

2007 No. 938

ENVIRONMENTAL PROTECTION

The Offshore Combustion Installations (Prevention and Control of Pollution) (Amendment) Regulations 2007

<i>Made</i>	- - - -	<i>19th March 2007</i>
<i>Laid before Parliament</i>		<i>21st March 2007</i>
<i>Coming into force</i>	- -	<i>16th April 2007</i>

The Secretary of State has consulted the persons required to be consulted by section 2(4) of the Pollution Prevention and Control Act 1999(a).

In exercise of the powers conferred on him by sections 2 and 7(9) of that Act he makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Offshore Combustion Installations (Prevention and Control of Pollution) (Amendment) Regulations 2007 and shall come into force on 16th April 2007.

Interpretation

2. In these Regulations “the 2001 Regulations” means the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001(b).

Amendment of 2001 Regulations

3. The 2001 Regulations are amended as follows.

4. In regulation 2 (Interpretation)—

(a) before the definition of “EEA State”, insert—

““the Directive” means Council Directive 96/61/EC concerning integrated pollution prevention and control(c);”;

(b) for the definition of “EEA State” substitute—

““EEA State” means a member State, Norway, Iceland or Liechtenstein;”;

(c) before the definition of “emission value limit”, insert—

(a) 1999 c. 24.

(b) SI 2001/1091, amended by SI 2005/2055.

(c) OJ No. L 257, 10.10.96, p. 26; amended by Directive 2003/35/EC of the European Parliament and of the Council (OJ No. L 156, 25.06.2003, p. 17), Directive 2003/87/EC of the European Parliament and of the Council (OJ No. L 257, 25.10.2003, p. 32), and Regulation No. 1882/2003 of the European Parliament and of the Council (OJ No. L 284, 31.10.2003, p. 1).

““electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) while in an electronic form;”;

- (d) in the definition of “Scottish controlled waters”, after “1974;” omit “and”;
- (e) for the definition of “substantial change” substitute—
 - ““substantial change” means—
 - (a) a change the extent of which is greater than a rated thermal input of 50 megawatts; or
 - (b) a change in operation which may have significant negative effects on people or the environment; and”; and
- (f) after the definition of “substantial change”, insert—
 - ““transboundary area” means the area comprising the relevant area but excluding—
 - (a) so much of the territorial sea of the United Kingdom as is adjacent to Scotland; and
 - (b) the places above and below the waters referred to in paragraph (a) above.”.

5. In paragraph (1) of regulation 5 (Contents of application for permit)—

- (a) in sub-paragraph (h), after “above;” omit “and”;
- (b) in sub-paragraph (i), for “environment.” substitute “environment; and”; and
- (c) after sub-paragraph (i), insert—
 - “(j) the main alternatives (if any) studied by the applicant, in outline.”.

6. In regulation 7 (Publicity regarding application for permit)—

- (a) for paragraph (1) substitute—
 - “(1) Where the Secretary of State receives an application for a permit he shall publish a notice—
 - (a) in the Gazettes; and
 - (b) by any other means he considers appropriate (which may include an electronic communication).”;
- (b) before paragraph (2), insert—
 - “(1A) A notice published pursuant to paragraph (1) above must—
 - (a) state that a copy of the application may be obtained on request;
 - (b) specify an address from which such a copy may be obtained;
 - (c) specify a date not less than 4 weeks after the date of publication in the Gazettes or, if the notice is not published on the same day in each Gazette, last such date of publication, by which persons may make representations regarding the application;
 - (d) specify an address to which such representations are to be sent;
 - (e) state, where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment pursuant to paragraphs (3) and (4) below; and
 - (f) state the nature of possible decisions in response to the application.

(1B) The Secretary of State shall take such steps as he considers appropriate to ensure that additional information is made available to the public forthwith so that comments may be made by persons affected by or with an interest in an application.

(1C) Where additional information is made available to the public pursuant to paragraph (1B) above, the Secretary of State shall take such steps as he considers appropriate having regard to the particular circumstances of the case, to allow persons affected by or with an interest in an application to make representations in respect of the application before a permit is granted.”;

- (c) in paragraph (3)—

- (i) for “Subject to paragraph (5) below” substitute “Subject to paragraphs (3A) and (5) below”; and
- (ii) for “a copy of the application” substitute “the information made public pursuant to paragraphs (1) and (1B)”;
- (d) before paragraph (4), insert—
 - “(3A) Paragraph (3) shall only apply where the Secretary of State has received an application for a permit within the meaning of Article 4 or Article 12(2) of the Directive.”;
- (e) in paragraph (4), after “sent” insert—
 - “, and shall take into account any such representations received from persons in those EEA States”; and
- (f) after paragraph (6), insert—
 - “(7) In this regulation “additional information” means any other information of material relevance to the Secretary of State’s decision that becomes available to the Secretary of State after an application for a permit has been submitted to him.”.

7. Before regulation 8 (Variation of conditions of permit on application of operator), insert—

“Publicity regarding projects in other EEA States having a significant effect on the environment in the transboundary area

7A.—(1) Where, pursuant to Article 17(1) of the Directive, the Secretary of State receives from another EEA State information which that EEA State has gathered from the developer of a combustion installation in that EEA State which is likely to have significant effects on the environment of the transboundary area, the Secretary of State shall—

- (a) enter into consultations with that EEA State regarding, inter alia, the potential significant negative effects of the proposed combustion installation on the environment of the transboundary area;
- (b) arrange for the information received from that EEA State to be made available, within a reasonable time, both to the authorities in the United Kingdom which he considers are likely to be concerned by the combustion installation by reason of their particular environmental responsibilities, and to the public;
- (c) ensure that those authorities and the public in the United Kingdom are given an opportunity, before a decision is reached, to forward to him their comments on the information supplied; and
- (d) send to the competent authority of the EEA State such comments as he receives.

(2) The Secretary of State shall also, insofar as he has received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the EEA State, and in particular—

- (a) a copy of the permit and any conditions and subsequent amendments to it; and
- (b) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public.”.

8. In regulation 9 (Reconsideration and updating of permit conditions)—

- (a) in sub-paragraph (a) of paragraph (2), after “emission limit values”, insert “, equivalent parameters or technical measures”;
- (b) for paragraph (3) substitute—
 - “(3) Where the Secretary of State considers that the conditions of a permit should be revised following a review pursuant to paragraphs (2)(b) or (2)(c) above—
 - (a) the Secretary of State shall not less than 14 days prior to 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; and

- (b) the operator shall be entitled to make representations, either in writing or by such means of electronic communication as the Secretary of State may determine, as to whether such a revised permit should be issued and as to its terms.”;
- (c) after paragraph (3), insert—
- “(3A) If no representations made pursuant to paragraph (3)(b) above are received prior to the relevant day, the revised permit shall be issued and shall come into effect on that day.
- (3B) If representations made pursuant to paragraph (3)(b) above are received prior to the relevant day, the Secretary of State shall consider them in determining whether the revised permit as originally notified under paragraph (3)(a) above should be amended, withdrawn or issued and may determine that the revised permit should come into effect on a later day than the relevant day.”;
- (d) for paragraph (4) substitute—
- “(4) Where the Secretary of State considers that the conditions of a permit should be revised following a review pursuant to paragraph (2)(a) above, he shall—
- (a) not less than 4 weeks prior to 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;
- (b) publish a notice—
- (i) in the Gazettes; and
- (ii) by any other means he considers appropriate (which may include an electronic communication); and
- (c) take such steps as he considers appropriate to ensure that any other material information that becomes available only after the information referred to in paragraph (4A) below has been made available to the public in accordance with that paragraph, is forthwith made available to the public.”;
- (e) after paragraph (4), insert—
- “(4A) A notice published pursuant to paragraph (4)(b) above must—
- (a) state that the Secretary of State is considering revising the conditions of a permit pursuant to paragraph (2)(a) above;
- (b) state that a copy of the proposal for revising the permit may be obtained on request;
- (c) specify an address from which such a copy may be obtained;
- (d) specify a date not less than 4 weeks after the date of publication in the Gazettes or, if the notice is not published on the same day in each Gazette, last such date of publication, by which persons may make representations regarding the proposal;
- (e) specify an address to which such representations are to be sent; and
- (f) state the nature of possible decisions in relation to the revision of the permit.
- (4B) Where information is made publicly available pursuant to paragraph (4)(b) or paragraph (4)(c) above, the Secretary of State shall take such steps as he considers appropriate having regard to the particular circumstances of the case to allow persons affected by or with an interest in the proposed revision to make representations.
- (4C) If representations made pursuant to paragraph (4B) above are received prior to the relevant day, the Secretary of State shall consider them in determining whether the revised permit as originally notified under paragraph (4)(a) should be amended, withdrawn or issued and may determine that the revised permit shall come into effect on a later day than the relevant day.”;
- (f) for paragraph (5) substitute—
- “(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.”;
- (g) for paragraph (6) substitute—
 - “(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.”; and
- (h) after paragraph (6), insert—
 - “(7) In this regulation, “the relevant day” is the day on which a notice given pursuant to paragraph (3)(a) or paragraph (4)(a) above, states that a revised permit shall have effect.”.

9. In regulation 11 (Register to be kept by the Secretary of State)—

- (a) for paragraph (1) substitute—
 - “(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 of any conditions and any subsequent amendments;
 - (b) any results of the monitoring of the releases required to be sent to him under the conditions of any permit; and
 - (c) details of public participation in the decision-making process, including a summary of concerns and opinions expressed by persons interested in or affected by the application, together with a summary of the reasons for the decision.”;
- (b) in paragraph (2), after “4 pm” insert—
 - “, and the Secretary of State may ensure that the entry in the register of the information referred to in paragraph (1) above is made by any means he considers appropriate (including an electronic communication)”;
- (c) after paragraph (2), insert—
 - “(3) In a case where information has been forwarded to an EEA State pursuant to regulation 7(3), the Secretary of State shall take the necessary steps to notify each such EEA State of all information to be entered in the register pursuant to paragraph (1) above.”.

10. In paragraph (1) of regulation 19 (Service of notices), omit the definition of “electronic communication”.

Transitional Provision

11. The amendments made by regulations 4 to 10 above shall not apply in relation to any application made under the 2001 Regulations which is received by the Secretary of State prior to the coming into force of these Regulations.

19th March 2007

Truscott
Parliamentary Under Secretary of State for Energy
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Offshore Combustion Installation (Prevention and Control of Pollution) Regulations 2001 (the “2001 Regulations”). The 2001 Regulations implement Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. Council Directive 96/61/EC has been amended by: (i) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 which provides for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amends, with regard to public participation and access to justice, Council Directives 85/337/EEC and 96/61/EC; (ii) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC; and (iii) Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty. These Regulations amend the 2001 Regulations so as to implement the amendments made by Directive 2003/35/EC.

Regulation 4 amends regulation 2 of the 2001 Regulations by inserting definitions for “Directive”, “electronic communication” and “transboundary area”, and amends the definition of “EEA State” so as to include all the member States which joined the European Union in 2004 and 2007.

Regulation 5 amends regulation 5 by requiring that an application for a permit under regulation 4 of the 2001 Regulations is accompanied by an outline of the main alternatives studied by the applicant, if any.

Regulation 6 amends regulation 7 by expanding the information which the Secretary of State must publish when he receives an application for a permit, requiring that information of material relevance to the Secretary of State’s decision is made available to the public, and providing that other EEA States can participate in the consultation procedure of the UK where the application for a permit falls within the meaning of Article 4 or Article 12(2) of Directive 96/61/EC (as amended).

Regulation 7 inserts a new regulation 7A; it provides for the Secretary of State to participate in the consultation procedure of another EEA State where a combustion installation to be built in that EEA State is likely to have significant effects on the environment of the transboundary area. The new regulation also sets out the procedure that the Secretary of State must follow in bringing such relevant projects to the attention of the public concerned in the UK.

Regulation 8 amends regulation 9 by setting out the consultation procedure to be followed where the Secretary of State reviews the conditions of a permit where the pollution caused by the installation is of such significance that all or any of the emission limit values, equivalent parameters or technical measures of the permit need to be revised.

Regulation 9 amends regulation 11 by requiring the Secretary of State to ensure that: (i) information on conditions attached to permits, (ii) subsequent updates to permits and (iii) details of the public participation in the decision-making process, are, in each case, kept on the register to be maintained by him. In addition, the Secretary of State must keep other EEA States involved in the public participation procedure informed of the matters contained on the register.

Regulation 11 provides a transitional provision which applies to applications received prior to the coming into force of these Regulations.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Energy Development Unit, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.

A Transposition Note is available and can also be obtained from the Energy Development Unit, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.

The regulatory impact assessment and Transposition Note are also annexed to the Explanatory Memorandum, which is available alongside the instrument on the Office of Public Sector Information website: www.opsi.gov.uk.

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of Pollution) (Amendment) Regulations 2007**

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