



Department
of Energy &
Climate Change

DECC – Offshore Oil and Gas Environment Unit Enforcement Policy

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Introduction

1. The [Department of Energy & Climate Change](#) (DECC) regulates the environmental aspects of offshore oil and gas exploration and production, offshore gas unloading and storage and offshore carbon dioxide storage activities, from exploration through production and/or storage to decommissioning.

The Offshore Oil and Gas Environment Unit (OEU), which forms part of the Offshore Oil and Gas Environment and Decommissioning unit (OGED), is responsible for developing the environmental regulatory framework for offshore oil and gas exploration and production, offshore gas unloading and storage and offshore carbon dioxide storage on the UK Continental Shelf (UKCS), and for administering and ensuring compliance with the regulatory regime. The aims of the OEU are to:

- Regulate the offshore oil and gas industry in the context of sustainable development;
- Improve industry regulatory compliance; and
- Regulate without undue burden on the industry, or taxpayer liability.

2. Firm but fair regulatory enforcement of the relevant legislation by inspectors of the DECC OEU Environmental Inspectorate is an important aspect of achieving these aims. Equally important, inspectors provide compliance advice to the offshore industry and guidance by way of participation in industry organised courses, conferences, joint industry projects, and DECC's oil and gas website;

<https://www.gov.uk/government/organisations/department-of-energy-climate-change>.

3. This enforcement policy applies to all offshore oil and gas installations located within the UKCS, operating in connection with the exploration, development or production of petroleum that comes within the scope of the relevant environmental legislation. This includes production platforms, mobile drilling units, floating production and storage offtake vessels, pipelines, etc.

4. An Operator [i.e. a company] who operates an offshore installation is described in this policy as "Operator" and is defined within the various Regulations covered by this policy.

5. Inspectors monitor compliance with the requirements imposed on Operators by relevant primary legislation and statutory instruments (Regulations). These requirements include:

- The regulation of the discharge and use of offshore chemicals, the discharge of oil, and emissions from qualifying offshore combustion installations¹;
- The prohibition on the release of offshore chemicals and oil; and
- The requirement for Licensed Operators to have an Oil Pollution Emergency Plan (OPEP) and safety case.

A list of the legislation from which inspectors appointed by the Secretary of State draw their powers is provided within Appendix 1: "Powers of Inspectors".

6. Offshore chemicals are those used in the process facilities or drilling activities in the production and exploration of petroleum. Oil includes any liquid hydrocarbon (e.g. crude oil, condensate, or dispersed oil in produced water etc.). Definitions of these terms, and others, are set out in the regulations.

¹ A combustion installation is a technical apparatus located on an offshore installation, in which fuels are oxidised to use the heat generated e.g. gas turbines, etc.

7. Permits authorising certain activities are granted, on successful application and assessment, to Operators. These Operators are also described as Permit Holders. Permits and Consents granted include:

- Direction(s) under EIA Regulations
- Chemical Permits
- Consents to Locate
- Oil Discharge Permits
- Marine Licenses
- Disturbance Licenses for European Protected Species
- Applications to carry out Marine Survey
- EU-ETS permits
- PPC permits
- Oil Pollution Emergency Plans
- Safety Cases

8. The enforcement methods available to inspectors are detailed in the relevant legislation and include: the serving of an Enforcement or Prohibition Notice, revocation of a Permit, the imposition of a civil penalty (in respect of breaches of the EU ETS scheme) and referral for prosecution.

9. This Policy sets out the general principles that inspectors will follow when considering enforcement action, including prosecution. It covers the key areas of:

- (i) Appointment and powers of inspectors;
- (ii) Purpose and scope of enforcement;
- (iii) Principles of enforcement;
- (iv) Methods of enforcement;
- (v) Prosecution;
- (vi) Enforcement and the liaison with other authorities;
- (vii) Concurrent use of enforcement methods and communicating outcomes;
- (viii) Publicity and provision of information; and
- (ix) Appeals, complaints or comments.

10. This Policy is written in the context of the regulatory regime existing at the time of publication. The principles of this Policy will apply to any future relevant legislation which contains enforcement powers. DECC reserves the right to change this Policy without notice and may re-issue it where there are significant changes to the legislative regime or, the manner in which it enforces the regulations.

11. DECC expects compliance with the requirements of the regulatory regime. However, Inspectors will not hesitate to use their enforcement powers when and where appropriate in accordance with this Policy.

Appointment and Powers of Inspectors

12. Inspectors are appointed by the Secretary of State and carry identification cards as evidence of that appointment. They have a number of powers under the legislative regime, which include the authority to:

- Investigate whether the requirements, restrictions or prohibitions imposed by the regulatory regime have been, or are being, complied with;
- Monitor the use, discharge or release of any offshore chemicals;
- Monitor any discharge or release of oil; and
- Report on the condition or operation of, or any discharges or releases from, any qualifying offshore combustion installation, as defined by the regulations.

13. Inspectors exercise their powers by undertaking regulatory interventions, such as inspections or investigations, in order to gather evidence and form an opinion as to whether Operators, Permit Holders and/or other companies have contravened the legislation, or are likely to do so.

14. An important aspect of gathering evidence is speaking to onshore and offshore personnel. Personnel may range from onshore Senior Management to Offshore Installation Managers, Supervisors, or Technicians. On occasions, inspectors may exercise their powers to conduct interviews with any person whom they have reasonable cause to believe is able to provide information relevant to any examination or investigation and to require that person to sign a declaration as to the truth of their answers. Inspectors often refer to the information provided during the interview² as a witness statement. Inspectors will explain to the interviewee the purpose and nature of such interviews.

15. In addition to interviews, inspectors have the legal authority to take copies of documents and pieces of equipment into their possession for examination. A full description of these powers is detailed in Appendix 1. However, it should not be assumed that if an inspector exercises these powers that this will inevitably lead to enforcement. Rather, it is a matter of ensuring that the inspector applies appropriate rigour and quality to the evidence gathering process.

16. A number of offences may arise where Operators or other persons fail to comply with the requirements of an inspector. For example, failure to provide an inspector with any information they have required as part of their investigation, wilfully obstructing an inspector appointed by the Secretary of State, or knowingly or recklessly making a statement which the person knows to be false or misleading, may all amount to separate offences under the regulations.

² A declaration may be admissible against that person in a Criminal Court subject to the discretion of the Court to exclude it on the basis of applicable rules of evidence.

Purpose and Scope of Enforcement

17. Inspectors exercise their enforcement powers for the purpose of securing compliance with the regulatory regime. The various statutory instruments detail the extent of that regulatory regime and the scope of likely enforcement activities.

18. **Purpose of Enforcement:** Enforcement, including prosecution, has three key purposes. It is to ensure that those, such as Permit Holders and Operators, who have duties under the law:

- take preventative or remedial measures to prevent pollution³;
- put in place measures to achieve compliance; and
- are held to account when failures to comply occur.

19. **Scope of Enforcement:** The scope of enforcement is limited to the contraventions that are stipulated as offences by the statutory instruments that make up the regulatory regime. However, it is important to highlight two areas that are out with the scope of this Policy: certain decisions and recommendations by the Oslo-Paris Convention, and various other pollution related requirements imposed upon mobile drilling units while they are in transit.

20. The 1992 Oslo-Paris Convention (OSPAR) is for the protection of the marine environment of the North East Atlantic. The OSPAR Commission is a body of representatives of Governments of the fifteen contracting parties. It is UK Government policy to implement and apply all the OSPAR Commission's decisions and recommendations. However, this Policy only applies to those decisions or recommendations in so far as they have been incorporated into UK legislation or form conditions attached to permits.

21. This Policy does not apply to mobile drilling units in transit as they are treated as vessels. During this time, they are subject to other pollution related statutory requirements that are out with the jurisdiction of DECC inspectors (e.g. having a Shipboard Oil Pollution Emergency Plan (SOPEP)⁴ and requirements of The International Convention for the Prevention of Pollution from Ships (MARPOL)).

³ According to the Offshore Chemicals Regulations 2002 and the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005, pollution means the introduction by man, directly or indirectly, of substances or energy into the relevant area which results, or is likely to result, in hazards to human health, harm to living resources and marine ecosystem, damage to amenities or interference with other legitimate uses of the sea.

⁴ This SOPEP is a different plan from the Oil Pollution Emergency Plan required for offshore installations under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998

Principles of Enforcement

22. Key to this Policy are the principles of:

- (i) Proportionality in the method of enforcement used;
- (ii) Targeting of enforcement;
- (iii) Consistency of approach;
- (iv) Transparency in the implementation of the Policy; and
- (v) Accountability of DECC for its actions.

23. **Proportionality:** Proportionality means relating the method of enforcement to the seriousness of any alleged offence, the potential for pollution, or actual pollution caused. In practice, this means that inspectors will take particular account of how far those who have duties under the law have fallen short of what the law requires and the extent of the risk of, or actual, pollution.

24. Repeated incidents or contraventions of legislation may be as a result of:

- Ongoing technical problems of a complex nature; or
- The unwillingness of a company, which has a duty under the law to change behaviour, to negate or reduce incidents, or put in place measures to achieve compliance with permit conditions.

25. This may require a review of a Permit Holder or Operator's actions, which may have a corresponding impact upon the method of enforcement [escalation or de-escalation], the approach taken by inspectors, the frequency, depth, and scope of future regulatory interventions.

26. **Targeting:** Targeting means making sure that regulatory enforcement effort is directed primarily towards those whose activities:

- Give rise to, or create a risk of, serious pollution;
- Have the potential to affect the environment, damage amenities or interfere with other uses of the sea;
- Historically have given rise to non-compliance with the Regulations;
- Have taken place, or are ongoing, in the absence of a required permit;
- Have given rise to previous warnings or enforcement with no evidence of improvement;
- Give rise to, or there is a likelihood of, non-compliance with permit conditions where a permit has been granted;
- Have given rise to previous reportable incidents; and
- Give rise to inspection/investigation findings.

In addition, failure by an Operator to submit, maintain or implement an Oil Pollution Emergency (OPEP) plan, is also likely to attract enforcement activities.

27. DECC's Inspection and Investigation Policies are integral tools for ensuring inspection and investigation effort is properly targeted.

28. **Consistency:** Consistency means taking a similar approach in similar circumstances to achieve similar ends. DECC aims to achieve consistency in relation to:

- Advice to those who have duties under the law;
- The response to pollution and other incidents;

- The exercise of powers by its inspectors; and
- Decisions on whether to pursue enforcement action.

29. DECC recognises that consistency cannot be as simple as uniformity. When determining whether enforcement action is appropriate, inspectors take into account many factors including, but not limited to, the:

- Scale of any actual/risk of pollution;
- Location of the incident;
- Amount of emissions, oil/offshore chemical released or discharged out with the conditions of a permit;
- Type and nature of the emission, or oil/offshore chemical discharged or released;
- Implementation of the OPEP;
- Number, or significance, of permit conditions that have not been complied with;
- Causal factors and circumstances that have given rise to consideration of enforcement, including those that:
 - ☐ arose as a result of something which could not reasonably have been prevented⁵; or
 - ☐ were due to something done as a matter of urgency for the purpose of securing the safety of any person.
- The measures and robustness of arrangements, or lack of them, that the Permit Holder or Operator has in place to achieve compliance;
- Likelihood of recurrence;
- Actions of the Permit Holder's or Operator's management, including their level of cooperation with any investigation undertaken by the Department;
- Permit Holder's or Operator's previous history of incidents, compliance record and enforcement;
- Evidence available and gathered to pursue the appropriate enforcement in line with this Policy; and
- Any potential conflict of enforcement with other statutory provisions.

30. The process of making enforcement decisions can be complex. Each situation is unique. Inspectors have discretion, within the framework of this Policy, to exercise their professional judgement so that the appropriate action is taken. DECC has arrangements in place to promote consistency in the exercise of that judgement.

31. **Transparency:** Transparency is vital in maintaining public and industry confidence in DECC's ability to regulate. It means helping those being regulated to understand what is expected of them and what they in turn can expect from DECC.

32. Transparency is an integral part of the role of an inspector. DECC trains its staff and has arrangements to ensure that:

- Where remedial action is required, it is clearly explained why the action is necessary and by when it must be carried out;
- In the case of an Enforcement Notice, that the recipient understands its content and consequences;
- In the case of a Prohibition Notice, explaining why the prohibition is deemed necessary;
- Where a Permit is revoked, explaining the rationale for the revocation;

⁵ This is a statutory defence under the relevant legislation [cite legislation].

- Where a matter is referred for consideration of prosecution, the Permit Holder, Operator, or company will, where it would not prejudice the outcome of an investigation, be advised; and
- That publicity and provision of information to the public is undertaken in accordance with the relevant legislation.

33. In order to facilitate the final aim set out above, DECC publishes a register of Enforcement Notices, Prohibition Notices and Convictions at [<https://www.gov.uk/oil-and-gas-decc-public-registers-of-enforcement-activity>]

34. In addition, inspectors will clearly distinguish between regulatory requirements, and advice on what is desirable or good practice.

35. **Accountability:** DECC, through the functions and roles undertaken by its inspectors, is accountable to the Secretary of State, Parliament, and to the public for its actions. This means that DECC must have policies and standards against which it can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints. The arrangements for handling complaints are described later in this Policy. DECC have arrangements in place so that the Secretary of State and other stakeholders are provided with information as necessary. In addition, the actions of DECC are subject to review by the courts by means of the appeal process established within the regulations. Further information in respect of the appellate system and the internal complaint handling system, is provided later in this policy.

Methods of Enforcement

36. Enforcement action can be prompted as a result of inspections, investigations, or other regulatory contacts where in the inspectors' opinion there is, or there is likely to be, a contravention of legislation. The methods of enforcement are detailed in the applicable legislation and include:

- (i) Enforcement Notices;
- (ii) Prohibition Notices;
- (iii) Revocation of a Permit; and
- (iv) Prosecution.

37. In addition to the enforcement methods listed above, DECC may raise concerns arising from an inspection or investigation by way of a letter to the Permit Holder or Operator.

38. The first two methods detailed above are non-punitive in nature and may be used where an alleged non-compliance, in the opinion of the Department, does not warrant more severe enforcement action, such as the revocation of a permit or prosecution. They are forward looking and are focussed on bringing the Permit Holder or Licensed Operator into compliance. DECC have arrangements in place to monitor, follow-up and check compliance with these notices. In contrast, punitive enforcement can involve DECC revoking a permit, or referring a Permit Holder or Operator to the relevant authorities for consideration of prosecution. Concurrent use of these methods of enforcement is described later in this Policy.

39. **Letter:** Where there has been a minor contravention, or where action is required to achieve compliance, but an Enforcement or Prohibition Notice is inappropriate for reasons of proportionality, then an inspector may write a letter to the Permit Holder or Licensed Operator. This letter will confirm the matters requiring attention and will specify actions to be taken.

40. **Enforcement Notice:** An Enforcement Notice may be served when an inspector is of the opinion that a Permit Holder or Operator has, is or is likely to, contravene any condition imposed by a permit issued under the legislation. In addition, an Enforcement Notice may be served where an inspector is of the opinion that a release, use without permit, or discharge without a permit has occurred, is occurring, or is likely to occur. The Notice will specify:

- The matters which gave rise to that opinion;
- The steps that must be taken to remedy or to prevent the contravention; and
- The period within which those steps must be taken.

41. The period specified in the Enforcement Notice in which compliance has to be achieved will be discussed with the Permit Holder. However, it is for the inspector serving the Notice to specify the compliance date.

42. An inspector may revoke an Enforcement Notice. Circumstances that may give rise to this include:

- Where a Notice has been served in error. Where a Notice contains an error, the original Notice will be revoked and a new Notice served with the error corrected; or
- An occasion where, for well justified reasons, a Permit Holder cannot achieve compliance within the period specified. The original Notice may be revoked and a new Notice served specifying a new compliance date. However, it is for the Permit Holder to bring this situation to the inspector's attention at the earliest opportunity and to put forward in writing the reasons why compliance cannot be achieved within the period specified.

43. Where a Permit Holder to whom an Enforcement Notice is addressed has failed to take the action required within the specified time and the Notice has not been revoked, the Secretary of State may undertake any action (e.g. remedial works) so required. The associated costs shall be recoverable as a debt from that Permit Holder. Where this power is exercised, the person shall afford such assistance as the Secretary of State may reasonably require.

44. The recipient of an Enforcement Notice can appeal against the decision to serve the Notice. Arrangements for this are described later in this Policy.

45. **Prohibition Notice:** A Prohibition Notice may be served when an inspector is of the opinion that there is the imminent risk of serious pollution as a consequence of any:

- Discharge or release of oil
- Use of, discharge, or release of offshore chemicals; or
- Operation of a qualifying offshore combustion installation.

A Prohibition Notice may be served on any aspect of the operation of an offshore installation whether or not it is regulated by the conditions of a Permit or, an accident has occurred.

46. The Notice will prohibit the activity giving rise to the risk and:

- State that the Secretary of State is of the opinion that there is an imminent risk of pollution etc. and
- Detail the matters giving rise to the Secretary of State's opinion, describing the risk involved in the activity to which the Prohibition Notice relates;
- Specify steps that must be taken to remove the risk and the period within which they must be taken; and
- May direct that any Permit cease to have an effect until the Prohibition Notice is withdrawn, or may impose conditions to be observed in carrying out an operation which is authorised under a relevant permit.

47. An inspector may, by notice in writing, withdraw a Prohibition Notice wholly or in part at any time and shall withdraw a Notice when DECC is satisfied that the steps required by the Prohibition Notice have been taken to achieve compliance.

48. The phrase 'serious pollution' is not defined in the legislation. It is not necessarily related to the size of any spill, discharge or emission. For example, a relatively small spill of a hazardous substance may have an impact on a protected habitat or species, or could result in a beach being closed to the public. In contrast, a large spill of a relatively benign substance may have little or no impact on the environment.

49. The recipient of a Prohibition Notice may appeal against the decision to serve the Notice. Arrangements for this are described later in the Policy.

50. **Revocation of a Permit:** The Secretary of State may, by a Notice in writing, revoke a permit issued under the legislation where they are of the opinion that:

- Any application or information or statement made in connection with a permit was false or misleading in a material particular; or
- The Permit Holder/ Operator has been guilty of a breach of any condition(s) attached to a permit.

51. An Operator may re-apply for a Permit after it has been revoked. However, the Permit would only be granted if DECC was satisfied that the information in connection with the application was not misleading or false, or that the Operator had put in place arrangements, such that they will be able to comply with the conditions on the granting of the Permit.

52. **Prosecution:** Prosecution can be brought against a Permit Holder, Operator or other company. For this to be pursued the legislation must stipulate the offence and there must be evidence that such an offence has been committed. In considering and recommending this method of enforcement, inspectors take account of the principles of enforcement and, in particular, the principle of proportionality. They will also abide by the Code for Crown Prosecutors (or the relevant code for the jurisdiction). Prosecution is dealt with in detail under its own heading below.

Prosecution

53. Prosecution is a punitive form of enforcement. It draws attention to the need for compliance with the law, and conviction may deter others from a similar failure to comply. Different arrangements exist in Scotland as compared to England, Wales and Northern Ireland for pursuing a prosecution. However, the same criteria of a general and particular nature are used by inspectors in considering legal proceedings. DECC has arrangements in place to monitor the decision to pursue prosecutions so as to retain confidence in the independence of this process.

54. **Arrangements in Scotland:** In Scotland the Procurator Fiscal decides whether to bring a prosecution. This will usually be on the basis of a recommendation by DECC following an investigation. DECC, using evidence gathered and in line with this Policy, will decide whether to report an incident with a view to prosecution to the Procurator Fiscal. The Procurator Fiscal may decide to investigate the circumstances independently of DECC and thereafter, make a decision as to whether to institute proceedings.

55. In Scotland, before prosecutions can be instituted, the Procurator Fiscal will need to be satisfied that there is sufficient corroborated admissible evidence, and that prosecution is in the public interest.

56. **Arrangements in England and Wales or Northern Ireland:** In England and Wales, any decision to proceed with a court case rests with the relevant independent prosecuting agency. In Northern Ireland the decision will be taken in accordance with the policy and provisions for that jurisdiction. For certain offences⁶, proceedings cannot be brought without the consent of the Secretary of State, or the Director of Public Prosecutions (in Northern Ireland, the Director of Public Prosecutions for Northern Ireland).

57. The decision to prosecute shall take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors (or the Northern Irish equivalent). No prosecution may go ahead unless the prosecutor is of the view that there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest.

58. **Managing the Decision to Pursue Prosecution⁷:** The decision to submit a case to the relevant prosecuting agency is taken not by the individual investigators. Rather, arrangements are in place where a senior manager, not involved in the investigation, makes the decision.

59. **General Criteria for Prosecution:** Referral for consideration of Prosecution may arise where, in DECC's opinion:

- (a) The gravity of the alleged offence, taken together with the seriousness of any actual or potential pollution, justifies this approach;
- (b) The general record and approach of the alleged offender warrants it; or
- (c) There has been reckless disregard of requirements imposed by the legislation.

⁶ I.e. offences under the Offshore Chemicals Regulations 2002 and under the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005

⁷ In England and Wales, when DECC have reached the final stages of its investigation into an alleged criminal offence it may provide "a body corporate" (i.e. a company)] with the opportunity to (a) respond to questions pertaining to alleged criminal offences that DECC suspects the company has committed and (b) make representations with a view to influencing DECC's decision-making with regard to the instigation of criminal proceedings. The company would be invited to nominate a senior representative to attend a tape-recorded interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) and Codes. The company is not obliged to participate in the interview.

60. **Particular Criteria for Prosecution:** Referral of a matter for consideration of the prosecution of a Permit Holder, Operator or other company may arise where, in DECC's opinion, there has been:

- (a) A significant discharge of oil or offshore chemical into the sea, or under the seabed, arising from an activity:
 - Where a permit has not been granted, or
 - Which is not in accordance with the terms of, and conditions attached to a permit.
- (b) Resulting in a significant release of oil or offshore chemical into the sea;
- (c) Resulting in a significant breach, or repeated breaches, of a permit condition(s);
- (d) Resulting in a spill of oil or chemical that has, or has the potential to have, an effect on the environment, damage amenities or interfere with other users of the sea;
- (e) Resulting in a significant failure and/or absence of controls to prevent an unpermitted discharge or release of offshore chemicals or oil; or
- (f) Resulting in a failure without reasonable cause, by the Licensed Operator, to implement its oil spill contingency plan in the event of an oil pollution incident.

61. Other examples of occasions where a prosecution may arise include where a Permit Holder, Operator or other company, in DECC's opinion, has:

- (a) Failed to comply with formal remedial requirements such as those set out in an Enforcement or a Prohibition Notice;
- (b) Failed to supply information without reasonable excuse, or knowingly or recklessly supplied false or misleading information;
- (c) Intentionally obstructed Inspectors in the lawful execution of their duties, or failed to comply with any requirements imposed by an Inspector;
- (d) Knowing or recklessly made a statement misleading in a material particular in respect of an application for a permit etc., or for the purposes of satisfying a requirement imposed by the regulations
- (e) Committed an offence due to the act or default of some other company (where this occurs, then that other company (e.g. the duty holder under the Safety Case Regulations) may be subject to legal proceedings whether or not proceedings for the offence are taken against the first mentioned company (e.g. Operator)); or
- (f) An Operator has, without reasonable cause, failed to submit, resubmit or maintain an OPEP, failed to undertake exercises or retain evidence of such exercises, commences with operations within 2 months of submitting their plan or, in the event of an oil spill, has not implemented this plan.

For full details of potential offences, including the defences to these offences, please refer to the Regulations.

62. **Prosecution of Individuals:** in respect of certain offences⁸ and in exceptional circumstances, DECC may identify and recommend prosecution of any Director, Manager, Secretary or other similar officer of the body corporate (i.e. the company) where an investigation reveals evidence that suggests that an offence may have been committed with the consent or connivance of such an individual, or to have been attributable to neglect on their part. Specifically, Inspectors will consider the management chain and the role played by individual Directors and Managers.

63. In addition, there may be situations whereby individuals, other than those within the management chain, are judged to have committed an offence. For example, where individuals

⁸ I.e. offences under the Offshore Chemicals Regulations 2002 and under the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005.

have knowingly provided false information within a statement, or have wilfully obstructed an inspector. When an inspector forms the opinion that any Director, Manager, Secretary, or any other individual, may have committed an offence that may result in legal proceedings being taken against them, the inspector will proceed in accordance with the relevant statutory provisions, for example:

- In Scotland, proceed to interview the individual under caution; and
- In England and Wales, interview the individual under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) and Codes.

64. Individuals being interviewed, under caution in connection with offences may consult privately with a Solicitor. Where a Solicitor has been consulted and is available they will be allowed to attend the interview.

65. Inspectors will explain to the interviewee the purpose and nature of such interviews.

Enforcement and Liaison with Other Regulatory Authorities

66. It is foreseeable that an Inspector's regulatory intervention giving rise to an enforcement action may coincide with an intervention on the same offshore installation by the:

- (i) Secretary of State's Representative [SOSREP]; or by
- (ii) Inspectors from another government appointed Regulator⁹

67. Arrangements are in place to ensure that there are no conflicts of interest for the Operator or Permit Holder between a DECC Inspector's enforcement activities and any actions taken by the SOSREP or other Regulator.

68. Inspectors often liaise and share information with Inspectors from other government appointed Regulators and Officers from the Maritime and Coastguard Agency.

69. **Secretary of State's Representative:** The SOSREP is appointed under the Offshore Installations (Emergency Pollution Control) Regulations 2002 and has powers of intervention where:

- An accident has occurred;
- In the opinion of the Secretary of State the accident will, or may, cause significant pollution; and
- In the opinion of the Secretary of State the use of the powers is urgently needed.

70. The SOSREP, for the purpose of preventing or reducing pollution, or the risk of pollution, may serve a Direction in respect of any offshore installation. A Direction may be much wider in scope than that of an Enforcement or Prohibition Notice.

71. The Inspector will inform the SOSREP when a Prohibition Notice has been served in respect of the installation when no accident has occurred.

72. Where an accident has occurred an Inspector may serve a Prohibition Notice and the SOSREP may also serve a Direction if the respective criteria are met. If this situation arises, the Inspector will liaise with the SOSREP to ensure that no conflict of interest arises.

73. **Inspectors from other Regulators:** The DECC Inspector will liaise with Inspectors from the other Regulators where both are planning to take enforcement action, such as serving of Notices, following similar regulatory interventions involving the same matter.

⁹ E.g. Inspectors from the Energy Division of the Health & Safety Executive as DECC's partners in the Competent Authority, Scottish Environmental Protection Agency, or in respect of England and Wales, the Environment Agency

Concurrent use of Enforcement Methods and Communicating Outcomes

74. Circumstances could be such that different methods of enforcement may be selected at different stages during and after a regulatory intervention. DECC is committed to communicating the outcomes of regulatory interventions to ensure that there is no uncertainty as to the approach its inspectors are pursuing.

75. **Concurrent Use of Enforcement Methods:** Notices, prosecutions, and other methods of enforcement can all be properly used in relation to the same matter. For example, a Prohibition Notice may be served to deal with an imminent risk of serious pollution, an Enforcement Notice may be served to secure wider long-term compliance and a prosecution pursued as an appropriate and proportionate regulatory response to the alleged offence. These actions may be taken concurrently.

76. **Communicating Outcomes:** The Department will write to the Permit Holder, Operator, other company, or individual, following an investigation to advise them what enforcement action, if any, is being considered. This may include:

- Whether the service of a Notice, or revocation of a permit is being considered;
- In Scotland, if a report has been sent to the Procurator Fiscal recommending prosecution;
- In England, Wales and Northern Ireland, if a report has been submitted to the independent prosecuting authority recommending prosecution; or
- Notification that no further legal proceedings are to be pursued.

77. It should be noted that an investigation may take a number of weeks or, in some cases, several months to complete depending on the complexity of the incident or logistical issues in gathering evidence.

Publicity and Provision of Information

78. Information regarding the implementation and outcomes of this enforcement policy shall be subject to release and publication in accordance with:

- The Freedom of Information Act 2000; or where appropriate,
- The Environmental Information Regulations 2004.

79. The Freedom of Information Act¹⁰ gives the public a right of access to information held by public authorities. These rights are subject to procedural and substantive limitations. The substantive limitations, or exemptions, ensure a proper balance is achieved between the right to know, the right to personal privacy, and the delivery of effective government. There are similarities between the Freedom of Information Act and the Environmental Information Regulations.

80. The Environmental Information Regulations¹¹ oblige public authorities to look at the information they hold and identify that which falls within the definition of environmental information provided by the regulations and, subject to exceptions, supply a copy of information if requested. An additional, but by no means lesser, responsibility is to take reasonable steps to organise and actively disseminate environmental information via electronic means on an ongoing basis. The definition of environmental information is very wide; it includes emissions, discharges and other releases into the environment. There is a presumption under the regulations that environmental information must be released, unless there are strong public interest considerations to justify withholding it.

81. Public Registers of Enforcement Notices, Prohibition Notices and Convictions are available to access on the DECC pages of the gov.uk website. The publication of these registers is in accordance with the principles of the Freedom of Information Act and the Environmental Information Regulations.

82. The OEU publishes the following information in the registers of Enforcement/Prohibition Notices:

- Notice type;
- Notice number;
- Name and registered address of the company on which the notice was served;
- A description of the circumstances of the notice;
- Legislative basis of the notice;
- Issue Date; and
- Compliance Date.

Information is not published until either the right of appeal period against the notice has expired or any appeal has been disposed of.

83. The OEU publishes the following information in the Register of Convictions:

- Name and registered address of the company convicted;
- Details of the offence(s);

¹⁰ For more information visit www.foi.gov.uk

¹¹ For more information visit www.ico.gov.uk

- Legislative basis of the conviction;
- Date of conviction; and
- The penalty imposed

84. Details of all on-going investigation cases, on-going prosecution cases yet to be finalised and any convictions subject to appeal are not published. To take account of the right to appeal, a delay of nine weeks applies before a new case is added to the Convictions Register.

Appeals, Complaints, or Comments

85. An integral part of the accountability principle of enforcement is having arrangements in place for dealing with complaints or comments. Two methods exist: a formal appellate system using the Courts, and local arrangements involving DECC senior management.

86. The formal appellate system for dealing with complaints as a result of the service of an Enforcement Notice, a Prohibition Notice or, any decision by the Secretary of State, is described in the relevant regulations. It entitles the Permit Holder or Licensed Operator to appeal to the High Court for England, Wales and Northern Ireland, or the Court of Session in Scotland. Any appeal under the regulations must be made within 28 days of written notification of the decision in question.

87. In addition, or alternatively, where a person has a complaint or comment regarding the implementation of this policy, they should bring this to the attention of the Department by writing to the address shown at the end of this policy. The Department will investigate any complaint and review any comments received and will write back to the person addressing their concerns.

88. Senior management within DECC OGED monitor the implementation and effectiveness of this policy.

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More information is available from the DECC oil & gas internet site:
<https://www.gov.uk/government/organisations/department-of-energy-climate-change>

Appendix 1: Powers of Inspectors

1. The Secretary of State for Energy & Climate Change appoints offshore environmental inspectors in accordance with the administration of relevant legislation. On appointment, inspectors have statutory authority to perform a number of functions and duties in relation to relevant environmental regulations, some of which are listed below:

- i. The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as amended).
- ii. The Offshore Chemicals Regulations 2002 (as amended).
- iii. The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013.
- iv. The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended)
- v. The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended).
- vi. The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended).
- vii. The Fluorinated Greenhouse Gases Regulations 2009 (as amended).
- viii. The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011.
- ix. The Energy Act 2008, Part 4A Works Detrimental to Navigation.
- x. The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 (as amended).
- xi. The Offshore Installations (Emergency Pollution Control) Regulations 2002.
- xii. The REACH Enforcement Regulations 2008 (as amended).
- xiii. The Mercury Export and Data (Enforcement) Regulations 2010 (as amended).
- xiv. Section 256(1) of the Merchant Shipping Act 1995 for the purposes of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, subject to Paragraph 18.
- xv. Regulation 8 of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998.
- xvi. The Merchant Shipping Act 1995 (as amended) (Part X but note that all the powers may be exercised by reason of the appointment under paragraph 1(a) except those powers in section(s) 257 and 258 of that Act).
- xvii. Regulation 31 of the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011
- xviii. The Greenhouse Gas Emissions Trading Scheme Regulations 2012 (as amended).
- xix. The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013.
- xx. The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) (Amendment) Regulations 2015.
- xxi. The Fluorinated Greenhouse Gas Regulations 2015.
- xxii. The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015.
- xxiii. The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015.

2. This document however has specific regard to The Merchant Shipping (Oil Pollution Preparedness Response and Co-operation Convention) Regulations 1998, The Offshore Chemical Regulations 2002 (as Amended); The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as Amended) and The Offshore Combustion

Installations (Pollution Prevention and Control) Regulations 2013 (“the Relevant Regulations”).

3. In respect of the Relevant Regulations, inspectors are appointed by the Secretary of State to:

- Investigate whether the requirements, restrictions or prohibitions imposed by the relevant regulations have been, or are being complied with;
- Monitor the use or discharge of any offshore chemicals;
- Monitor any discharge of oil; and
- Report on the condition or operation of, or discharges from, any qualifying offshore combustion installation.

4. An inspector under the Relevant Regulations (save for The Merchant Shipping (Oil Pollution Preparedness Response and Co-operation Convention) Regulations 1998) may for any of the purposes mentioned in those Regulations and on producing evidence of his appointment—

- (a) At any reasonable time (or, in a situation which in his opinion may give rise to a risk of significant pollution as a result of the discharge or release of oil, or the discharge or release of an offshore chemical, or operation of any qualifying offshore installation¹², at any time board any offshore installation;
- (b) On boarding an offshore installation, take with him any other person authorised by the Secretary of State for the purposes mentioned in paragraph (1) and any equipment or materials that he thinks he may require;
- (c) Make such examination or investigation as he considers necessary (including any examination or investigation of the offshore installation or of the maintenance or monitoring of apparatus on the offshore installation)
- (d) Give a direction requiring that any part of the offshore installation be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
- (e) Take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) Take samples of any articles or substances found on the offshore installation or take samples of the atmosphere, land, seabed (including the subsoil thereof) or water in the vicinity of the offshore installation;
- (g) In the case of any article or substance which he finds on the offshore installation, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless, in the circumstances of the case, that is necessary);
- (h) In the case of any such article or substance as is mentioned in sub-paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely
 - (i) to examine it and do to it anything which he has power to do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before his examination of it is completed; and

¹² In the 2013/971 Regulations, an emergency.

- (iii) to ensure that it is available for use as evidence in any proceedings relating to an offence under the Regulations;
- (i) Require any person whom he has reasonable cause to believe is able to give any information relevant to any examination or investigation under sub-paragraph (c)--
 - (i) to attend at a place and time specified by the inspector;
 - (ii) to answer (in the absence of any person other than persons whom the inspector may allow to be present and a person nominated to be present by the person upon whom the requirement is imposed) such questions as the inspector thinks fit to ask; and
 - (iii) to sign a declaration as to the truth of his answers;
- (j) Require the production of, and inspect and take copies of--
 - (i) any records which by virtue of any provision of any permit are required to be kept; and
 - (ii) any records which he considers it necessary for him to see for the purposes of any examination or investigation under sub-paragraph (c).
- (k) Require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by the Regulations.

5. Under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, Inspectors may inspect any offshore installation, oil handling facilities or pipelines to which the Regulations apply.

