

**EXPLANATORY MEMORANDUM TO
THE OFFSHORE INSTALLATIONS (OFFSHORE SAFETY DIRECTIVE)
(SAFETY CASE ETC.) REGULATIONS 2015**

2015 No. 398

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 On 28 June 2013, the European Commission published the Directive on the safety of offshore oil and gas operations (OSD). This was followed on 22 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.
 - 2.2 These regulations will transpose the majority of the Directive's requirements in Great Britain and introduce measures to ensure the Implementing Regulation can be enforced (whilst it is directly applicable under the law of the United Kingdom, it is not enforceable in Great Britain without further provision).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 Some requirements of the Implementing Regulation duplicate requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 on the reporting of safety and environmental incidents. This sort of 'double-banking' is usually avoided by repealing the overlapping national law because there is no advantage in repeating an obligation and possibly a disadvantage caused by the potential for confusion.
 - 3.2 In this case we consider that the overlapping national law should be preserved because removing the small overlap would create more problems than retaining it. In particular: it would greatly complicate the national law and make it less accessible to the user; in practice industry will be using a new reporting form that will ensure the requirements of the overlapping provisions will be met administratively, without causing any additional burden; and the provisions of national law which overlap have been introduced to implement another [Directive](#) and retaining the overlapping provisions ensures that both Directives are fully implemented.
4. **Legislative Context**
 - 4.1 Many of the OSD's requirements are matched by similar requirements of the existing Offshore Installations (Safety Case Regulations) 2005 (SCR 2005). The SCR 2005 apply to internal waters – essentially tidal waters within Great Britain – and external waters – the territorial sea and areas designated by order under the [Continental Shelf Act 1964](#). However, the OSD does not apply to internal waters and its requirements in external waters are often more detailed or more onerous

than the similar requirements of the SCR 2005. Some of the OSD requirements are entirely new.

- 4.2 Rather than create a complex single set of implementing regulations that apply to internal and external waters it was considered appropriate to limit the application of the SCR 2005 to internal waters and create a new set of regulations – the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (SCR 2015) – for external waters based on the SCR 2005 but with appropriate modifications. This maintains and exploits familiarity with the existing regime. The SCR 2015 retain much of the wording of the SCR 2005 for that reason.
- 4.3 The OSD’s licensing and environmental requirements not dealt with by the SCR 2015, will be introduced by the following Department of Energy and Climate Change (DECC) legislation, which will be laid before Parliament at the same time as SCR 2015: the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) (Amendment) Regulations 2015; and the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015.
- 4.4 As the Implementing Regulation is directly applicable, it does not need to be transposed. However, to ensure it can be used effectively for regulation the regulators must have enforcement powers and appropriate penalties must be put in place. This is achieved by treating the Implementing Regulation as a health and safety regulation (relevant statutory provision) under the Health and Safety at Work etc. Act 1974 which means it may be enforced by health and safety inspectors and DECC’s Departmental inspectors. There is also a need to remove any conflict between the Implementing Regulation and existing domestic provisions. The only area of conflict is in terms of the deadline for operators and owners to submit notifications. This is to be overcome by adopting the slightly longer period for compliance in the Implementing Regulation within the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.

5. Territorial Extent and Application

- 5.1 This instrument applies in Great Britain and outside Great Britain in external waters.
- 5.2 As Northern Ireland (NI) has similar legislation to HSE, reciprocal arrangements are being made in NI. As Gibraltar is not planning to undertake any offshore oil and gas operations, the European Commission have confirmed that Gibraltar need only implement those Articles that are applicable to countries without oil and gas operations.

6. European Convention on Human Rights

As the instrument is subject to the 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 UK's offshore oil and gas regulatory regime was introduced as a result of the Piper Alpha disaster. The European Commission used the UK regime as a template for many of their OSD proposals. During Council negotiations, and European Parliament considerations, UK stakeholders (e.g. Ministers, industry and workforce representatives) argued strongly for a Directive rather than the proposed directly applicable European Regulation. This was to ensure that the UK had the flexibility to maintain as much as possible of the existing regime, and in doing so minimise administrative burdens on the oil and gas industry in the UK.

7.2 As well as using SCR 2015 to transpose the OSD's requirements, we are also taking this opportunity to reduce the stock of offshore regulations by revoking the following six sets of offshore and pipeline regulations, and placing any remaining requirements within our other offshore safety legislation;

- (i) [the Offshore Installations \(Logbooks and Registration of Death\) Regulations 1972](#);
- (ii) [the Offshore Installations \(Inspectors and Casualties\) Regulations 1973](#);
- (iii) [the Submarine Pipe-lines \(Inspectors etc.\) Regulations 1977](#);
- (iv) [the Submarine Pipe-lines Safety Regulations 1982](#);
- (v) [the Offshore Installations \(Safety Zones\) Regulations 1987](#); and
- (vi) [the Offshore Safety \(Miscellaneous Amendments\) Regulations 2002](#).

- Consolidation

7.3 Some of the Schedules to the SCR 2015 amend other instruments. Unless a policy need arises, the consideration of the consolidation of the other instruments will not take place until the first review of the SCR 2015.

8. Consultation outcome

8.1 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 were also used to ensure that stakeholders were updated on developments.

8.2 There were 65 responses to the formal public consultation, which ran from 23 July to 24 September 2014. HSE considered this to be a good representative sample from this small, but economically important, sector. Currently there are just over 300 offshore installations working in the UK, and the 45 responses from Industry (in addition to 20 from other employers) represented a reasonable proportion of the industry. In addition, trade bodies like Oil and Gas UK (OGUK), and the International Association of Drilling Contractors (IADC), gathered detailed views from their members before submitting their collective responses. The four trade union responses, including from RMT, UNITE and the Scottish TUC, also ensured that the views of the workforce were represented. There were also responses from health and safety professionals and verification bodies.

8.3 They demonstrated overwhelming support (from 80-100% of respondents) for most of HSE's proposals. The remaining proposals obtained support from 59-72% of respondents. There were only two areas where respondents disagreed with the proposals. Following the consultation DECC and HSE worked with industry to develop alternative proposals in these areas, which resulted in changes to the draft regulations. The responses generally demonstrated a firm understanding of the issues, which is partly a reflection of the extensive pre-consultation engagement undertaken with industry.

9. Guidance

9.1 Work is underway to draft the legal guidance supporting the SCR 2015. This guidance will be made available on the HSE website twelve weeks before the Regulations come in to force on the 19 July 2015.

10. Impact

10.1 The impact on business and civil society is estimated to be around £159 million in present values over ten years. This is broken down as follows: around £158 million from compliance with SCR 2015; and around £0.2 million from compliance with the Implementing Regulation. The impact on the public sector is around £1.9 million from compliance with the Implementing Act.

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 and the Implementing Act are contained within section 9 of the IA.

11. Regulating small business

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

11.2 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 these legal requirements will be prepared. The basis for this decision was taken after consulting all of the oil and gas industry on the impact assessment supporting the SCR 2015, and on previous offshore safety 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 SCR 2015 will be monitored in conjunction with industry and a full post implementation review is planned for July 2020.

13. Contact

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