Title: The Offshore Chemicals Regulations 2002 No. 1355	Post Implementation Review
PIR No: DESNZ004(PIR)-24-OPRED	**Date:** 19/02/2024
Original IA/RPC No: N/A	**Type of regulation**: Domestic
Lead department or agency: Department for Energy Security & Net Zero	**Type of review:** Statutory
Other departments or agencies: N/A	**Date measure came into force:** 15/05/2002
	Recommendation: Keep
Contact for enquiries: Anna Buckingham anna.buckingham@energysecurity.gov.uk; 01224 254149	RPC Opinion: Choose an item.

1. What were the policy objectives of the measure? (Maximum 5 lines)

The Offshore Chemicals Regulations 2002 (as amended) ("the Regulations") establish and implement a regime whereby the UK can meet its obligations under the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) Decision 2000/2 on a Harmonised Mandatory Control System (HMCS) for the Use and Reduction of the discharge of Offshore Chemicals ("the Decision") in relation to offshore oil and gas industry activities, to reduce the overall impact of offshore chemicals in the marine environment. The Regulations define "offshore activities" as offshore petroleum activities or offshore storage or unloading activities. The Regulations also, amongst other things, defined an offshore chemical; established a system of permits; and introduced enforcement powers to monitor and investigate the use and discharge of offshore chemicals.

2. What evidence has informed the PIR? (Maximum 5 lines)

- Information gathered from an **industry Survey** undertaken from 3rd October to 31st October 2023.
- **UK data reported to OSPAR** from the period of 2018 to 2022 (five years of data), specifically the quantity of chemicals used and discharged.
- **Non compliances issued by OPRED** (when an operator has not adhered to the conditions attached to their permit or have used and / or discharged offshore chemical(s) without a permit).
- **Inspection findings observed by OPRED** ('findings' are identified during an inspection activity that require the operator (permit holder) to take certain action(s) to bring back their offshore installation into compliance.
- **Investigations by ORPED** (a formal investigation into a breach of a permit condition that may result in enforcement action being taken.

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

Overall, the policy objectives have been achieved. The Decision was implemented via the Regulations thus only allowing the use and / or discharge of offshore chemicals that are currently approved under the HMCS. A permitting regime has been implemented; the definition of an offshore chemical was further clarified in 2011 through amendments to the Regulations; and the 2011 amendments also introduced supplemental enforcement powers.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: **Graham Stuart** Date: 27/02/2024

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

(Maximum 5 lines)

The original assumptions were that in the absence of the Regulations, there would be limited legal incentive for operators to look for further opportunities to reduce the volume of offshore chemicals discharged to the marine environment and that the UK might not meet its international commitments under OSPAR. The formal application, assessment and permitting procedure for offshore chemical discharges would bring a more robust approach to the control of offshore chemical discharges.

5. Were there any unintended consequences? (Maximum 5 lines)

The single respondent to the PIR Survey stated that *it is an administrative burden to have multiple applications for different activities and that the use of regulation 3A to justify "findings" (about small drips, bunding arrangements, hose management) could be better regulated and managed with relevant processes and procedures*. However, given that only one response to the Survey was received, the views expressed by that respondent cannot be considered representative of the offshore oil and gas sector as a whole. Consequently, it is conceivable that the low response rate to the PIR Survey suggests that Industry generally considers that the introduction of the Regulations have not resulted in any unintended consequences.

6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

OPRED identified that the requirement to vary chemical permits to adjust the quantity of PLONOR chemicals (those that pose little or no risk to the marine environment) was onerous. This requirement is no longer required, resulting in a more streamlined and efficient application process.

OPRED previously required operators to undertake a review of their chemical Life Permits every three years, which, amongst other things, required three years' worth of forecasted data of chemical use and discharge. OPRED has amended the approach, and an operator is no longer required to provide three years' worth of forecasted chemical data in advance. The operator is now only required to ensure that their chemical use and discharge for the following year has been approved on the chemical permit prior to the commencement of that year. An operator still has the option of including a forecast for two additional years of use and discharge. This in turn has resulted in operators varying their chemicals permits only when required and ensured a more accurate forecast based on the most recent information on production from the installation.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

The Regulations were introduced, in part, to implement OSPAR Decision 2000/2 on a Harmonised Mandatory Control System for the Use and Reduction of the Discharge of Offshore Chemicals in relation to offshore activities by the offshore oil and gas industry, to reduce the overall impact of offshore chemicals in the marine environment. The Decision applies to relevant OSPAR Contracting Parties with an offshore oil and gas industry, all of whom have taken a similar approach of the UK by implementing the Decision and have a permitting regime in place for the use and discharge of offshore chemicals.

The Decision is supported by Recommendations 2000/4 (as amended) and 2000/5 (as amended) and any amendments have been implemented by OPRED and via guidance to Industry. OPRED has continued to deliver its obligations without needing to further amend the Regulations.

Annex

Supporting Information to the Post Implementation Review (PIR) on the Offshore Chemicals Regulations 2002 (as amended)

1. Policy Description and Objectives

The Offshore Chemicals Regulations 2002 (as amended) ("the Regulations") were made under the Pollution Prevention and Control Act 1999. They establish and implement a regime whereby the UK can meet its obligations under the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) Decision 2000/2 on a Harmonised Mandatory Control System (HMCS) for the Use and Reduction of the discharge of Offshore Chemicals ("the Decision") in relation to offshore oil and gas industry activities, to reduce the overall impact of offshore chemicals in the marine environment.

The Decision operates in conjunction with two OSPAR Recommendations, which are fundamental to the implementation of the Decision. These Recommendations are:

(a) OSPAR Recommendation 2000/4 (as amended) on a Harmonised Pre-Screening Scheme for Offshore Chemicals; and

(b) OSPAR Recommendation 2000/5 (as amended) on a Harmonised Offshore Chemical Notification Format (HOCNF) implementing a permitting regime which applies to the United Kingdom (UK) offshore oil and gas industry in respect to the use and discharge of offshore chemicals.

The administration / enforcement of the Regulations is undertaken by the Department for Energy Security & Net Zero, through its Offshore Petroleum Regulator for Environment and Decommissioning (OPRED[1]).

The Regulations require an offshore oil and gas operator to apply for a permit(s) to use and discharge an offshore chemical(s) to sea during offshore activities - including well operations, production operations, pipeline operations, and decommissioning operations.

The Regulations were amended in 2011 by the Offshore Chemicals (Amendment) Regulations 2011 to:

(i) update several definitions, some of which included updating the definition of "discharge", "offshore chemical", and "offshore installation";

(ii) extend the provisions to take enforcement action in the event of any unpermitted offshore chemical release;

(iii) simplify the process for varying permits or transferring them to other operators; and

(iv) more closely align the Regulations with the Offshore Petroleum (Oil Pollution Prevention and Control) Regulations 2005 (as amended).

The fee charging provisions of the Regulations relate to a Charging Scheme which has been separately updated, in more recent years, to reflect changes introduced by subsequent

amendments (from 2016 onwards) to the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 plus the fee charging provisions of other specific regulations.

The Regulations were also amended in 2005, 2010, 2016, and 2020 by:

- The Offshore Petroleum Activities (Oil Pollution, Prevention and Control) Regulations 2005 which introduced provisions relating to enforcement and prohibition notices.

- The Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010 which extended the provisions of the Regulations to offshore gas and carbon dioxide unloading and storage operations (in addition to oil and gas activities).

- The Energy (Transfer of Functions, Consequential Amendments and Revocation) Regulations 2016 which introduced provisions recognising the functions undertaken by the Oil and Gas Authority and a requirement to review the Regulations.

- The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 which made consequential amendments to the Regulations.

The current Regulations have, amongst other things, essentially:

1. defined an offshore chemical;

2. established a system of permits; and

3. introduced enforcement powers to monitor and investigate the use and discharge of offshore chemicals.

2. **Supporting evidence**

The requirement to review the Regulations was introduced in 2016, with an obligation to review the Regulations every five years. As this PIR commenced in the last quarter of2023, any quantitative data is considered from the years 2018 to 2022.

This PIR on the Regulations considered evidence from the following:

- Information gathered from an **industry Survey** undertaken from 3rd October to 31st October 2023.

- **UK data reported to OSPAR** from the period 2018 to 2022 (five years of data), specifically the quantity of chemicals used and discharged.

- **Non compliances issued by OPRED** (when an operator has not adhered to the conditions attached to their permit or have used and/or discharged an offshore chemical(s) without a permit).

- **Inspection findings observed by OPRED** ('findings' are identified during an inspection activity that require the operator (permit holder) to take certain action(s) to bring back their offshore installation into compliance.

- **Investigations by ORPED** (a formal investigation into a breach of a permit condition that may result in enforcement action being taken.

Industry Survey

The Survey asked about the key policy objectives of the Regulations and it also included more general questions about the Regulations themselves plus their effectiveness. Industry was notified of the Survey via OPRED's communications page, to which industry stakeholders are signed up, in addition to the trade association - Offshore Energies UK (OEUK). Industry was given four weeks to respond to the Survey after which, the response(s) were analysed.

Only one response was received from Industry (from a single operator) therefore, whilst the Survey results are not necessarily reflective of the offshore oil and gas sector as a whole, it is conceivable that the low response rate suggests that Industry are content with the Regulations and deem them fit for purpose.

There are also no guarantees that a longer response time to the Survey would have provided more responses as the low response rate is not dissimilar to other PIR Surveys undertaken by OPRED. For example, Surveys appertaining to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001; the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005; and the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013. Consequently, on the basis that Industry was given four weeks to respond to the Survey; no emails were received requesting an extension; and Industry received significant warning via OEUK that the Survey would be circulated. There are no plans to re-distribute the Survey again.

UK Data reported to OSPAR

An operator is only allowed to use and / or discharge offshore chemicals that are currently approved under the HMCS and are included in the lists of approved chemicals maintained and published by the Centre for Environment Fisheries and Aquaculture Science (CEFAS).

Table 1 illustrates UK data reported to OSPAR from the last five years (2018 to 2022) of the quantity of offshore chemicals used and discharged. The data is not reflective of any risk of harm to the marine environment from those chemicals. There are different variables that influence the use and discharge of offshore chemicals such as the amount of drilling activity (the use), and whether any offshore chemicals have been re categorised by OSPAR / CEFAS which may affect whether they are allowed to be discharged to the marine environment. OPRED will continue to monitor the use and discharge of offshore chemicals and the possible influencing variables of the data.

Table 1 Quantity of offshore chemicals used and discharged in kg/year

	Quantity of offshore chemicals used and discharged in kg/year				
Year	2018	2019	2020	2021	2022
Quantity used/kg	221,621,041	288,547,707	232,513,004	301,529,946	163,755,209
Quantity discharged/kg	60,232,170	75,323,156	55,720,467	37,483,705	48,317,437

Non-conformances issued, inspection findings and investigations undertaken by OPRED

The Amendment in 2011 extended the circumstances in which enforcement and prohibition notices can be served to include any release of an offshore chemical or its use or discharge without a permit. Prior to this, notices could only be served in relation to permitted activities. The Amendment also made provisions about the period within which remedial steps could be taken under an enforcement or prohibition notice, and who can be served with such notices; meaning that if an operator does not comply within the period of time in accordance with the notice served, enforcement action can be taken. Since the introduction of the powers, there have been prosecutions, enforcement notices attained, and non-conformances issued, and inspections closed out each year. However, there is not enough data to demonstrate a trend to further discuss each of these in detail.

3. **Were Policy Objectives Achieved?**

Overall, the policy objectives have been achieved.

OSPAR Decision 2000/2 and Recommendations 2000/04 (as amended) & 2000/05 (as amended)

The Decision adopted the HMCS of which the objective is to protect the marine environment by identifying those offshore chemicals with a potential to cause a risk of harm to the marine environment and restricting their use and discharge to the marine environment. The Regulations brought into effect the Decision.

The Decision requires the pre-screening, ranking, hazard assessment and risk management of offshore chemicals, and the substitution of certain offshore chemicals by operators for less hazardous alternatives. Offshore chemicals must be registered via the HOCNF. Data within the HOCNF is evaluated and assessed against a Harmonised Pre-Screening Scheme of which there are a number of possible outcomes: certain chemicals may be deemed to Pose Little Or No Risk (PLONOR) to the marine environment, others may be considered to present a high risk of harm to the marine environment.

An offshore oil and gas operator is only allowed to use and / or discharge offshore chemicals that are currently approved under the HMCS and are included in the lists of approved chemicals maintained and published by the Centre for Environment Fisheries and Aquaculture Science (CEFAS).

The Decision is supported by Recommendations (as amended) and any subsequent amendments have been implemented by OPRED and via guidance to Industry.

Defined an offshore chemical

The definition of an offshore chemical was further clarified in 2011.

Further clarity is sometimes required, on specific cases, as to whether a chemical is classed an offshore chemical or not, and therefore whether the operator requires a permit to be issued under the Regulations. OPRED is responsible for providing such clarity and has a published Frequently Asked Questions document available for Industry.

Established a system of permits

A permitting regime was introduced in 2002 whereby any operator wanting to use or discharge chemicals in connection with offshore activities must apply to the Secretary of State (SoS) for a chemical permit. Once an application has been received, OPRED is required under the Regulations to consult with CEFAS (for applications in English and Welsh waters) or the Marine Directorate (MD), which is part of the Scottish Government (for applications in Scottish waters) for their views and technical advice on the application and associated risk assessment. OPRED will review the permit application and take into consideration any comments received from CEFAS, MD, or any other consultees or any comments received in response to a Public Notice where appropriate.

The use and / or discharge of offshore chemicals must be in accordance with the conditions attached to their permit.

Operators have an obligation to investigate the replacement of any offshore chemical(s) that are categorised by OSPAR as 'candidates for substitution', with a view to identifying suitable alternatives. They are required to submit an annual report to OPRED (Technical Justification Report (TJR)), confirming, amongst other things, the candidates for substitution that are still in use, the measures taken to identify or trial suitable alternatives, a summary of any trials undertaken to reduce or eliminate use and / or discharge and the outcomes of those trials and the current status of the replacement schedule. This information is reported to OSPAR.

An opportunity for improvement which has already been identified by OPRED is that the operator (permit holder) provides a TJR upfront at the application for a permit stage and not retrospectively on an annual basis. Discussions are currently being held with OPRED's chemical consultees to determine if this option is plausible.

The permit holder is required to submit a return to OPRED confirming the quantities of all chemicals used and / or discharged during their offshore activities, using the Environmental Emissions Monitoring System (EEMS) reporting forms. These figures are then collated and formerly reported to OSPAR.

Introduced enforcement powers to monitor and investigate the use and discharge of offshore chemicals whether lawful or unlawful.

Regulation 18(1) of the Regulations makes it an offence to use or discharge an offshore chemical otherwise than in accordance with the permit and the applicable terms and conditions of the permit.

The Amendment in 2011 introduced enforcement powers, as previously mentioned.

The permit holder must report a release of an offshore chemical to the Department and any non-compliance.

OPRED's aims were to implement a robust, effective, and efficient approach to the management of the use and discharge of offshore chemicals. The regime has been effective in that:

- there are controls in place for which chemicals can be used and / or discharged offshore; and

- the regime is efficient in terms of the assessment of permit applications submitted by operators and, where applications are approved, the timeous issuing of permits with associated conditions.

Nevertheless, there is always room for improvement and to this end, following the close of the Survey and future deliberations with Industry (e.g. at regular OEUK / Industry Forum meetings), proposals for further enhancing the Regulations - and suitably updating the associated Guidance will be considered over the long-term. See related issues under 'Next Steps' below.

Next Steps:

OPRED's review has concluded that the original objectives were achieved and therefore the Regulations remain appropriate. Consequently, there are little grounds for further amending the Regulations in the short-term insofar as they implement the original objectives.

However, operationally there are areas where the Regulations could be improved should an opportunity present itself. Opportunities to make further amendments would depend on parliamentary time and other OPRED legislative priorities.

Further Information

4. Original Assumptions - Reduction in offshore chemical discharges

The original assumptions were that in the absence of the Regulations, there would be limited legal incentive for operators to look for further opportunities to reduce the volume of offshore chemicals discharged to the marine environment and that the UK might not meet its international commitments under OSPAR. The formal application, assessment and permitting procedure for offshore chemical discharges would bring a more robust approach to the control of offshore chemical discharges.

Since the introduction of the Regulations the discharge of offshore chemicals to the marine environment has declined, although this is not an indicator of the risk of harm to the marine environment from individual offshore chemicals. The permitting regime itself, and the OSPAR Recommendations further amending those chemicals that are allowed to be used and / or discharged to the marine environment, have contributed to this reduction.

5. Unintended Consequences

The single respondent to the PIR Survey stated that *it is an administrative burden to have multiple applications for different activities and that the use of regulation 3A to justify "findings" (about small drips, bunding arrangements, hose management) could be better regulated and managed with relevant processes and procedures*. However, given that only one response to the Survey was received, the views expressed by that respondent cannot be considered representative of the offshore oil and gas sector as a whole. Consequently, it is conceivable that the low response rate to the PIR Survey suggests that Industry generally considers that the introduction of the Regulations have not resulted in any unintended consequences.

6. Opportunities for reducing burden

OPRED identified that the requirement to vary chemical permits to adjust the quantity of PLONOR chemicals (those that pose little or no risk to the marine environment) was onerous. Therefore, to reduce unnecessary administrative burden on operators, the requirement to list the quantity of PLONOR chemicals is no longer required, resulting in a more streamlined and efficient application process.

OPRED previously required operators to undertake a review of their chemical Life Permits every three years, which, amongst other things, required three years' worth of forecasted data of chemical use and discharge. OPRED has amended the approach and an operator is no longer required to provide three years' worth of forecasted chemical data in advance. The operator is now only required to ensure that their chemical use and discharge for the following year has been approved on the chemical permit prior to the commencement of that year. An operator still has the option of including a forecast for two additional years of use and discharge. This in turn has resulted in operators varying their chemicals permits only when required and ensured a more accurate forecast based on the most recent information on production from the installation.

The current permitting approach requires operators to consider offshore chemicals that are less hazardous to the marine environment. However, the current offshore environmental regulations do not take a holistic approach for all emissions and discharges which may result in increasing discharges to some receptors to achieve greater reductions in others. It would require a significant change in legislation to adopt an integrated pollution prevention and control approach which is in place onshore.

OPRED will continue to identify and review opportunities to reduce any unforeseen burden upon OPRED, its consultees or on operators.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

The Regulations were introduced, in part, to implement OSPAR Decision 2000/2 on a Harmonised Mandatory Control System for the Use and Reduction of the Discharge of Offshore Chemicals in relation to offshore activities by the offshore oil and gas industry, to reduce the overall impact of offshore chemicals in the marine environment. The Decision applies to relevant OSPAR Contracting Parties with an offshore oil and gas industry, all of whom have taken a similar approach to the UK by implementing the Decision and have a permitting regime in place for the use and discharge of offshore chemicals.

The original Decision is supported by Recommendations 2000/4 (as amended) and 2000/5 (as amended) and any amendments have been implemented by OPRED and via Guidance to Industry. OPRED has continued to deliver its obligations without needing to further amend the Regulations.