

EXPLANATORY MEMORANDUM TO
THE OFFSHORE PETROLEUM LICENSING (OFFSHORE SAFETY
DIRECTIVE) REGULATIONS 2015 NO. 385

AND

THE MERCHANT SHIPPING (OIL POLLUTION PREPAREDNESS, RESPONSE
AND CO-OPERATION CONVENTION) (AMENDMENT) REGULATIONS 2015
NO. 386

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

This memorandum contains information for the Joint Committee on Statutory Instruments

2. **Purpose of the instrument**

2.1 On 28th June 2013, the European Commission (EC) published the Directive on the safety of offshore oil and gas operations (OSD). This was followed on 22nd October 2014, by the publication of an Implementing Regulation addressing the detail of two OSD requirements: a common format for the sharing of information on major hazard indicators by operators and owners of offshore oil and gas installations; and a common format for the publication of this information by Member States. These Regulations implement the OSD's requirements relating to licensing and certain environmental matters relating to emergency response, and are produced by the Department of Energy and Climate Change (DECC).

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

3.1 These Regulations predominantly adopt the copy out approach to transposition. Consequently they import some concepts direct from the Directive without further elaboration and those concepts are intended to have the same meaning as in the Directive.

4. **Legislative Context**

4.1 These Regulations, together with the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (the Safety Case Regulations), implement the OSD and the Implementing Regulation. The Safety Case Regulations implement the obligations relating to health and safety, and some environmental matters such as Environmental Critical Elements and (Safety and) Environmental Management Systems. The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 implement those provisions of the OSD which relate to the grant and transfer of licences and certain obligations in relation to operators, and the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) (Amendment) Regulations 2015 implement those provisions of the OSD that relate to the remaining environmental obligations, the oil pollution aspects of internal emergency response plans.

4.2 The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 require the licensing authority to take account of certain considerations before granting or consenting to the transfer of a licence to search, bore for or get petroleum granted under the Petroleum Act 1998 (or the Petroleum (Production) Act 1934). The regulations also allow for licensees to appoint operators to carry out functions under those licences, and impose further obligations on those operators and licensees, in particular to ensure the capability of operators under the licences. They also make provision for the licensing authority, in exceptional circumstances such as the dismissal of an operator, to appoint operators in respect of those licences.

4.3 The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) (Amendment) Regulations 2015 amend the existing requirements in the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 to have an oil pollution emergency plan. The obligations under the OSD do not extend to internal waters, so the amendments to the 1998 Regulations are limited to an installation in the territorial sea or the continental shelf. To effect this distinction, installations in internal waters are now referred to as “oil handling facilities”.

4.4 A transposition note is Annexed to this Explanatory Memorandum.

5. **Territorial Extent and Application**

5.1 These Regulations apply in Great Britain and outside Great Britain in relevant waters (e.g. the territorial sea adjacent to Great Britain and any area designated by order under the Continental Shelf Act 1964). However, they only make material changes in relation to matters within the territorial sea and on the continental shelf.

6. **European Convention on Human Rights**

6.1 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 OSD aims to reduce as far as possible the occurrence of major accidents, and consequential major environmental incidents, related to offshore oil and gas operations, and to limit their consequences. Although the Directive is broadly based on the UK’s approach, changes will be required to build on the UK regime.

7.2 The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 require the submission of an oil pollution emergency plan which covers the response that an offshore installation or oil handling facility will make in the event of certain releases, including of oil. In order to meet the OSD requirements the matters which need to be considered before the Secretary of State will approve an OPEP and the circumstances which will trigger a review of an approved OPEP have been expanded.

7.3 The Directive requires that the UK establishes an offshore Competent Authority (CA). This will be implemented through DECC and HSE working in partnership to deliver the functions specified in the Directive, with each party concentrating on their areas of

expertise. The CA duties would be managed via an enhanced MoU between DECC and HSE, and the arrangement would be analogous to the existing Control of Major Accident Hazards (COMAH) model used for the regulation of onshore major hazard installations¹.

7.4 In relation to licensing the OSD requires that a greater range of considerations are taken into account before the granting or transfer of a licence to explore for or produce petroleum. The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 builds on the existing licensing regime in the Petroleum Act 1998 (and the Petroleum Production) Act 1934) and applies that greater range of requirements. It also creates obligations on the licensing authority and the competent authority in relation to the appointment and regulation of operators, who carry out functions under a licence.

7.5 There are new reporting requirements which arise from the Directive and these have been implemented via a direct-acting European Regulation. Industry has been involved in helping to prepare the Regulation and also the draft guidance to accompany it. To minimise the burden on industry a single reporting mechanism (which is an expansion of the current safety incident notification process) will be introduced for all incidents that fall to be reported under the Implementing Regulation, and the domestic arrangements for reporting all releases to sea of oil and offshore chemicals will be maintained to ensure appropriate pollution response measures are implemented in a timely manner.

8. **Consultation outcome**

8.1 A consultation on the Transposition of Directive (2013/30/EU) was conducted from 28th July 2014 to 24th September 2014 following the Reducing Regulation Sub-Committee's clearance on 23rd July.

8.2 Significant informal consultation with industry, Trade Unions and other stakeholders, including open workshops, conferences and monthly meetings, took place prior to, and following, the formal public consultation. The Offshore Directive web-pages on the HSE's website (linked to DECC's website) were also used to ensure that stakeholders were updated on developments.

8.3 There were 65 responses to the formal public consultation. DECC and HSE considered this to be a good representative sample from this sector. Currently there are just over 300 offshore installations which are working in the UKCS, and the 45 responses from Industry (as well as 27 from other employers) represented a reasonable proportion of the industry. In addition, trade bodies like Oil and Gas UK (O&G UK), and the International Association of Drilling Contractors (IADC), gathered detailed views from their members before submitting their collective responses. The trade union responses, including from RMT, UNITE and the Scottish TUC, ensured that the views of the workforce were represented. There were also responses from health and safety professionals and verification bodies.

8.4 While most of the responses were positive, in two areas; means of implementation of the Environmental Management Systems and the use of a Single versus Multiple operator approach, DECC and HSE have decided to change their proposals in the light of this

¹ The COMAH Competent Authority for onshore major hazard installations involves HSE and the Environment Agency (in England and Wales) and the Scottish Environment Protection Agency (in Scotland).

consultation. The common theme from those who supported the other proposals in general, and those who did not, was the need for further guidance.

9. **Guidance**

9.1 Work is underway to draft the guidance supporting these Regulations. This guidance must be available online at least twelve weeks before the Regulations come in to force on the 19th July 2015.

10. **Impact**

10.1 Implementation of the Directive is estimated to result in a net cost of around £196.2 million (central estimate, Net Present Value, 2014 prices) over an appraisal period of ten years. This is broken down as follows:

- Net cost to Government of around £2.8 million.
- Net cost to business of around £193.4 million.

10.2 An Impact Assessment (IA) covering all the steps DECC and HSE are taking to transpose the OSD is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. The costs associated with the SCR 2015, the Implementing Act, and the updates for emerging technology are contained within section 9 of the IA.

11. **Regulating small business**

11.1 The legislation applies to small business, as the Directive's requirements apply to all offshore operators and owners.

11.2 It is important to note that major hazard risks are not proportionate to business size. The potential for poorly managed risks leading to a major accident with catastrophic consequences is the same for small businesses as it is for large international companies. In the light of recent offshore major accidents (e.g. the Deepwater Horizon disaster in the Gulf of Mexico 2010) and the subsequent close scrutiny of the UK offshore industry, it is crucial that all businesses operating offshore, regardless of size, are subject to the same regulatory regime to ensure that they continue to provide a high level of protection for the safety of the workforce and the protection of the marine environment. However, to minimise the impact of the SCR 2015 requirements on small business, and the industry as a whole, detailed guidance on how to comply with the legal requirements will be prepared.

11.3 The basis for this decision was taken after consulting the entire oil and gas industry on the Impact Assessment supporting these Regulations, and on previous offshore environment and licensing statutory instruments. The offshore industry recognises the importance of maintaining a consistent approach to managing and controlling offshore major hazards, regardless of business size.

12. **Monitoring & review**

12.1 The effectiveness of the Regulations will be monitored in conjunction with industry and a full post implementation review is planned for 2018.

13. **Contact**

Kevin O'Carroll - Tel: 01224 254025 or email: kevin.ocarroll@decc.gsi.gov.uk - can answer any queries regarding the instrument.