

2020 No.

ELECTRONIC COMMUNICATIONS

The Network and Information Systems (Amendment and Transitional Provision etc.) Regulations 2020

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) (“the 1972 Act”) in relation to electronic communications.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the 1972 Act.

Citation, commencement, application and interpretation

1.—These Regulations may be cited as the Network and Information Systems (Amendment and Transitional Provision etc.) Regulations 2020 and come into force on [***] 2020.

(1) These Regulations apply to—

- (a) the United Kingdom, including its internal waters;
- (b) the territorial sea adjacent to the United Kingdom;
- (c) the sea (including the seabed and subsoil) in any area designated under section 1(7) of the Continental Shelf Act 1964(c).

(2) In these Regulations, “the 2018 Regulations” means the Network and Information Systems Regulations 2018(d).

Amendment of the 2018 Regulations

2. The 2018 Regulations are amended in accordance with regulations 3 to 20.

(a) S.I. 2001/3495. See article 2 of, and Schedule 1 to, these Regulations. There are amendments not relevant to these Regulations.

(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7). In so far as these Regulations deal with matters that are within the devolved competence of Scottish Ministers, the power of the Secretary of State to make regulations in relation to those matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c. 46).

(c) 1964 c. 29. Section 1(7) of the Continental Shelf Act 1964 was amended by section 37 of, and Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23), and section 103 of the Energy Act 2011 (c. 16).

(d) S.I. 2018/506. This instrument was amended by S.I. 2018/629.

Amendment to regulation 1 (interpretation)

3. In regulation 1(2), after the definition of “essential service” insert—
““First-tier Tribunal” has the meaning given by section 3(1) of the Tribunals, Courts and Enforcement Act 2007(a);”.

Amendment to regulation 6 (information sharing - enforcement authorities)

4. In regulation 6(1)—
- (a) in the opening text, after “with” insert “each other, relevant law-enforcement authorities;”;
 - (b) for sub-paragraph (a) substitute—
 - “(a) necessary for—
 - (i) the purposes of facilitating the performance of any functions of a NIS enforcement authority under or by virtue of these Regulations or any other enactment;
 - (ii) national security purposes; or
 - (iii) purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution;”.

Amendment to regulation 8 (identification of operators of essential services)

5. In regulation 8—
- (a) in paragraph (2), after “authority” insert “in writing”;
 - (b) after paragraph (7) insert—
 - “(7A) If a person has reasonable grounds to believe that it no longer meets the conditions for deemed designation under paragraph (1) or designation under paragraph (3), it must notify in writing, and provide evidence in writing supporting that belief to, the designated competent authority as soon as practicable.
 - (7B) A competent authority which receives from a person a notification and supporting evidence referred to in paragraph (7A) must have regard to that notification and evidence in considering whether to revoke that person’s designation under regulation 9(1) or (2) (whichever is relevant).”.

[Insertion of regulation 8A

6. After regulation 8, insert—
- “Nomination by an OES of a person to act on its behalf in the United Kingdom**
- 8A.—**(1) This regulation applies to any OES(b) which has its head office outside the United Kingdom and—
- (a) provides an essential service of a kind referred to in one or more of paragraphs 1, 2, 3 and 10 of Schedule 2 (in the energy or digital infrastructure sector) within the United Kingdom; or
 - (b) provides an essential service of a kind referred to in one or more of paragraphs 4 to 9 of Schedule 2 (in the transport, health or drinking water supply and distribution sector) within the United Kingdom and falls within paragraph (2).

(a) 2007 c. 15.

(b) An OES is an operator of an essential service as defined in regulation 1(2) of the 2018 Regulations.

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(2) An OES falls within this paragraph if the designated competent authority for the OES has required by notice in writing to the OES that the OES must comply with the requirements of this regulation.

(3) An OES to which this regulation applies must—

- (a) nominate in writing a person in the United Kingdom with the authority to act on its behalf under these Regulations, including for the service of documents under regulation 24 (a “nominated person”);
- (b) before the relevant date, notify the designated competent authority in writing of—
 - (i) its name;
 - (ii) the name and address of the nominated person; and
 - (iii) up-to-date contact details of the nominated person (including email addresses and telephone numbers).

(4) The OES must notify the designated competent authority for the OES of any changes to the information notified under paragraph (3) as soon as practicable and in any event within seven days beginning with the day on which the change took effect.

(5) The designated competent authority for the OES and GCHQ may, for the purposes of carrying out their responsibilities under these Regulations, contact the nominated person instead of or in addition to the OES.

(6) A nomination under paragraph (3) is without prejudice to any legal action which could be initiated against the OES.

(7) In this regulation, “relevant date” means the date three months after and beginning with the first day on which the OES was deemed to be designated as an OES under regulation 8(1) or with the day on which it was designated as an OES under regulation 8(3).”].

Amendment to regulation 9 (revocation)

7. In regulation 9, in each of paragraphs (1) and (2), after “notice” insert “in writing”.

Amendment to regulation 11 (duty to notify incidents)

8. In regulation 11(1), after “authority” insert “in writing”.

Amendment to regulation 12 (relevant digital service providers)

9. In regulation 12—

- (a) in paragraph (3), after “Commissioner” insert “in writing”;
- (b) in paragraph (9)—
 - (i) after “authority” insert “in writing”;
 - (ii) for “as soon as it occurs” substitute “without undue delay”.

Amendment to regulation 14 (registration with the Information Commissioner)

10. In regulation 14(3), after “Commissioner” insert “in writing”.

Amendment to regulation 15 (information notices)

11. In regulation 15—

- (a) in paragraph (1)—
 - (aa) after “notice” insert “in writing”;
 - (bb) for “information that” substitute “all such information as”;

- (b) in paragraph (2)—
 - (i) in the opening text—
 - (aa) after “notice” insert “in writing”;
 - (bb) for “that person” substitute “the OES”;
 - (cc) for “information that” substitute “all such information as”;
 - (dd) for “to assess” substitute “for one or more of the following purposes”;
 - (ii) for sub-paragraphs (a) and (b) substitute—
 - “(a) to assess the security of an OES’s network and information systems;
 - (b) to establish whether there have been any events that had an adverse effect on the security of network and information systems, and the nature and impact of those events;
 - (c) [to identify any failure of an OES to comply with any duty set out in these Regulations;]
 - (d) to assess the implementation of an OES’s security policies, including any about inspections conducted under regulation 16 and any underlying evidence in relation to such an inspection;
 - (e) to carry out its other functions under these Regulations.”;
- (c) in paragraph (3), in the opening text—
 - (i) after “notice” insert “in writing”;
 - (ii)]for “information that” substitute “all such information as”;
- (d) omit paragraph (4);
- (e) after paragraph (5) insert—

“(5A) A person upon whom an information notice has been served under this regulation must comply with the requirements of the notice.”.

Amendment to regulation 16 (power of inspection)

- 12.** In regulation 16—
- (1) in each of paragraphs (1) and (2)—
 - (a) after sub-paragraph (b) omit “or”;
 - (b) after sub-paragraph (c) omit the closing text;
 - (2) in paragraph (3)—
 - (a) at the end of sub-paragraph (a) insert “if so required by the designated competent authority”;
 - (b) in sub-paragraph (b), for the words from “person” to the end substitute “inspector and the designated competent authority or the Information Commissioner, as the case may be”;
 - (c) after sub-paragraph (d) omit “and”;
 - (d) after sub-paragraph (e) insert—
 - “(f) not intentionally obstruct an inspector performing their functions under these Regulations; and
 - (g) comply with any direction made by, or requirement of, an inspector performing their functions under these Regulations.”;
 - (3) after paragraph (4) insert—

“(5) The inspector may—

 - (a) require the OES or RDSP to leave undisturbed and not to dispose of, render inaccessible or alter in any way any material, document, information, in whatever form and wherever it is held (including where it is held remotely), or equipment

which is, or which the inspector considers to be, relevant for such period as the inspector may specify;

- (b) require the OES or RDSP to produce and provide the inspector with access to, for the purposes of the inspection, any such material, document, information or equipment immediately or within such period as the inspector may specify;
 - (c) require the inspection, printing, copying or removal of any document or information, and the inspection or removal of any material or equipment (including for the purposes of printing or copying any document or information);
 - (d) take statements from any person;
 - (e) [conduct tests;]
 - (f) [at any reasonable time enter any premises (except any premises used wholly or mainly as a private dwelling) if the inspector has reasonable grounds to believe that access to those premises may be necessary or helpful for the purpose of the inspection;] and
 - (g) take any other action relevant to the inspection.
- (6) In this regulation—
- (a) a reference to a test is a reference to any process employed to uncover, assess or measure the existence or extent of any weakness or vulnerability in, or in the management of, a network or information system;
 - (b) “inspection” means—
 - (i) any activity carried out for the purpose of checking and promoting compliance with the requirements of these Regulations, including any necessary follow-up; or
 - (ii) any activity carried out for the purpose of assessing or gathering evidence of alleged failures, including any necessary follow-up;
 - (c) “inspector” means the person conducting an inspection in accordance with paragraph (1) or (2).”.

Amendment to regulation 17 (enforcement for breach of duties)

13. In regulation 17—

- (a) in the heading, after “enforcement” insert “notices”;
- (b) in paragraph (1), before sub-paragraph (a) insert—
 - “(za) notify the competent authority under regulation 8(2);
 - (zb) notify the competent authority under regulation 8(7A);
 - (zc) comply with the requirements stipulated in regulation 8A;”;
- (c) in paragraph (2), after sub-paragraph (d) insert—
 - “(da) comply with the requirements stipulated in regulation 14A;”;
- (d) in paragraph (3)(a), for “reasons” substitute “grounds”;
- (e) after paragraph (3) insert—
 - “(3A) An OES or RDSP(a) upon whom an enforcement notice has been served under paragraph (1) or (2) must comply with the requirements, if any, of the notice regardless of whether the OES or RDSP has paid any penalty imposed on it under regulation 18.”.

Amendment to regulation 18 (penalties)

14. In regulation 18—

(a) A RDSP is a relevant digital service provider as defined in regulation 1(3)(e) of the 2018 Regulations.

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- (a) in paragraph (1), for the words from “penalty”, in the opening text, to the end of the paragraph substitute—
- “notice of intention to impose a penalty on that OES if—
- (a) the OES was served with an enforcement notice under regulation 17(1) and the OES—
 - (i) was required under that notice to take steps to rectify a failure within a period stipulated in the notice but failed to take, or adequately take, one or more of those steps within that period; or
 - (ii) the competent authority is not satisfied with the representations submitted by the OES in accordance with regulation 17(3)(d); or
 - (b) (whether or not the OES was served with an enforcement notice) the competent authority is satisfied that the OES has failed to comply with a duty set out in regulation 17(1) and considers that a penalty is warranted having regard to all the facts and circumstances of the case.”;
- (b) in paragraph (2), for the words from “penalty”, in the opening text, to the end of the paragraph substitute—
- “notice of intention to impose a penalty on that RDSP if—
- (a) the RDSP was served with an enforcement notice under regulation 17(2) and the RDSP—
 - (i) was required under that notice to take steps to rectify a failure within a period stipulated in the notice but failed to take, or adequately take, one or more of those steps within that period; or
 - (ii) the Commissioner is not satisfied with the representations submitted by the RDSP in accordance with regulation 17(3)(d); or
 - (b) (whether or not the RDSP was served with an enforcement notice) the Commissioner is satisfied that the RDSP has failed to comply with a duty set out in regulation 17(2) and considers that a penalty is warranted having regard to all the facts and circumstances of the case.”;
- (c) in paragraph (3)—
- (i) in the opening text, for “penalty notice” substitute “notice of intention to impose a penalty”;
 - (ii) for sub-paragraph (d) substitute—

“(d) the period within which the penalty must be paid which must be at least 30 days beginning with the date of the final decision to impose a penalty (“the payment period”);”;
 - (iii) omit sub-paragraph (e) and “and” after it;
 - (iv) before sub-paragraph (f), insert—

“(ei) that the penalty notice and payment of the penalty is without prejudice to the requirements, if any, of the enforcement notice (see regulation 17(3A));”;
 - (v) after sub-paragraph (f) insert—

“; and
 - (g) how and when representations may be made about the content of the notice and any related matters.”;
- (d) after paragraph (3), insert—
- “(3A) The relevant competent authority or Information Commissioner may, after considering any representations, serve a penalty notice on the OES or RDSP with a final penalty decision.
- (3B) A penalty notice—
- (a) must be given in writing to the OES or RDSP;

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- (b) must include reasons for the final penalty decision;
 - (c) may require the OES or RDSP to pay—
 - (i) the penalty specified in the notice under paragraph (1) or (2); or
 - (ii) such penalty as the relevant competent authority or Information Commissioner considers appropriate in light of any representations made by the OES or RDSP and any steps taken by the OES or RDSP to rectify the failure or to do one or more of the things set out in regulation 17(1) or (2);
 - (d) must specify the period within which the penalty must be paid; and
 - (e) must provide details of the appeal processes under regulation 19A.
- (3C) It is the duty of the OES or RDSP to comply with any requirement imposed by a penalty notice.”;
- (e) in paragraph (5), in the opening text, after “under” insert “a notice of intention to serve a penalty notice or a”;
 - (f) [in paragraph (6)—
 - (i) in the opening text, after “a” insert “notice of intention to serve a penalty notice or a”;
 - (ii) in sub-paragraph (a), for “could not cause a NIS incident” substitute “was not a material contravention”;
 - (iii) omit sub-paragraph (b);
 - (iv) in sub-paragraph (c), for the words from “has caused” to the end substitute “does not meet the criteria set out in sub-paragraph (d)”;
 - (v) in sub-paragraph (d), for the words from “has caused” to the end substitute “has [or could have] created a significant risk to, or significant impact on, service provision by the OES or RDSP.”;]
 - (g) in paragraph (7)(a)—
 - (i) for paragraph (i) substitute—
 - “(i) a failure to take, or adequately take, one or more of the steps required under an enforcement notice within the period stipulated in that notice to rectify a failure described in one or more of—
 - (aa) sub-paragraphs (a) to (d) of regulation 17(1); or
 - (bb) sub-paragraphs (a) to (d) of regulation 17(2);”;
 - (ii) in paragraph (ii), for the words from “a” to the end and the comma immediately preceding “a” substitute “under an enforcement notice, a failure described in one or more of—
 - (aa) sub-paragraphs (a) to (d) of regulation 17(1); or
 - (bb) sub-paragraphs (a) to (d) of regulation 17(2).”.

Omission of regulation 19 (independent review of designation decisions and penalty decisions)

15. Omit regulation 19.

Insertion of new regulations 19A, 19B and A20

16. Before regulation 20 insert—

“Appeal by an OES or RDSP to the First-tier Tribunal

19A.—(1) An OES may appeal to the First-tier Tribunal against one or more of the following decisions of a competent authority on one or more of the grounds specified in paragraph (4)—

- (a) a decision under regulation 8(3) to designate that person as an OES;
- (b) a decision under regulation 9(1) or (2) to revoke the designation of a person as an OES;
- (c) a decision under regulation 17(1) to serve an enforcement notice upon the OES;
- (d) a decision under regulation 18(3A) to serve a penalty notice.

(2) A RDSP may appeal to the First-Tier Tribunal against one or both of the following decisions of the Information Commissioner on one or more of the grounds specified in paragraph (4)—

- (a) a decision under regulation 17(2) to serve an enforcement notice upon the RDSP;
- (b) a decision under regulation 18(3A) to serve a penalty notice.

(3) The period within which an OES or RDSP may bring such an appeal is 28 days beginning with the day on which notice of the decision to which the proceedings relate was sent to the OES or RDSP (see rule 22 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(a)).

(4) The grounds of appeal referred to in paragraphs (1) and (2) are—

- (a) that a decision to serve an enforcement notice or to serve a penalty notice was based on a material error as to the facts;
- (b) that any of the procedural requirements under these Regulations in relation to a decision mentioned in paragraph (1)(a) to (d) or (2)(a) or (b) have not been complied with and the interests of the OES or RDSP have been substantially prejudiced by the non-compliance;
- (c) that any such decision was wrong in law;
- (d) that there was some other material illegality, including unreasonableness or lack of proportionality, which has substantially prejudiced the OES or RDSP.

(5) Except as provided by this regulation, the validity of a decision mentioned in paragraph (1) or (2) shall not be questioned by any legal proceedings.

Decision of the First-tier Tribunal

19B.—(1) The First-tier Tribunal must determine the appeal after considering the grounds of appeal referred to in regulation 19A(4) and by applying the same principles as would be applied by a court on an application for judicial review.

(2) The Tribunal may, until it has determined the appeal in accordance with paragraph (1) and unless the appeal is withdrawn, suspend the effect of the whole or part of any of the following decisions to which the appeal relates—

- (a) a decision under regulation 8(3) to designate a person
- (b) a decision under regulation 9(1) or (2) to revoke the designation of a person as an OES)
- (c) a decision under regulation 17(1) or (2) to serve an enforcement notice; or
- (d) a decision under regulation 18(3A).to serve a penalty notice.

(3) The Tribunal may—

- (a) confirm any decision to which the appeal relates;

(a) S.I. 2009/1976 (L. 20), amended by S.I. 2018/1053 (L. 10); there are other amending instruments but none is relevant.

(b) quash the whole or part of any decision to which the appeal relates.

(4) Where the Tribunal quashes the whole or part of a decision to which the appeal relates, it must remit the matter back to the competent authority or, as the case may be, Information Commissioner, with a direction to that authority or the Commissioner to reconsider the matter and make a new decision having regard to the ruling of the Tribunal.

(5) The competent authority or, as the case may be, Information Commissioner, must have regard to a direction under paragraph (4).

(6) Where the competent authority or, as the case may be, Information Commissioner makes a new decision in accordance with a direction under paragraph (4), this decision is to be considered final.

Enforcement by civil proceedings

A20.—(1) This regulation applies where—

- (a) a designated competent authority for an OES has reasonable grounds to believe that the OES has failed to comply with regulation 17(3A); or
- (b) the Information Commissioner has reasonable grounds to believe that a RDSP has failed to comply with regulation 17(3A).

(2) This regulation applies irrespective of whether the OES or RDSP has appealed to the First-tier Tribunal under regulation 19A except that it does not apply where the OES or RDSP has so appealed to the extent that the Tribunal has granted a suspension of the effect of the whole or part of the relevant decision under regulation 19B(2).

(3) Where paragraph (1)(a) applies, the relevant competent authority may commence civil proceedings against the OES—

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988(a); or
- (c) for any other appropriate remedy or relief.

(4) Where paragraph (1)(b) applies, the Information Commissioner may commence civil proceedings against the RDSP—

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
- (c) for any other appropriate remedy or relief.

(5) No proceedings may be commenced under this regulation until after the expiry of a 28-day period beginning with the day on which the last enforcement notice to which the proceedings relate was served on the OES or, as the case may be, RDSP.”.

Amendment to regulation 20 (enforcement of penalty notices)

17. In regulation 20, omit paragraph (6).

Amendment to regulation 23 (enforcement action – general considerations)

18. In regulation 23(1), for “or 18” substitute “, 18 or A20,”.

Amendment to regulation 25 (review and report)

19. In regulation 25(2)—

(a) 1988 c. 36.

- (a) after “2020” insert, “, the second report must be published on or before 9th May 2022”;
- (b) for “biennial intervals” substitute “intervals not exceeding five years”.

Amendment to Schedule 2 (essential services and threshold requirements)

20. In Schedule 2—

- (a) in paragraph 2 (the oil subsector)—
 - (i) in sub-paragraph (3)—
 - (aa) in paragraph (a), omit “capacity” and at the end insert “not including transmission of crude oil”;
 - (bb) in paragraph (b), omit “capacity”;
 - (ii) in sub-paragraph (4)—
 - (aa) in paragraph (a), after “facility,” insert “an operator of a facility with a throughput of more than 3,000,000 tonnes of oil equivalent per year.”;
 - (bb) in paragraph ((b) after “facility,” insert “an operator of a pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year.”;
 - (cc) omit the closing text.
 - (iii) in sub-paragraph (5), in the opening text—
 - (aa) for “oil” substitute “crude oil based fuel”;
 - (bb) for “treatment,” substitute “onshore”;
 - (iv) in sub-paragraph (6)—
 - (aa) in paragraph (i), for the words from “(other” to the end substitute “, an operator of an installation with a throughput of more than 3,000,000 tonnes of oil equivalent per year.”;
 - (bb) in paragraph (ii), after “installation,” insert “an operator of a pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year”;
 - (cc) omit the closing text.
 - (v) in sub-paragraph (8)—
 - (aa) in paragraph (c), for the words from “any” to the end substitute “substances derived from crude oil, not including crude oil itself.”;
 - (bb) for paragraph (e) substitute—
 - “(e) “gas processing facility” has the meaning given by section 12(6) of the Gas Act 1995(a).”;
 - (cc) after paragraph (j) insert—
 - “(ja) “operator” means—
 - (i) in relation to a pipeline—
 - (aa) the person who is to have or (once fluid or any mixture of fluids is conveyed) has control over the conveyance of fluid or any mixture of fluids in the pipeline;
 - (bb) until that person is known, the person who is to commission or (where commissioning has started) commissions the design and construction of the pipeline; or
 - (cc) when a pipeline is no longer used or is not for the time being used, the person last having control over the conveyance of fluid or any mixture of fluids in it;

(a) 1995 c. 45. Section 12(6) was amended by section 76(7) of the Utilities Act 2000 (2000 c. 27) and section 92(1) and (11)(a) of the Energy Act 2011 (2011 c. 16).

- (ii) in relation to a production installation—
 - (aa) the person appointed by the licensee to manage and control directly or by any other person the execution of the main functions of a production installation; or
 - (bb) the licensee where it is not clear to the designated competent authority that one person has been appointed to perform the functions described in paragraph (aa) or, in the opinion of that authority, any person appointed to perform the functions described in that paragraph is incapable of performing those functions satisfactorily;”;
 - (dd) after paragraph (n) insert—
 - “(na) “production installation” has the meaning given by regulation 2(1) of the Offshore Installations (Safety Case) Regulations 2005(a);”
 - (vi) in sub-paragraph (10)(c), after “sea” insert “(including the seabed and subsoil)”;
 - (vii) after sub-paragraph (10), insert—
 - “(11) In this paragraph, “Great Britain” includes—
 - (a) Great Britain;
 - (b) the territorial sea adjacent to Great Britain; and
 - (c) the sea (including the seabed and subsoil) in any area designated under section 1(7) of the Continental Shelf Act 1964(b).”.
- (b) in paragraph 3 (the gas subsector)—
 - (i) in sub-paragraph (7), for paragraphs (a) and (b) substitute—
 - “(a) an operator of a relevant gas processing facility, an operator of a facility with a throughput of more than 3,000,000 tonnes of oil equivalent per year; or
 - (b) a relevant upstream pipeline and associated infrastructure that is connected to and operated from such a facility, and critical to the continued operation of that facility, an operator of a pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year.”;
 - (ii) in sub-paragraph (10)—
 - (aa) after paragraph (o) insert—
 - “(oa) “operator” means—
 - (i) in relation to a pipeline—
 - (aa) the person who is to have or (once fluid or any mixture of fluids is conveyed) has control over the conveyance of fluid or any mixture of fluids in the pipeline;
 - (bb) until that person is known, the person who is to commission or (where commissioning has started) commissions the design and construction of the pipeline; or
 - (cc) when a pipeline is no longer used or is not for the time being used, the person last having control over the conveyance of fluid or any mixture of fluids in it;
 - (ii) in relation to a production installation—

(a) S.I. 2005/3117. This definition was amended by paragraphs 33 and 34(1) and (3) of Schedule 13 to S.I. 2015/398. Regulation 2(1) also defines “installation”, which is referred to in the definition of “production installation”, to mean an offshore installation within the meaning of regulation 3 of the Management Regulations, separately defined as the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (S.I. 1995/738). That regulation 3 was amended by regulation 2(2)(a) to (c) of S.I. 2002/2175 and paragraphs 8 and 10(1), (2)(a) and (b) and (3) of Schedule 13 to S.I. 2015/398.

(b) 1964 c. 29. Section 1(7) of the Continental Shelf Act 1964 was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23) and section 103 of the Energy Act 2011.

- (aa) the person appointed by the licensee to manage and control directly or by any other person the execution of the main functions of a production installation; or
 - (bb) the licensee where it is not clear to the designated competent authority that one person has been appointed to perform the functions described in paragraph (aa) or, in the opinion of that authority, any person appointed to perform the functions described in that paragraph is incapable of performing those functions satisfactorily;”;
- (bb) after paragraph (s) insert—
- “(sa) “production installation” has the meaning given by regulation 2(1) of the Offshore Installations (Safety Case) Regulations 2005”;
 - (iii) in sub-paragraph (12)(c), after “sea” insert “(including the seabed and subsoil)”;
 - (iv) after sub-paragraph (12) insert—
- “(13) In this paragraph, “Great Britain” includes—
- (a) Great Britain;
 - (b) the territorial sea adjacent to Great Britain; and
 - (c) the sea (including the seabed and subsoil) in any area designated under section 1(7) of the Continental Shelf Act 1964;”;
- (c) in paragraph 10 (the digital infrastructure subsector)—
- (i) for sub-paragraphs (2) to (4) substitute—
- “(2) For the essential service of a TLD Name Registry, irrespective of its place of establishment (whether within, or outside of, the United Kingdom), the threshold in the United Kingdom is a TLD Name Registry which services 14 billion or more queries from any devices located within the United Kingdom in any consecutive 168-hour period for domains registered within the Internet Corporation for Assigned Names and Numbers (“ICANN”).
- (3) For the essential service of a DNS resolver service provided by a DNS service provider, irrespective of its place of establishment (whether within, or outside of, the United Kingdom), the threshold in the United Kingdom is a DNS resolver service which services 500,000 or more different Internet Protocol addresses used by persons in the United Kingdom in any consecutive 168-hour period.
- (3A) For the essential service of a DNS authoritative hosting service provided by a DNS service provider, irrespective of its place of establishment (whether within, or outside of, the United Kingdom), the threshold in the United Kingdom is a DNS authoritative hosting service which services 100,000 or more domains registered to persons with an address in the United Kingdom.
- (4) For the essential service of an IXP provided by an IXP operator, irrespective of its place of establishment (whether within, or outside of, the United Kingdom), the threshold in the United Kingdom is an IXP operator which has 30% or more market share amongst IXP operators in the United Kingdom, in terms of interconnected autonomous systems.”.
- (ii) in sub-paragraph (5)—
- (aa) in paragraph (a) for ““domain name system”” substitute ““Domain Name System”” and for the words from “in” to the end substitute “which processes and responds to queries for DNS resolution”;
 - (bb) in paragraph (b), for “domain name system” substitute “Domain Name System” and for “on” substitute “accessible via”.

Transitional and saving provisions

21.— The 2018 Regulations as they were in force immediately before [*coming into force date of these Regulations*] (“the pre-amendment Regulations”) continue to apply in respect of a request under regulation 19(1) or (2) of the pre-amendment Regulations where—

- (a) the request was made before that date, and
- (b) the reviewer has not before that date made any decision in relation to the request under regulation 19(9) of the pre-commencement Regulations.

(2) Where the pre-commencement Regulations continue to apply in accordance with paragraph (1) of this regulation and the reviewer upholds a designation decision or penalty decision or both those decisions in relation to an OES under regulation 19(9) of those Regulations—

- (a) the relevant competent authority must—
 - (i) notify the OES that the OES may appeal to the First-tier Tribunal against the designation decision or penalty decision or, as the case may be, both those decisions, and
 - (ii) explain to the OES the permitted grounds and procedure (including time limit) for bringing such an appeal; and
- (b) the OES may appeal to the First-tier Tribunal against the designation decision or penalty decision or, as the case may be, both those decisions on one or more of the following grounds—
 - (i) that the decision was based on a material error as to the facts;
 - (ii) that any of the procedural requirements under these Regulations in relation to the decision have not been complied with and the interests of the OES have been substantially prejudiced by the non-compliance;
 - (iii) that the decision was wrong in law;
 - (iv) that there was some other material illegality, including unreasonableness or lack of proportionality, which has substantially prejudiced the OES.

(3) Where the pre-commencement Regulations continue to apply in accordance with paragraph (1) of this regulation and the reviewer upholds a penalty decision in relation to a RDSP under regulation 19(9) of those Regulations—

- (a) the Information Commissioner must—
 - (i) notify the RDSP that the RDSP may appeal to the First-tier Tribunal against the penalty decision, and
 - (ii) explain to the RDSP the permitted grounds and procedure (including time limit) for bringing such an appeal; and
- (b) the RDSP may appeal to the First-tier Tribunal against the penalty decision on one or more of the following grounds—
 - (i) that the decision was based on a material error as to the facts;
 - (ii) that any of the procedural requirements under these Regulations in relation to the decision have not been complied with and the interests of the RDSP have been substantially prejudiced by the non-compliance;
 - (iii) that the decision was wrong in law;
 - (iv) that there was some other material illegality, including unreasonableness or lack of proportionality, which has substantially prejudiced the RDSP.

(4) For the purposes of rule 22(1)(b) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009—

- (a) in the case of an appeal under paragraph (2)(b) of this regulation, the notice of the decision to which the proceedings relate is the notice referred to in paragraph (2)(a)(i) of this regulation;

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(b) in the case of an appeal under paragraph (3)(b) of this regulation, the notice of the decision to which the proceedings relate is the notice referred to in paragraph (3)(a)(i) of this regulation.

(5) The Tribunal must determine the appeal after considering the grounds of appeal referred to in paragraph (2)(b) or (3)(b) (as the case may be) and by applying the same principles as would be applied by a court in an application for judicial review.

(6) The Tribunal may, until the appeal is withdrawn, or, where it is not withdrawn, until it has determined the appeal in accordance with paragraph (5), suspend the effect of—

- (a) a designation decision to which the appeal relates;
- (b) a penalty decision to which the appeal relates.

(7) The Tribunal may—

- (a) confirm one or, as the case may be, both of the decisions to which the appeal relates;
- (b) quash the whole or part of one or, as the case may be, both of the decisions to which the appeal relates.

(8) Where the Tribunal quashes the whole or part of a decision to which the appeal relates, it must remit the matter back to the competent authority or, as the case may be, Information Commissioner, with a direction to that authority or the Commissioner to reconsider the matter and make a new decision having regard to the ruling of the Tribunal.

(9) The competent authority or, as the case may be, Information Commissioner, must have regard to a direction under paragraph (8).

(10) Where the competent authority or, as the case may be, Information Commissioner makes a new decision in accordance with a direction under paragraph (8), this decision is to be considered final.

(11) Words and expressions used but not defined in this regulation that are also used in the 2018 Regulations have the same meanings as in the 2018 Regulations.

Date

Matt Warman
Parliamentary Under Secretary of State
Department for Digital, Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Regulations)

[*To follow*]