

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT WORKS DETRIMENTAL TO NAVIGATION
(POWERS AND DUTIES OF INSPECTORS)
REGULATIONS 2018

Tuesday 27 February 2018

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The Committee consisted of the following Members:

Chair: MR VIRENDRA SHARMA

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| † Allan, Lucy (<i>Telford</i>) (Con) | † Kawczynski, Daniel (<i>Shrewsbury and Atcham</i>) (Con) |
| † Bacon, Mr Richard (<i>South Norfolk</i>) (Con) | † Perry, Claire (<i>Minister for Energy and Clean Growth</i>) |
| † Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| † Brown, Alan (<i>Kilmarnock and Loudoun</i>) (SNP) | † Tomlinson, Justin (<i>North Swindon</i>) (Con) |
| † Campbell, Mr Alan (<i>Tynemouth</i>) (Lab) | † Umunna, Chuka (<i>Streatham</i>) (Lab) |
| † Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab) | † Villiers, Theresa (<i>Chipping Barnet</i>) (Con) |
| † Cryer, John (<i>Leyton and Wanstead</i>) (Lab) | † Whitehead, Dr Alan (<i>Southampton, Test</i>) (Lab) |
| † Harris, Rebecca (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Claire Cozens, <i>Committee Clerk</i> |
| Jones, Graham P. (<i>Hyndburn</i>) (Lab) | † attended the Committee |
| † Jones, Mr Kevan (<i>North Durham</i>) (Lab) | |

Fourth Delegated Legislation Committee

Tuesday 27 February 2018

[MR VIRENDRA SHARMA *in the Chair*]

Draft Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018

2.30 pm

The Minister for Energy and Clean Growth (Claire Perry): I beg to move,

That the Committee has considered the draft Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018.

May I say what a pleasure it is to serve for the first time under your chairmanship, Mr Sharma? May I also put on the record that colleagues complaining about the temperature will know that we are doing our bit for climate emissions and demonstrating how difficult it is for occupiers of listed buildings to improve the energy efficiency of those properties? I would very much like to address that, but not today.

The draft regulations will provide inspectors in the Department for Business, Energy and Industrial Strategy's Offshore Petroleum Regulator for Environment and Decommissioning with powers to conduct inspections to assess compliance by operators of offshore hydrocarbon installations with the conditions of consents to locate granted under part 4A of the Energy Act 2008. I would like to put on the record my thanks to the fine team at OPRED, which I visited on my first trip to Aberdeen on 26 January. I was very impressed with what it does and its strong record of safety activity on behalf of those it represents.

OPRED inspectors travel to offshore installations to monitor compliance with our offshore environmental regulatory framework, but they do not have powers to conduct inspections to assess operator compliance with the conditions of consents to locate. Pursuant to part 4A of the Energy Act 2008, the draft regulations will close that gap in enforcement capabilities by giving inspectors powers to board offshore installations to ensure that operators are complying with the consents to locate regime, to inspect and investigate any breaches of the legislation and to take enforcement action where required.

Consents to locate are required before activities that are likely to cause danger to navigation are carried out offshore by oil and gas operators. A key condition of consents to locate is the need for operators to maintain functioning navigational aids such as lighting, foghorns and other signage to warn shipping of the presence of offshore installations in fog or other low-visibility conditions. Part 4A of the 2008 Act gives my Secretary of State powers to appoint inspectors to check operator compliance, to make regulations on the powers of inspectors and to create criminal offences. The draft regulations were created using the second of those powers.

Regulation 3 of the draft regulations gives inspectors powers to undertake examinations and investigations, require equipment to be tested for functionality, inspect

documents and ask relevant questions—all powers they need to carry out their duties. Regulation 6 sets out the offences and penalties that will apply in the case of a failure to co-operate with inspectors.

Inspectors will conduct checks on the consents to locate regime when undertaking routine visits to offshore installations to determine operator compliance with other legislation under our offshore environmental regulatory framework. However, as with other legislation, the draft regulations will also allow inspectors to access offshore installations at any time—in response to incidents requiring investigation, for example. I say to anyone who thinks that is a trivial task that I was not permitted to visit an offshore installation because I had not undergone the mandatory dunk test training, where someone is dunked upside down in a tank by a helicopter to ensure that they can cope with the survival processes they may be required to undertake. Our inspectors take fairly hefty steps to get out there to conduct these important inspections. I do intend to take the dunk test and go and see the rigs.

The draft regulations are needed due to an increasing trend since 2015 whereby non-compliance by operators with the conditions of consents to locate—primarily the obligation to maintain functioning navigational aids, which are clearly critical for vessels—have not been remedied in a timely fashion, despite OPRED's efforts. Although most operators initially responded to incidents that were reported by deploying temporary collision avoidance measures—notably guard vessels in the vicinity of installations—and eventually resolved breaches after protracted investigations, that is not an ideal situation and it is not the way to reassure users of those waters that installations are correctly signposted.

Notwithstanding the instigation by operators of temporary solutions, the risk to shipping of a collision with an offshore oil and gas rig at night or in fog remains until functioning navigational systems are reinstated. We can all imagine how difficult and dangerous such a collision would be. Without powers to access offshore installations and conduct inspections, we have to rely on operator good will or evidence from third parties such as lighthouse agencies or the Maritime and Coastguard Agency to encourage operators to revert to compliance, which is unacceptable. Therefore, OPRED's lack of inspection powers reduces the ability to take enforcement action, when required, against non-compliant operators.

The draft regulations will provide inspectors with the necessary powers to investigate and to enforce a return to compliance, thus reducing the risk of offshore collisions. I reassure right hon. and hon. Members that the risk of collision remains low. To date, there have been no incidences of shipping colliding with UK offshore installations as a consequence of failed navigational aids. Clearly, we want to avoid that, and to ensure that any breaches of the consents to locate regime are dealt with quickly, which is why I am laying the draft regulations before the Committee. In relation to navigational aids, there are currently lengthy time lags before resolution. In one case, it took four months for compliance to be restored, which is unacceptable.

We are proud of the fact that our offshore hydrocarbon activities are conducted in one of the safest, most environmentally sound and best regulated regimes in the world. In April 2017, OPRED conducted a four-week

consultation with the offshore sector on the draft regulations and only two responses were received, seeking simple clarification. We have replied to those consultees addressing their comments and have agreed to publish updated guidance on the consents to locate regime once the regulations enter into force. A substantive issue arose regarding provisions in regulation 3 that would allow inspectors to take original documents as evidence in an investigation. For the purposes of enforcing consent, it was our opinion that the ability to obtain original documents would be required in order to comply with our legal obligation to gather the best evidence available, should it be necessary to pursue criminal proceedings. We decided, therefore, to retain the power to seize original documents but took account of industry concerns by caveating that with sensible limitations on the use of that power.

In summary, the objective of the draft regulations is to achieve a high level of operator compliance with the consents to locate regime through offshore inspections, the investigation of breaches, the use of enforcement notices already permitted under part 4A of the 2008 Act to instruct operators to take actions, and the imposition of penalties as appropriate. Given the need for the regulations, it would be extremely useful if they could enter into force on the day after they are made. I recommend the draft regulations to the Committee.

2.38 pm

Dr Alan Whitehead (Southampton, Test) (Lab): It is a pleasure to serve for the first time under your chairmanship, Mr Sharma.

The draft regulations are very much needed and the Opposition support their introduction. I have, however, some questions about what they apply to. I would like to hear some clarification and thoughts from the Minister before we conclude our business this afternoon.

The draft regulations are on hydrocarbon industries in the North sea, but ships do not distinguish between installations that get hydrocarbons from the sea and those that get wind out of the air. They collide with both. As far as I can see, the regulations relating to navigational safety regarding offshore wind are guided by different legislation: the Energy Act 2004. However, that Act itself requires some pretty similar sorts of arrangements as far as offshore wind establishments are concerned, relating to assurances that they will be safe from collision etc. As far as offshore hydrocarbon establishments are concerned, an automatic 500-yard safety zone is declared to be in place once the permissioning for that particular site has been agreed. However, as far as offshore wind is concerned, such establishments effectively have to apply for a safety zone to be placed around the installation, or the area in which the offshore wind farm is sited.

In the 2004 Act, there are also mostly equivalent arrangements concerning the responsibilities of offshore wind establishments to make sure that they do not get collided with. So they need to have provision of aids to navigation, the stationing of guard ships in the vicinity and other measures in connection with the control and movement of vessels. So they are nearly identical to what the Minister has set out for the provisions in respect of hydrocarbon-based installations.

Yet we are providing an additional level of inspection only for hydrocarbon facilities this afternoon. That may be because of the way the legislation falls and indeed I cannot see whether there is a parallel inspection body to that of the Offshore Petroleum Regulator for Environment and Decommissioning that applies to offshore wind installations. It appears to be the case that offshore wind installations are fairly well behaved. Of course, once a wind farm is in a place, people know where it is, whereas oil installations, while not exactly popping up, tend to be located in less easily established areas.

Nevertheless, it seems that the parallels are so exact that putting in place an inspection regime that applied to all installations operating in the North sea might be a wise move. I wonder whether the Minister can shed any light on whether such a move was considered, or will it be considered in the future, or does she consider that it is not necessary to have that sort of regime in respect of installations in the North sea that are not hydrocarbon-based?

The second issue that I would like some light shed on is the question of how it came about that these powers were considered to be needed. I ask that because in the explanatory memorandum that we have all received alongside the regulations themselves, it states:

“The need for the instrument has arisen due to a number of incidents from 2015 onwards whereby some operators failed to resolve within a reasonable timeframe (e.g. no more than a few days at most)”—

the Minister said that in one case it took four or five months—

“serious non-compliances with the conditions of Consents to Locate (primarily the obligation to maintain functional navigational aids) - despite continued pressure being exerted by OPRED.”

Under the 2008 Act, the Secretary of State already has considerable powers to investigate failure to comply with consents to locate. The Minister, under the 2008 Act, can indeed provide directions as far as non-complying installations with regard to consents to locate are concerned, and indeed can introduce enforcement on the back of those directions. Indeed, not only can she introduce enforcement but she can, in extremis, levy fines of—I believe—up to £50,000, or a persistent offender can be sentenced to two years in prison.

So there are already powers on the statute book that enable substantial direction and enforcement to take place, yet the explanatory memorandum states that the incidents occurred from 2015 onward. Given that the legislation was passed in 2009—the Marine and Coastal Access Act 2009 amended the Energy Act 2008—I assume that between 2009 and 2015 people with consents to locate did not flout their responsibility to supply navigational aids and other means of preventing collisions, or perhaps the Secretary of State did issue directions and enforcement measures before 2015.

I do not know whether the Minister has with her any record of what notices the Secretary of State has issued in respect of his powers under the 2008 Act, whether any enforcement has been undertaken, and, if so, what the outcome was. The Committee should be able to see whether action was taken before 2015, when it was pointed out that a number of operators appeared not to have resolved issues within a reasonable timeframe.

The other issue that arises is that, if nothing much happened between 2009 and 2015, why did lots of things suddenly happen after 2015 requiring this change

[Dr Alan Whitehead]

to the inspectors' powers to enable them, as the Minister reasonably said, to board structures and ensure there are navigational aids and so on? Are the operators behaving differently? Is it that the previous operators were rather well behaved but that a new set of operators who are determined to flout the regulations has turned up in the North sea, or is it that the situation was identical during that period but that we did not realise it until 2015 so are only now introducing these regulations? I rather suspect that the former is the case—there are a higher number of incidents that inspectors consider have not been resolved properly. That is effectively what the Minister is saying, but it would be useful to know whether that is the case and whether the operators are much less compliant than they used to be. If so, we should think more widely about the question of compliance, which is very important given the disastrous consequences if a navigational problem causes a collision with an oil rig or an exploratory rig. If such disasters are being countenanced by operators in the North sea, who are not complying as they previously did, should not the Department look at whether a culture of not taking compliance seriously has developed? Should we take wider action, in addition to giving inspectors further powers of entry, to ensure that a culture is in place that regards compliance with the requirement to provide navigational aids and other means of ensuring ships do not collide with offshore institutions to be a matter of course for operators, and not as something that they may eventually be dragged into complying with after much to-ing and fro-ing and threatening from the Government?

I would appreciate it if the Minister would address those thoughts, to ensure that safety in the North sea is as good as it can be. It is paramount, across all aspects of installations. If she can shed a little light on that, I am sure the Opposition will not oppose the regulations, because at their heart is making sure that safety in the North sea is as good as it can be, which is the right and proper thing to do.

2.50 pm

Claire Perry: I thank the hon. Gentleman for a typically thoughtful and well researched speech, which raised many important and interesting questions. I will start with a couple that I can answer. He asks an interesting question about the compliance regime for offshore wind turbines. Like offshore rigs, wind turbines appear on ships' charts, and they have navigational aids. I will write to him on whether specific questions have been

raised. These regulations are required because of the catastrophic implications of what might happen if a vessel—particularly one at high speed—collided with a hydrocarbon extraction rig. Indeed, there was an incident at Mumbai High North in 2005 where that happened: there was a slow vessel collision, with 11 deaths, 11 missing, and possible environmental damage. Many of us have long memories and will think of what we saw in the Piper Alpha disaster. The last thing we want is for that to happen again. I will take his points and write to him.

As the hon. Gentleman knows, we continue to lead the world in offshore wind installations. We have the largest capacity now. Pricing has dropped substantially, and we would like to do more offshore wind, but we need to ensure that it is safe, and safe for vessels.

The hon. Gentleman reasonably asked why the regulations are necessary now. Until the end of 2014 there were incidences of non-compliance, but such breaches were resolved within reasonable timescales—no more than a few days at a time. There was a sense of co-operation, so there was no need to tighten up the regulation. However, since 2015 there has been a trend among certain operators not to respond on serious non-compliances—as I mentioned, for up to four months. As we want to maintain this extremely safe and well-regulated extraction regime, we feel it is right to bring in the regulations.

I cannot answer why the situation with some operators has become more difficult. It could be because the oil price dropped so sharply, perhaps forcing them to reprioritise how they do maintenance and routine checks. Given that the Oil and Gas Authority is now established and doing a great job to promote cost-effective and safe extraction in the North sea, and given the recovery in the oil price, if that were the case we would expect incidences of non-compliance to fall without the regulations. However, I think we will all accept that it would be unsatisfactory for the situation to continue.

What we propose to do is of a safety-critical nature, so I am pleased to hear that the hon. Gentleman and the Opposition are happy to support the regulations, which are important and close an important loophole. I will take away the hon. Gentleman's valid point about whether down the line we are potentially looking at something we would need to tighten for offshore wind installations. On that basis, I commend the regulations to the Committee.

Question put and agreed to.

2.54 pm

Committee rose.