pursuant to this regulation may require within such period as may be specified in the direction—

- (a) the submission to the Secretary of State for his approval of a plan of the steps to be taken;
- (b) the carrying out of a plan of the kind referred to in sub-paragraph (a) above which has been approved by the Secretary of State;
- (c) the installation on a fixed or floating structure used in connection with UKCS oil and gas activities of such equipment as may be specified in the direction; or
- (d) the carrying out of a modification of such a structure or the manner in which it is operated.

(3) Prior to any direction being given pursuant to this regulation the Secretary of State shall consult the Joint Nature Conservation Committee as to the steps to be specified in the direction.

(4) Any direction given pursuant to this regulation may revoke or modify the terms and conditions of a consent, authorisation or approval.

(5) Any direction given pursuant to this regulation shall be in writing and shall not have effect unless it has been served on the person to whom it is addressed.

(6) Subject to paragraph (7) below, the Secretary of State shall not give a direction to any person pursuant to this regulation unless—

- (a) he has served on that person a copy of a draft of the direction that he is proposing to give;
- (b) that person has been afforded a reasonable opportunity of making representations regarding the content of the proposed direction; and
- (c) the Secretary of State has taken into account any representations made by that person.

(7) Paragraph (6) above shall not apply in a case of urgency where the Secretary of State is of the opinion that the giving of a direction is necessary for the purposes set out in paragraph (1) above or (9) below.

(8) A direction given pursuant to this regulation may be modified or revoked by a further direction given by the Secretary of State.

(9) A direction shall be given under this regulation in respect of an area which is not a relevant site, but as to which the Secretary of State, having consulted the Joint Nature Conservation Committee, is of the opinion that it would be likely to be classified as a special protection area pursuant to Article 4 of the Wild Birds Directive where the Secretary of State is satisfied that anything done, being done or proposed to be done pursuant to a UKCS licence, authorisation or approval—

- (a) has had, is having, or is likely to have an adverse effect on the integrity of that area; or
- (b) has caused, is causing, or is likely to cause pollution or deterioration of natural habitats or disturbance of species for which that site is likely to be classified in so far as such disturbance could be significant in relation to the objectives of Article 4 of the Wild Birds Directive; and
- (c) steps can be taken to avoid, reverse, reduce or eliminate that effect, pollution, deterioration or disturbance.

Review of directions given by the Secretary of State

8.—(1) Subject to paragraph (2) below, where a direction pursuant to regulation 7 above has been served on a person by the Secretary of State, the Secretary of State shall review the appropriateness of the direction if requested to do so by that person.

(2) The Secretary of State shall only be bound to carry out a review pursuant to a request of the kind referred to in paragraph (1) above, where, in the case of the first request to review it, that request is made no earlier than the first anniversary of the giving of the direction and in relation to any subsequent request, the period of one year has elapsed since a request was last made.

(3) Where, having carried out a review of a direction pursuant to paragraph (1) above, the Secretary of State is satisfied that the direction is no longer appropriate, he shall modify or revoke it.

(4) The Secretary of State shall give notice in writing to the applicant of any decision made under this regulation.

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

9.—(1) Subject to paragraph (6) below, any person aggrieved by a direction given to him pursuant to regulation 7 above (or by any decision in relation to that direction) may appeal to the court.

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

- (a) in respect of a direction or decision relating to the English area, the High Court;
- (b) in respect of a direction or decision relating to the Scottish area, the Court of Session; or
- (c) in respect of a direction or decision relating to the Northern Irish area, the High Court in Northern Ireland.

(3) 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(a).

(4) Where the direction or decision relates to activities in more than one of the areas referred to in paragraph (2) above, then 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 direction or 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 direction or decision in question.

Protection of certain creatures

10. Subject to regulations 13 and 14 below, a person shall not carry out UKCS oil and gas activities in such a way as—

- (a) deliberately to kill, capture or disturb any creature in the wild which is a member of any species listed in Annex IV(a) of the Habitats Directive;
- (b) deliberately to destroy or take its eggs from the wild; or
- (c) to cause deterioration or destruction of breeding sites or resting places of any such creature.

Protection of certain birds

11. Subject to regulations 13 and 15 below, a person shall not carry out UKCS oil and gas activities in such a way as—

- (a) deliberately to kill or capture any bird in its wild state which is a member of any species referred to in Article 1 of the Wild Birds Directive;
- (b) deliberately to disturb any wild bird referred to in Article 1 of the Wild Birds Directive while it is building a nest or is in, on or near a nest containing eggs or young, or the dependent young of such a bird;
- (c) deliberately to damage or destroy its nest or eggs or to remove its nest; or
- (d) to take or keep its eggs.

(a) S.I. 1987/2197.

Protection of certain plants

12. Subject to regulations 13 and 14 below, a person shall not carry out UKCS oil and gas activities in such a way so as deliberately to pick, collect, cut, uproot or destroy any plant which is a member of a species listed in Annex IV(b) of the Habitats Directive.

Lawful activities

13. Nothing in regulations 10, 11 or 12 above shall make unlawful anything which was the incidental result of an otherwise lawful operation and could not reasonably have been avoided.

Activities affecting creatures or plants which are necessary for imperative reasons of overriding public interest

14. Regulations 10 or 12 above shall not apply to any activity which would otherwise contravene its provisions where—

(a) the Secretary of State is of the opinion that the carrying out of the activity is necessary for imperative reasons of overriding public interest, that there is no satisfactory alternative to the carrying out of the activity and having consulted the Joint Nature Conservation Committee, he is also of the opinion that the carrying out of the activity is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range; and

(b) he has consented in writing to the carrying out of the activity,

and the Secretary of State may make any consent granted under this regulation subject to such conditions as he shall think fit.

Activities affecting birds which are necessary for imperative reasons of overriding public interest

15. Regulation 11 above shall not apply to any activity which would otherwise contravene its provisions where—

(a) the Secretary of State is of the opinion that the carrying out of the activity is necessary in the interests of public health and public safety and that there is no satisfactory alternative to the carrying out of the activity; and

(b) he has consented in writing to the carrying out of the activity, specifying any matters required to be so specified pursuant to Article 9 of the Wild Birds Directive,

and the Secretary of State may make any consent granted under this regulation subject to such conditions as he shall think fit.

Prohibition of certain methods of capturing or killing species listed under Annex IV(a) of the Habitats Directive

16. Notwithstanding any consent that may have been given under regulation 14 above, a person shall not in the course of carrying on UKCS oil and gas activities use any of the means set out in Annex VI to the Habitats Directive to capture or kill any member of a species listed in Annex IV(a) to that Directive.

Prohibition of certain methods of capturing or killing birds

17. Subject to regulation 15 above, a person shall not in the course of carrying on UKCS oil and gas activities—

(a) use any of the methods set out in Annex IV(a) to the Wild Birds Directive to capture or kill any bird; or

(b) use any method to capture or kill any bird from an aircraft, or from a boat driven at a speed exceeding five kilometres an hour.

Prohibition of certain methods of capturing or killing species listed under Annex V of the Habitats Directive

18. A person shall not in the course of carrying on UKCS oil and gas activities use any of the means set out in Annex VI to the Habitats Directive to capture or kill any member of a species listed in Annex V(a) to that Directive.

Offences

19.—(1) A person is guilty of an offence if he—

- (a) without reasonable excuse fails to comply with a direction given in accordance with regulation 7 above; or
- (b) contravenes any of regulations 10 to 12 and 16 to 18 above.

(2) A person guilty of an offence under paragraph (1)(a) above shall on summary conviction be liable to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(3) A person guilty of an offence under paragraph (1)(b) above shall on summary conviction be liable to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(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^(a) (restriction on prosecutions) shall not apply to any proceedings for an offence under this regulation.

(9) No prosecution shall be commenced in England and Wales or Northern Ireland except by the Secretary of State or with his consent.

Service of notices and other documents

20.—(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 the post.

(2) Any notice or other document required or authorised to be served on, or given to, 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 or served on, or given to, 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

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

(c) in the case of a partnership (including a Scottish partnership) or a person having control or the 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.

Use of electronic communication

21. Wherever a person is required under these Regulations to serve or give any notice or other document in writing, that requirement may be satisfied by the use of such means of electronic communication as the Secretary of State may determine.

8th May 2001

Peter Hain,
Minister for Energy and Competitiveness in Europe,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 92/43 of May 21, 1992 (O.J. 1992, L206/7) on the conservation of natural habitats and of wild fauna and flora and Council Directive 79/409 of April 2, 1979 (O.J. 1979, L103/1) on the conservation of wild birds, in relation to oil and gas activities carried out wholly or partly on the UK continental shelf.

Regulations have already been made (the Conservation (Natural Habitats,&c) Regulations 1994, S.I. 1994/2716, amended by the Conservation (Natural Habitats,&c) (Amendment) Regulations 2000, S.I. 2000/192) which implement the Directive in relation to activities carried out onshore and in territorial waters.

Regulation 2 deals with definitions. Regulation 3 requires the Secretary of State to exercise functions consistently with the requirements of the Directives. Regulation 4 requires consent to be obtained for certain geological surveys. Regulation 5 provides for appropriate assessment of the effects of certain oil and gas activities where the activity is likely to have a significant effect on a relevant site. Regulation 6 provides for derogation from regulation 5. Regulation 7 requires the Secretary of State to give directions in the circumstances set out, in order to avoid, reverse, reduce or eliminate adverse effects on relevant sites, or deterioration or disturbance of certain natural habitats or species. Regulations 8 and 9 confer a right to request a review of directions given under regulation 7 and a right of appeal to a court against any such direction.

Regulations 10 to 12 provide for the protection of certain creatures, birds and plants. Regulation 13 makes provision to protect lawful activities. Regulations 14 and 15 provide for derogations from regulations 10 and 11. Regulations 16, 17 and 18 prohibit certain methods of capturing or killing in the circumstances set out in each regulation. Regulation 19 creates offences and provides for penalties. Regulations 20 and 21 deal with service of documents.

These Regulations come into force on 31st May 2001.

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 5098). Copies have been placed in the Libraries of both Houses of Parliament.

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PETROLEUM

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