

2015 No. 386

MARINE POLLUTION

The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) (Amendment) Regulations 2015

<i>Made</i>	- - - -	<i>19th March 2015</i>
<i>Laid before Parliament</i>		<i>23rd March 2015</i>
<i>Coming into force</i>	- -	<i>19th July 2015</i>

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 matters relating to the environment, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) (Amendment) Regulations 2015 and come into force on 19th July 2015.

Transitional provisions

2.—(1) Where an installation is a planned production installation, these Regulations apply in relation to an operator in respect of such an installation and its connected infrastructure, from 19th July 2016.

(2) These Regulations apply to an operator of a production installation which is an existing installation, in respect of that installation, from the earlier of—

- (a) the date of thorough review in relation to that installation; or
- (b) 19th July 2018.

(3) Where a production installation which is not a planned production installation or an existing production installation, but in respect of which a current safety case applied before 19th July 2016, these Regulations apply to an operator in respect of such a production installation and its connected infrastructure from the 19th July 2016.

(4) In relation to a well operator who is planning or executing well operations, the provisions of these Regulations relating to the carrying out of well operations apply from the earlier of—

- (a) the date of thorough review in relation to the installation from which the well operations were planned or executed; or
- (b) 19th July 2016.

(a) S.I. 2008/301.

(b) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). The power of Ministers to make regulations in relation to matters in or regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c. 46).

- (5) These Regulations apply to the owner of a non-production installation which is—
- (a) an existing installation, in respect of that installation, from the earlier of—
 - (i) the date of thorough review in relation to that installation; and
 - (ii) 19th July 2016; and
 - (b) not an existing installation, in respect of that installation, from 19th July 2016.
- (6) In this regulation—
- (a) “current safety case” has the meaning given in the Offshore Installations (Safety Case) Regulations 2005(a);
 - (b) “date of thorough review in relation to an installation” means the date of thorough review in relation to that installation within the meaning given in the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015(b), but only where that date is after 18th July 2015;
 - (c) “existing installation” means an installation in respect of which a current safety case applied on 18th July 2013; and
 - (d) “planned production installation” means a production installation in respect of which a design notification had been sent to the Health and Safety Executive in accordance with regulation 6 of the Offshore Installations (Safety Case) Regulations 2005 before 18th July 2013, but which had not commenced operations at that date.

Amendments to the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998

3. These Regulations amend the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998(c) (“the 1998 Regulations”).

Amendment of regulation 2

4.—(1) Regulation 2(interpretation) of the 1998 Regulations is amended as follows.

(2) Before the definition of “GT” insert—

““the 2013 Directive” means Directive 2013/30/EU of the European Parliament and of the Council on safety of offshore oil and gas operations and amending Directive 2004/35/EC(d);

“combined operation” has the meaning given in Article 2(25) of the 2013 Directive;

“connected infrastructure” means—

- (a) any well or supplementary unit connected to an offshore installation; and
- (b) within an offshore installation’s safety zone—
 - (i) any associated structure or device which is connected to the installation;
 - (ii) any apparatus or works on, or affixed to, the main structure of the installation; and
 - (iii) any pipeline apparatus or works attached to the installation;”.

(3) After the definition of “GT” insert—

““major environmental incident arising from a major accident” means a major environmental incident (which has the meaning given in Article 2(37) of the 2013 Directive) which is caused by—

(a) S.I. 2005/3117.

(b) S.I. 2015/398.

(c) S.I. 1998/1056.

(d) O.J. No. L178, 28.06.13, p.66.

- (a) an event involving a fire, explosion, loss of well control or the release of a dangerous substance causing, or with a significant potential to cause, death or serious personal injury to persons on an offshore installation or engaged in an activity on or in connection with it;
- (b) an event involving major damage to the structure of the offshore installation or plant affixed to it or any loss in the stability of the offshore installation;
- (c) the collision of a helicopter with the offshore installation;
- (d) the failure of life support systems for diving operations in connection with the offshore installation, the detachment of a diving bell used for such operations or the trapping of a diver in a diving bell or other subsea chamber used for such operations; or
- (e) any other event arising from a work activity involving death or serious personal injury to five or more persons on the offshore installation or engaged in an activity in connection with it,

and for the purposes of determining whether an event constitutes a major accident under paragraphs (a) or (b), an offshore installation that is normally unattended is to be treated as if it were attended;”.

- (4) After the definition of “National Contingency Plan” insert—

““non-production installation” means an offshore installation other than a production installation;”.

- (5) For the definition of “offshore installation” substitute—

““offshore installation” means a stationary, fixed or mobile facility, or a combination of facilities permanently inter-connected by bridges or other structures, which is—

- (a) in offshore waters; and
- (b) used for offshore oil and gas operations or in connection with such operations, but only includes mobile offshore drilling units (that term having the same meaning as in the 2013 Directive) when they are stationed in offshore waters for drilling, production or other activities associated with offshore oil and gas operations;”.

- (6) After the definition of “offshore installation” insert—

““offshore licence” has the meaning given in the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015(a);

““offshore oil and gas operations” has the meaning given in Article 2(3) of the 2013 Directive;

““offshore waters” means—

- (a) the waters comprising the territorial sea of the United Kingdom; or
- (b) the sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964(b);”.

- (7) In the definition of “oil handling facility” after “installation” insert “or its connected infrastructure;”.

- (8) After the definition of “oil pollution incident” insert—

““oil spill response effectiveness” has the meaning given in Article 2(32) of the 2013 Directive;”.

- (9) For the definition of “operator” substitute—

““operator”—

- (a) in relation to an oil handling facility means a person having, for the time being, the management of such facility in the United Kingdom;

(a) S.I. 2015/385.

(b) 1964 c. 29.

- (b) subject to paragraph (c), in relation to a production installation and its connected infrastructure, means an “installation operator” as that term is defined in the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015; or
- (c) in relation to well operations, means the well operator;”.

(10) After the definition of “operator” insert—

““production installation” means an offshore installation used for the offshore extraction of oil and gas from the underground strata of the area covered by a licence, including offshore processing of oil and gas and its conveyance through connected infrastructure;

“responsible person” means in relation to—

- (a) a production installation and its connected infrastructure, subject to paragraph (c), the operator in relation to the installation or connected infrastructure;
- (b) a non-production installation and its connected infrastructure, subject to paragraph (c), the person entitled to control the operation of the installation; and
- (c) well operations, the well operator,

and “matters for which a responsible person is responsible” shall be construed accordingly;

“safety zone” means a safety zone within the meaning of Part 3 of the Petroleum Act 1987(a);”.

(11) After the definition of “United Kingdom Ship” insert—

““well operation” has the meaning given in the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015(b); and

“well operator” has the meaning given in the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015.”.

Amendment of regulation 3

5.—(1) Regulation 3(application) of the 1998 Regulations is amended as follows.

(2) In paragraph (1)(a), for the words “the Schedule” substitute “Schedule 1”.

(3) For paragraph (2), substitute—

“(2) These Regulations apply to—

- (a) every offshore installation and its connected infrastructure in offshore waters; and
- (b) every oil handling facility which—
 - (i) is a pipeline; or
 - (ii) would be an offshore installation were it in offshore waters,

in United Kingdom waters and in any area designated under the Continental Shelf Act 1964.”.

Amendment of regulation 4

6.—(1) Regulation 4 (oil pollution emergency plans) of the 1998 Regulations is amended as follows.

(2) For sub-paragraph (c) of paragraph (1) substitute—

“(c) responsible person, in respect of the matters for which that person is responsible.”.

(3) For sub-paragraph (b) of paragraph (2) substitute—

(a) 1987 c. 12.
 (b) S.I. 2015/398.

“(b) there may be joint plans in respect of a number of offshore installations and their connected infrastructure; and”.

(4) After sub-paragraph (b) of paragraph (2) insert—

“(c) there may be joint plans in respect of an offshore installation and its connected infrastructure and any of their related oil handling facilities where such a facility—

- (i) would be an offshore installation were it in offshore waters; or
- (ii) is a pipeline.”.

(5) In paragraph (3)—

(a) in sub-paragraph (a)—

- (i) after “operator” insert “of an oil handling facility and every responsible person”; and
- (ii) after “offshore installation” insert “and its connected infrastructure or well operations”;

(b) in sub-paragraph (b) for “or operator” substitute “, an operator of an oil handling facility or a responsible person”; and

(c) after sub-paragraph (b) insert—

“(c) An oil pollution emergency plan in respect of an offshore installation must comply with Schedule 2.”.

(6) In paragraph (4)—

(a) for the words in sub-paragraph (a)(iii) substitute “operations relating to an offshore installation, its connected infrastructure or well operations are to be commenced.”;

(b) for the words in sub-paragraph (bb) substitute “operations relating to the offshore installation or connected infrastructure are to be commenced; or”;

(c) after sub-paragraph (bb) insert—

“(cc) well operations are to be commenced.”; and

(d) after sub-paragraph (b) insert—

“(c) Where an oil pollution emergency plan is submitted in accordance with sub-paragraph (a), any approval by the Secretary of State of that plan is valid only when that installation is in United Kingdom waters or in any area designated under the Continental Shelf Act 1964.”.

(7) In paragraph (5)—

(a) in sub-paragraph (a), for the words “harbour authority and every operator” substitute “person required to submit an oil pollution emergency plan under these Regulations, except where paragraph (5B) applies.”; and

(b) in sub-paragraph (b), after the word “operator” insert “of the oil handling facility or responsible person”.

(8) After paragraph (5) insert—

“(5A) Paragraph (5B) applies to—

- (a) every responsible person; and
- (b) every operator of an oil handling facility which—
 - (i) would be an offshore installation were it in offshore waters; or
 - (ii) is a pipeline.

(5B) Where this paragraph applies, the responsible person or the operator of an oil handling facility must carry out a full review of the oil pollution emergency plan for which the person or operator is responsible—

- (a) within 5 years of the date upon which the Secretary of State first approved the plan; and

- (b) thereafter at intervals of no more than 5 years after the latest date on which the Secretary of State approved the plan after conducting a full review of the plan, under this paragraph.

(5C) Where there has been a material change to—

- (a) the safety case submitted under regulation 17(1), 18(1) or 20(1) of the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015(a) which is associated with an offshore installation and its connected infrastructure; or
- (b) any of the documents associated with an offshore installation and its connected infrastructure required to be prepared or submitted to the competent authority by or by virtue of—
 - (i) regulation 15(1), 15(3), 19(1), 21(1), 21(2) or 22(1) of the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015; or
 - (ii) regulation 8(1) of the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995(b),

in respect of an offshore installation, connected infrastructure or well operations, the responsible person in respect of the installation, infrastructure or operations, as the case may be, must submit to the Secretary of State a new oil pollution emergency plan, or amendments to the existing plan, within 3 months of such change becoming known to the responsible person.

(5D) The Secretary of State may, by written notice, require a responsible person to review an oil pollution emergency plan which has been approved in respect of any matters for which that person is responsible.

(5E) A notice under paragraph (5D) must include the date by which an amended plan must be submitted to the Secretary of State for approval in accordance with paragraph (5F) and may impose requirements on that person relating to the carrying out of that review including—

- (a) the manner in which the review is to be carried out; and
- (b) specific matters that must be included within the review.

(5F) Where the Secretary of State requires a review under paragraph (5D) the person required to carry out that review must review the oil pollution emergency plan in accordance with the requirements of the Secretary of State and must submit to the Secretary of State an amended plan for approval.

(5G) Where an oil pollution emergency plan in respect of an offshore installation or its connected infrastructure must be amended by reason of the particular nature or location of a well, the well operator for that well must—

- (a) submit to the Secretary of State for approval an amended plan or an adequate description of the amendment to be made to the plan; and
- (b) make that submission together with the relevant notification of well operations required by regulation 21(1) or 21(2) of the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015.

(5H) Where a non-production installation is to be used for carrying out combined operations for which a notification needs to be submitted in accordance with regulation 22(1) of the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015, the operator of any production installation and the owner of any non-production installation involved in those combined operations must—

(a) S.I. 2015/398.
(b) S.I. 1995/743.

- (a) submit to the Secretary of State for approval an amended oil pollution emergency plan for that installation so that it covers the combined operations; and
- (b) make that submission together with the relevant notification of combined operations, required by regulation 22(1) of the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015.

(5I) Paragraph (5J) applies where a responsible person fails to comply with—

- (a) any obligation in paragraphs (5B) to (5H) to submit either an amended oil pollution emergency plan or an adequate description of such a plan; or
- (b) a requirement in a notice under paragraph (5D) relating to the carrying out of a review.

(5J) Where this paragraph applies, the plan in respect of which the amendment or adequate description should have been submitted ceases to be approved for the purposes of this regulation on the date by which the amended oil pollution emergency plan, or adequate description as the case may be, was required to be submitted to the Secretary of State for approval.”.

(9) In paragraph (6)—

- (a) after the words “any plan” insert the words “, adequate description”;
- (b) for “paragraph (3), (4) or (5)” substitute “paragraphs (3) to (5H)”;
- (c) after each instance of “harbour authority or operator” insert “of the oil handling facility or responsible person”.

(10) In paragraph (7) for the words “offshore installations” substitute “an offshore installation and its connected infrastructure, an oil handling facility which would be an offshore installation were it in offshore waters, well operations”.

(11) In paragraph (8) after the word “operator” insert “of an oil handling facility, every responsible person”.

(12) After paragraph (8) insert—

“(9) Every responsible person must—

- (a) maintain equipment and expertise relevant to the oil pollution emergency plan which is approved in respect of matters for which the person is responsible;
- (b) ensure that such equipment and expertise is available for use at all times;
- (c) make such equipment and expertise available to the authorities responsible for the execution of the National Contingency Plan;
- (d) undertake exercises to maintain relevant expertise for the implementation of the plan, including interaction with the National Contingency Plan;
- (e) retain evidence of those exercises; and
- (f) provide such evidence to the Secretary of State, if so required by the Secretary of State by written notice.

(10) Every responsible person must ensure that no operations relating to an offshore installation, its connected infrastructure or well operations for which that person is responsible, are carried out unless they are the subject of an oil pollution emergency plan approved by the Secretary of State under this regulation.

(11) Every operator of an oil handling facility—

- (a) that is a pipeline; or
- (b) that would be an offshore installation were it in offshore waters,

must ensure that no activities that present a risk of an oil pollution incident are undertaken unless those activities are the subject of an oil pollution emergency plan approved by the Secretary of State under this regulation.”.

Amendment of regulation 5

7. In paragraph (2) of regulation 5 (reporting of incidents: ships and offshore installations) of the 1998 Regulations, for “An individual having charge of an offshore installation or” substitute “A responsible person, an operator of an oil handling facility which would be an offshore installation were it in offshore waters or an operator of”.

Amendment of regulation 6

8. In paragraph (1) of regulation 6 (reporting of incidents: harbour authorities and oil handling facilities) of the 1998 Regulations, after “pipelines” insert “or those which would be offshore installations were they in offshore waters”.

Amendment of regulation 7

9.—(1) Regulation 7 (offences) of the 1998 Regulations is amended as follows.

(2) In paragraph (1)—

- (a) omit “offshore installation or of an”; and
- (b) after “facility” insert “or any responsible person”.

(3) After paragraph (2) insert—

“(3) Any responsible person who without reasonable cause—

- (a) fails to comply with a duty under regulation 4(9); or
- (b) breaches the obligation in regulation 4(10),

is guilty of an offence punishable on summary conviction by a fine not exceeding £5,000, or on conviction on indictment by a fine.

(4) Any operator of an oil handling facility who, without reasonable cause, breaches the obligation in regulation 4(11) is guilty of an offence punishable on summary conviction by a fine not exceeding £5,000, or on conviction on indictment by a fine.”.

Amendment of regulation 8

10.—(1) Regulation 8 (inspection of offshore installations) of the 1998 Regulations is amended as follows.

(2) The existing regulation is renumbered as paragraph (1).

(3) In paragraph (1) as so renumbered—

- (a) after “offshore installation” insert “and its connected infrastructure”; and
- (b) after “pipelines” insert “or oil handling facilities which would be offshore installations were they in offshore waters”.

(4) After paragraph (1) as so renumbered insert—

“(2) To the extent that they otherwise would not be, these Regulations are to be treated as if they were made under the Merchant Shipping Act 1995(a).”.

New regulation 9

11. After regulation 8 (inspection of offshore installations) of the 1998 Regulations insert—

“Information

9. The Secretary of State may disclose to the Health and Safety Executive such information which is acquired by the Secretary of State in the exercise of the Secretary of

(a) 1995 c. 21.

State's functions under these Regulations, to the extent that the disclosure is necessary to enable the Secretary of State or the Executive to comply with any obligations which are imposed on the competent authority under the 2013 Directive.”.

Schedules

- 12.**—(1) The existing Schedule is renumbered as Schedule 1.
(2) After Schedule 1, as so renumbered, insert—

“SCHEDULE 2

Regulation 4

Requirements for an oil pollution emergency plan in respect of an offshore installation

- 1.** The oil pollution emergency plan (“the plan”) must take into account—
 - (a) the risk assessment undertaken during preparation of the most recent safety case submitted under regulation 17(1), 18(1) or 20(1) of the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015; and
 - (b) where a mobile non-production installation is to be used for carrying out well operations, the risk assessment undertaken as part of the preparation of the notification of well operations, required by regulation 21(1) or 21(2) of the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015.
- 2.** The plan must include the following information—
 - (a) positions of persons authorised to initiate emergency response procedures and the positions of persons directing the emergency response to an oil pollution incident;
 - (b) positions of persons responsible for liaising with the authority or authorities responsible for the National Contingency Plan;
 - (c) arrangements for training personnel in the duties they will be expected to carry out in the event of any incident, where necessary co-ordinating the training with the National Contingency Plan;
 - (d) a description of the potential worst case release of oil to the sea from the installation or connected infrastructure, arising from the scenarios identified in the safety case in respect of that installation or infrastructure (as required by the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015). This must include any relevant details when two or more installations operate in combination in a way that affects the major hazard potential;
 - (e) arrangements for limiting risks to the environment, including a description of equipment and arrangements for the protection of the environment from an incipient major accident and how warnings are to be given and the actions persons are expected to take on receipt of a warning;
 - (f) a description of the equipment and resources available to respond to a release of oil to the sea, including the equipment and resources available for the capping of any potential release from a well, including—
 - (i) a complete and up-to-date inventory of emergency response equipment pertinent to those operations; and
 - (ii) details of the ownership, the storage location, the arrangements for transport to, and mode of deployment at, the incident location of the equipment and resources;
 - (g) the measures in place to ensure that the response equipment and procedures are maintained in an operable condition;

- (h) an estimate of the oil spill response effectiveness, including consideration of the following environmental conditions—
 - (i) weather, including wind, visibility, precipitation and temperature;
 - (ii) sea states, tides and currents;
 - (iii) presence of ice and debris;
 - (iv) hours of daylight; and
 - (v) other known environmental conditions that might influence the efficiency of the response equipment or the overall effectiveness of a response effort;
- (i) evidence that prior assessment of any relevant chemical dispersants has been carried out to minimise public health implications and any environmental damage;
- (j) an assessment of the identified potential environmental effects resulting from a release of oil and a description of the technical and non-technical measures envisaged to prevent, reduce or offset them, including monitoring; and
- (k) arrangements for providing early warning of a major environmental incident arising from a major accident to the authority or authorities responsible for initiating the National Contingency Plan, including—
 - (i) details of the type of information that should be contained in any warning; and
 - (ii) the arrangements for the provision of more detailed information as it becomes available.

3. The plan must be consistent with the National Contingency Plan.”.

19th March 2015

Matthew Hancock
Minister of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, make amendments to the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 (SI 1998/1056) (“the 1998 Regulations”) for the purpose of implementing the environmental requirements of Articles 14 and 28 of Directive 2013/30/EU of the European Parliament and of the Council on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ No L178, 28.6.2013, p.66), which relate to the requirement to have an internal emergency response plan. The remaining requirements of those Articles are implemented by the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995 (SI 1995/743) (as amended by the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (SI 2015/398)).

The 1998 Regulations make provision for certain facilities in the United Kingdom’s internal waters, territorial sea and continental shelf to have an oil pollution emergency plan. The amendments effected by these Regulations apply the requirement to have an oil pollution emergency plan to non-production installations in the territorial sea and the continental shelf and apply further requirements to installations and their connected infrastructure which are carrying out offshore oil and gas operations, including well operations, in the territorial sea and the continental shelf, but not in internal waters.

These requirements include the circumstances in which a review of the plan must be carried out and to extra obligations relating to the maintenance and availability of relevant equipment and expertise.

The new paragraph (2) inserted into regulation 8 of the 1998 Regulations allows for inspectors appointed under the Merchant Shipping Act 1995 (c. 21) to exercise their inspection and enforcement powers in relation to the whole of the 1998 Regulations, as amended.

The Secretary of State and the Health and Safety Executive together form the competent authority for the purposes of the Directive and new regulation 9 inserted into the 1998 Regulations makes provision ensuring that the Secretary of State can share with the HSE information relevant to the fulfilment of the functions of the competent authority.

A transposition note and a full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector are annexed to the Explanatory Memorandum which is available alongside these Regulations on www.legislation.gov.uk

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