

**EXPLANATORY MEMORANDUM TO  
THE ENERGY ACT 2008 (CONSEQUENTIAL MODIFICATIONS) (OFFSHORE  
ENVIRONMENTAL PROTECTION) ORDER 2010**

**2010 No. 1513**

**1.** This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This consequential instrument is part of the implementation of new licensing regime provided by the Energy Act 2008 for offshore storage of combustible gas (in practice natural gas consisting mainly of methane); the offshore unloading of combustible gas to an installation; and the offshore storage of carbon dioxide. This consequential instrument will broaden the scope of the framework of environmental legislation that has been developed for the offshore oil and gas industry to protect the environment so that this legislation also applies to these new types of developments.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 Part 1, Chapter 2 and 3 (sections 2 to 35), of the Energy Act 2008 (“the Act”) provides for licensing regimes governing the offshore storage of combustible gas; the offshore unloading of combustible gas and the offshore storage of carbon dioxide. Section 104(2) of the Act confers powers on the Secretary of State to make an order including incidental and consequential provisions and section 107(2) of the Act confers powers to make appropriate consequential modifications to other legislation. Those powers are here being used to modify instruments, in order to take into account the new licensing regimes provided by the Act.

4.2 However, that power to amend instruments applies only to those made before the end of the session in which the Act was passed. Since the instruments modified include an instrument made in 2009 (see *article 11*), powers under section 2(2) of the European Communities Act 1972 are also relied upon for the purposes of that article.

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom (but relates solely to offshore activities within the territorial sea and Continental Shelf).

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- *What is being done and why*

7.1 The DECC EDU Offshore Environment and Decommissioning Unit (OED) looks after the environmental regulation of the offshore oil and gas industry, and also contributes to the environmental regulation of offshore renewable industries. A robust framework of environmental legislation has been developed for offshore energy industries to protect the environment. In introducing powers under the Energy Act to license the new types of offshore development, the Government has indicated its intention to extend the relevant environmental legislation to cover these types of development.

7.2 DECC's Offshore Environmental Management Team will administer the amended legislation, and its Inspectorate Team will monitor and enforce compliance with the regulations.

7.3 This instrument ensures that the following environmental regulations will be apply to these new developments:

**The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended).** These regulations implement the EU Environmental Impact Assessment Directive (Council Directive 85/337/EEC) for relevant categories of offshore activities.

**The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended).** These regulations implement the EU Habitats and Wild Birds Directives (Council Directive 92/43/EEC. and European Parliament and Council Directive 2009/147/EC) for relevant categories of offshore activities.

**The Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 (as amended).** These regulations implement the EU Integrated Pollution Prevention and Control Directive (European Parliament and Council Directive 2008/1/EC) in so far as it applies to offshore combustion installations with an aggregated thermal capacity of greater than 50 Megawatts (thermal).

**The Greenhouse Gas Emissions Trading Scheme Regulations 2005 (as amended).** These regulations implement the EU Emissions Trading Scheme Directive (European Parliament and Council Directive 2003/87/EC), which applies to all combustion installations with an aggregated thermal capacity of greater than 20 Megawatts (thermal). Phase II of the Scheme commenced in January 2008, and covers the period up to the Kyoto commitment deadline of December 2012. Phase III of the EU-ETS commences in 2013.

**The Offshore Chemicals Regulations 2002.** These regulations implement measures taken under the OSPAR Convention (1992 Convention for the Protection of the Marine Environment of the North-East Atlantic), relating to the permitting of chemical use and discharge in the course of offshore oil and gas activities, but the provisions of the regulations are considered to be equally relevant to developments covered by the Energy Act licences. See also the REACH Regulations 2008 (below).

**The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.** These regulations control the discharge of liquid hydrocarbons ("oil").

**The Offshore Installations (Emergency Pollution Control) Regulations 2002.** These regulations implement the recommendations of the Donaldson Report requiring the appointment of a Secretary of State's representative (SoSREP) to oversee the response to incidents involving pollution by oil or other substances, establishing powers to allow the DECC SoSREP to intervene in the event of an offshore incident or where there is a significant threat of pollution.

**Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (as amended).** These regulations implement the EU Habitats and Wild Birds Directives for relevant categories of offshore activities that are not regulated by the Secretary of State for Energy and Climate Change.

**REACH Enforcement Regulations 2008.** These regulations enforce the EU REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulation (European Parliament and Council Regulation (EC) No 1907/2006 ), which imposes obligations on manufacturers / importers of chemical substances and downstream users, to evaluate and control the risks associated with their use.

**Fluorinated Greenhouse Gases Regulations 2009.** These regulations enforce the EU F-Gases Regulation (European Parliament and Council Regulation (EC) No 842/2006) which aims to contain, prevent and reduce emissions of F-Gases (i.e. Hydrofluorocarbons (HFCs)) from equipment such as refrigeration systems, air-conditioning units and fire-protection systems. The UK Regulations apply to the offshore oil / gas industry which is required to comply with the obligations on leakage checking; the keeping of records (relating to the maintenance of equipment); and the reporting of F-Gas emissions.

## **8. Consultation outcome**

8.1 Both the consultations for the gas storage and gas unloading licensing regime, and the carbon dioxide storage regime, indicated that the framework of environmental legislation that has been developed for the offshore oil and gas industry to protect the environment in the context of sustainable development, and relevant environmental legislation would be amended so that it can be applied to the new types of developments. We have also informally consulted on the Regulations with industry bodies likely to have an interest such as the Gas Storage Operators Group and The Carbon Capture and Storage Association and no adverse representations have been received.

8.2 Where DECC is not the lead Department for the Regulation being amended we have received policy clearance from the appropriate Department and / or the Devolved Administrations.

## **9. Guidance**

9.1 Guidance on the regime will be made available on the DECC website.

## **10. Impact**

10.1 The impact on charities or voluntary bodies is likely to be none, as projects will be taken forward by commercial operators such as oil and gas companies, gas storage companies and LNG importers. Those operators will be obliged to comply with the applicable environmental protection regimes, but the overall impact on those operators will be positive, as they will benefit from a more streamlined consenting regime tailored to the needs of the industry.

10.2 The impact on the public sector is negligible as DECC will be the regulatory authority and will accommodate this new area of work within its current resource head room.

10.3 An Impact Assessment has not been prepared for these Regulations. However, the assessment for the proposed offshore licensing regimes contained in the Impact Assessment for the Energy Bill 2007-08, is relevant.

*A: Consultation on the Proposed Offshore Gas Storage and Gas Unloading Licensing Scheme: Implementing the Energy Act 2008*, and is updated in section 8 of that document. The document is available at:

<http://www.decc.gov.uk/en/content/cms/consultations/open/gsul/gsul.aspx>

*B: Consultation on the Proposed Offshore Carbon Dioxide sStorage Licensing Regime*. The document is available at

[http://www.decc.gov.uk/en/content/cms/consultations/co2\\_storage/co2\\_storage.aspx](http://www.decc.gov.uk/en/content/cms/consultations/co2_storage/co2_storage.aspx)

## **11. Regulating small business**

11.1 The legislation applies to gas storage and unloading activities offshore however carried out.

## **12. Monitoring & review**

12.1 DECC will monitor the environmental protection arrangements implemented by this instrument and will seek feedback from the industry as to the regime's efficacy. The policy will be reviewed in conjunction with the planned review of the Regulations on licensing arrangements under Part 1 of the Act, in 2011.

## **13. Contact**

Ricki Kiff at the Department of Energy and Climate Change. Tel: 0300 068 6042 or email: [ricki.kiff@decc.gsi.gov.uk](mailto:ricki.kiff@decc.gsi.gov.uk) can answer any queries regarding the instrument.

**TRANSPOSITION NOTE**

**Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide**

**Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment**

**Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora**

**Directive 2009/174/EC of the European Parliament and of the Council on the conservation of wild birds**

**Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control**

**-and-**

**Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community**

**Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals**

**-and-**

**Regulation (EC) No 842/2006 of the European Parliament and of the Council on certain fluorinated greenhouse gases**

*Statement on over-implementation:* These Regulations do no more than is necessary to implement the relevant requirements of the Directive, subject to the elements of “gold-plating” noted below.

Article	Result to be achieved	Implementation by <i>The Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010</i> <sup>1</sup>	Comments <sup>2</sup>
<b>Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide</b>			
31	Amendment of Annexes I and II of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment to include defined types of pipelines for the transport of carbon dioxide for the purposes of geological storage, storage sites pursuant to Directive 2009/31/EC and	<i>Article 2</i> of the Order, modifying the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/360) (“the 1999 Regulations”) so that they apply to carbon dioxide storage and pipe-lines conveying carbon dioxide in the “relevant area” (as defined in the 1999 Regulations).	The 1999 Regulations implement the Directive 85/337/EC for relevant categories of offshore activities.

<sup>1</sup> In this Note, referred to as “the Order”.

<sup>2</sup> Elements of over-implementation are highlighted in this column.

	installations for the capture of CO2 streams.		
<b>Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment</b>			
	Implementation of Directive 85/337/EEC in respect of combustible gas unloading and storage activities offshore.	<i>Article 2</i> of the Order, modifying the 1999 Regulations so that they apply to combustible gas activities in the “relevant area” (as defined in the 1999 Regulations) requiring consent under Part 1 of the Energy Act 2008.	<u>Gold-plating</u> : Under the Directive, Member States may determine through a case-by-case examination or the application of thresholds or criteria set by the Member State, whether certain types of project (including some combustible gas unloading and storage projects). are to be made subject to an environmental impact assessment. However, the 1999 Regulations, when modified, will require an environmental impact assessment for all such projects which require consent under Part 1 of the Energy Act 2008. The 1999 Regulations will provide that the Secretary of State may not give a direction that an environmental statement is not required in respect of applications for consent for such projects.
<b>Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora -and- Directive 2009/174/EC of the European Parliament and of the Council on the conservation of wild birds</b>			
All	Implementation of Directive 92/43/EEC and Directive	<i>Article 3</i> of the Order, modifying the Offshore Petroleum Activities	The Offshore Petroleum Activities (Conservation of

	2009/174/EC in respect of the Secretary of State's functions under Part 1 of the Energy Act 2008.	(Conservation of Habitats) Regulations 2001.	Habitats) Regulations 2001 implement Directives 92/43/EEC and 2009/174/EC for relevant categories of offshore activities.
<b>Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (as amended by Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide)</b>			
All	Implementation of Directive 2008/1/EC in respect of combustion installations on structures used for or in connection with gas storage or unloading activities, provided that the structure is within the "reserved area" defined by <i>article 5(c)</i> of the Order.	<i>Article 5</i> of the Order, amending the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 (SI 2001/1091) ("the 2001 Regulations").	The 2001 Regulations implement Directive 2008/1/EC (a codified version of Directive 96/61/EC, as amended) in so far as it applies to offshore combustion installations with an aggregated thermal capacity of greater than 50 Megawatts (thermal).
<b>Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community</b>			
All	To ensure that the Greenhouse Gases Emissions Trading Scheme Regulations 2005 (S.I. 2005/925) ("the 2005 Regulations") make appropriate provision for the powers and functions of the Devolved Administrations in relation to gas storage and unloading installations within the seaward limits of the territorial sea adjacent to Wales or Scotland.	<i>Article 8</i> , amending the definition of "offshore installation" in regulation 2 of the 2005 Regulations to exclude gas storage and unloading installations within the seaward limits of the territorial sea adjacent to Wales or Scotland.	The 2005 Regulations implement the EU Emissions Trading Scheme (Directive 2003/87/EC), which applies to all combustion installations with an aggregated thermal capacity of greater than 20 Megawatts (thermal).
<b>Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals</b>			
	To provide for	<i>Article 10</i> , amending the	The 2008 Regulations

	<p>enforcement of Regulation (EC) No 1907/2006 in respect of installations established or maintained for the purpose of activities which must be licensed under Part 1 of the Energy Act 2008 (“Part 1 installations”) and to reflect devolved responsibilities and functions.</p>	<p>REACH Enforcement Regulations 2008 (“the 2008 Regulations”) so that they apply to Part 1 installations. The amendments to the 2008 Regulations also provide that the duty to enforce provisions of Regulation (EC) No 1907/2006 lies with the Scottish Environmental Protection Agency where the installation is within the seaward limits of the Scottish territorial sea.</p>	<p>provide for the enforcement of Regulation (EC) No 1907/2006.</p>
<p><b>Regulation (EC) No 842/2006 of the European Parliament and of the Council on certain fluorinated greenhouse gases</b></p>			
	<p>To provide for enforcement of Regulation (EC) No 842/2006 in respect of Part 1 installations.</p>	<p><i>Article 11</i>, amending the Fluorinated Greenhouse Gases Regulations 2009 (“the 2009 Regulations”), so that the provisions of those Regulations extend to all Part 1 installations.</p>	<p>The 2009 Regulations provide for the enforcement of Regulation (EC) No 842/2006.</p>