Environmental Authorisations (Scotland) Regulations 2018: proposed amendments

Offshore Energies UK is the leading trade body for the UK's integrated offshore energy industry. Our membership includes over 400 organisations with an interest in offshore oil, gas, carbon capture and storage (CCS), hydrogen, and wind. From operators to the supply chain and across the lifecycle from production to decommissioning, they are safely providing cleaner fuel, power, and products to the UK. Working together with our members, we are a driving force supporting the UK in ensuring security of energy supply while helping to meet its net zero commitments.

We welcome the opportunity to provide feedback on the proposed changes to the EA(S)R and support the principle of a simplified, streamlined, and standardised common framework for environmental authorisations in Scotland.

The offshore energy industry is a fundamental pillar of the UK economy, supporting hundreds of thousands of jobs and contributing billions of pounds to the exchequer annually while powering homes and businesses across the breadth of the country. Our sector has the potential to spend almost £200 billion over this decade in the energy sector and continue to support hundreds of thousands of jobs across the UK. The majority of this could be spent in offshore wind, CCS, and hydrogen in the right investment environment.

We shared this consultation with our members to ensure their feedback was captured in relation to radioactive substances activities, as this is the element of the EA(S)R that is directly applicable to offshore energies. However, we have received a response from a limited number of members with onshore operations affected by the changes, who have asked us to respond on their behalf to wider elements of the proposals. In many cases, these are requests for further clarification due to the complexity of the proposed changes and the format of the consultation. Certain changes proposed require respondents to cross-reference between multiple legislative texts – for example, to determine the practical changes to permit consultation outlined in the proposal to a site previously regulated under PPC; this would involve reference to the Water Environment (Controlled Activities) (Scotland) Regulations 2011, the existing Pollution Prevention and Control (Scotland) Regulations 2012, the relevant schedules of Directive 2010/75/EC, the EA(S)R 2018 (as made) and the current proposed amending regulation.
The key points our members wished to raise are summarised below.

Public Consultation and Call-In Procedure:

The proposal to amend the approach to public consultation to remove unnecessary delay does not specify the details of the changes. What are the activities or circumstances under which pre-application public consultation will be requested, and how will this be determined by SEPA? The consultation documents point to SEPA's public participation statement as a source of further

information, but this document currently advises that SEPA's "authorisation guide will set out in more detail which permit activities we will normally consult on". The current draft authorisation document available within SEPA's concurrent consultation appears to state only that permit applications have the "potential" for public consultation and has no information about how variations are determined to be "substantial". Our members have also requested clarification on whether the proposed changes to the provisions with respect to the public register will affect the current provisions for requesting the exclusion of sensitive information and data from the register.

Changes relevant to industrial activities currently regulated by the PPC regulations

The rationale for the changes to defining BAT following the UK leaving the EU are recognised. It is suggested that within Schedule 19 wording be included to ensure that specifics such as geographic location, local environmental conditions, operational limits or the technical characteristics of a site are considered along with any environmental outcomes when determining whether a technique is "BAT" for an individual site or installation, and also whether its implementation would lead to disproportionately higher cost to environmental benefit on a specific site.

Paragraph 11(2) suggests that SEPA will be able to require specific decarbonisation measures as permit conditions for sites currently operating under ETS, as long as these are not ELVs. In addition, although the summary document references the UK GHG trading regulations, it is unclear what original enabling legislation grants this power.

If SEPA are to impose such authorisation conditions, further practical questions also arise:

- Does this undermine the "cap-and-trade" approach to decarbonisation?
- Can this be standardised across all ETS sites to ensure that similar sites in each nation of the UK have equal regulations when delivering decarbonisation measures?
- For sites unable to comply with ELVs at proportionate cost/benefit, there is a recognised and clear derogation process. What is the equivalent process for sites in terms of decarbonisation measures?

Clarification on these topics would be appreciated, and OEUK is ready to assist in any further engagement the Scottish Government decides to have with industry during the extension of the EASR approach.