

**EXPLANATORY MEMORANDUM TO**  
**The Petroleum Licensing (Exploration and Production)**  
**(Landward Areas) Regulations 2014**

**2014 No. 1686**

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 To amend the terms of Petroleum Exploration and Development Licences so as to improve their compatibility with shale oil, shale gas and coalbed methane.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 Paragraph 7 of Schedule 1 to the Regulations provides a definition of the expression “low water line” by reference to Ordnance Survey maps on a scale of 1:25,000.

- 3.2 Paragraph 5.4.10(c) of Statutory Instrument Practice requires Departments to provide copies of any relevant map to the Joint Committee on Statutory Instruments.

- 3.3 After considering the cost of meeting this requirement, the well-understood nature of what the “low water line” is and the significant experience of the Committee in dealing with this type of definition, the Department concluded that to supply copies of the relevant maps might put the taxpayer to unnecessary expense.

- 3.4 However, the Department would be happy to supply copies of the maps if the Committee would find it helpful.

- 3.5 The Department regrets that it has breached the 21-day rule and sends its apologies to the Committee and to both Houses of Parliament. The RPC validated the Impact Assessment but recommended certain improvements, and regrettably, the time needed to make these improvements has reduced below 21 days the period between laying and the date on which the Regulations come into force. It should be noted, however, that in practice, those affected by the regulations will still have considerably more than 21 days in which to understand their implications and effect, because the regulations will not have a practical effect until the Secretary of State awards licences that incorporate the model clauses, and that is not expected to happen within the next several weeks or months.

4. **Legislative Context**

- 4.1 Section 3 of the Petroleum Act 1998 empowers the Secretary of State to grant licences to explore for and extract naturally-occurring hydrocarbons (including shale gas). Section 4 of the Act requires him to make regulations that prescribe “model clauses which shall, unless he thinks fit to modify or exclude them in any particular case, be incorporated in any such licence”. Any change to the usual terms and conditions of licences must, therefore, be made by regulations. The measures proposed here would

partially amend or replace the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004 (No 352), which among other things set out model clauses for Landward Licences. Changes to the model clauses affect only licences issued under that set of Regulations, and have no retrospective effect on existing licences.

4.2 Landward oil and gas companies propose to exploit new types of hydrocarbon target, whose characteristics are different from those of conventional oil and gas. The existing terms of Petroleum Act licences – particularly those relating to the retention of acreage – require an update, so that licences will continue to accommodate all forms of petroleum, whether conventional or not.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England, Wales and Scotland.

## **6. European Convention on Human Rights**

The Minister of State for Energy has made the following statement regarding Human Rights:

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Petroleum is a valuable national resource that includes unconventional hydrocarbons (e.g. shale gas) as well as conventional oil and gas. The Petroleum Act 1998 vests all rights to the petroleum resources in Great Britain in the Crown but empowers DECC to grant licences that confer exclusive rights to the licensees to ‘search and bore for and get’ petroleum. These licences are essential to secure the exploitation of this valuable national resource, because they protect the value of a company’s investment from rivals that might otherwise seek to exploit hydrocarbons that it has discovered. The case for making the necessary investment would be very much reduced without that protection.

7.2 Where a licence confers this exclusivity, though, its terms are designed to ensure that licensees use it productively and do not simply bank it as a valuable but unused asset. Traditionally, that was done by requiring the surrender of certain proportions of acreage at specified deadlines, and by imposing an increasing rental paid by the square kilometre to incentivise the voluntary surrender of acreage.

7.3 A Petroleum Act licence covers all natural hydrocarbons within its licensed area, so it is important that the model clauses are compatible with all types of hydrocarbon – coalbed methane, shale gas, shale oil, conventional oil and gas and others. However, the industry body UKOOG (UK Onshore Operators’ Group) and individual firms have brought to DECC’s attention that the existing model clauses, designed for conventional hydrocarbons, may not be appropriate for the technologies and economics involved in shale gas production. This is because shale gas is not concentrated in small, high-value fields that leave lots of unproductive acreage to spare, but is likely to be dispersed across a whole licensed area. Shale gas companies are therefore unlikely to be able to identify any low-value acreage that they can surrender without loss.

7.4 DECC accepts that the current provisions are not best suited to shale gas. However, simply removing them would allow all licensees to keep prospective acreage without cost as a valuable but untouched asset, depriving the nation of both energy supplies and revenue.

7.5 DECC is therefore introducing a new set of model clauses for landward licences to introduce a new level of flexibility into the provisions governing the retention of acreage. In particular, it will allow the retention of greater areas than before. This will enable the level of retention that shale gas companies say they need, but because it will be based on agreement between DECC and licensee, it will not create a risk of landbanking. These changes will make licences compatible with shale gas while remaining compatible with conventional oil and gas.

7.6 These changes could be implemented either by amending the existing set of Model Clauses piecemeal or by laying a whole new set. For the sake of clarity and transparency, the latter option has been selected.

## **8. Consultation outcome**

8.1 On 25 November 2013, DECC consulted existing licensees and UKOOG (the onshore trade association), and after discussions and consultation with its members UKOOG replied on 17 January 2014 with a warm welcome: the approach is “much to be encouraged”, “offers an increase in flexibility which will complement how shale and coal bed methane is likely to be developed”, “reduces complexity” and “provides the operator with the opportunity to target a range of hydrocarbon types”.

8.3 A different set of concerns about shale gas has been expressed by others outside the industry, arising from issues to be dealt with by planning authorities, health and safety and environmental regulators. The changes proposed in these Regulations have no bearing on any of these concerns. They modify licence terms only so as to ensure that the new Model Clauses offer acceptable retention provisions to shale gas companies, and increase transparency of information about fracking in shale, and so are potentially of concern only to would-be licensees. The consultation carried out was therefore pitched at the appropriate level.

## **9. Guidance**

9.1 DECC has already provided guidance to stakeholders affected in the form of the consultation of UKOOG and existing licensees, and is committed to work with UKOOG to develop procedures and guidance about fracking reports. The changes introduce new options that licensees are not likely to take for several years, and DECC will develop the remaining guidance in good time.

## **10. Impact**

10.1 The direct impact on business is expected to be an average net benefit of £45.8 million a year; there is not expected to be any direct impact on charities or voluntary bodies.

10.2 The impact on the public sector is negligible (with any administrative costs accommodated within existing resources).

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website following certain minor amendments proposed by the RPC.

**11. Regulating small business**

11.1 The legislation applies to small business.

11.2 This policy is beneficial to business so its effect on small firms has not been minimised because that would put them at a competitive disadvantage.

**12. Monitoring & review**

12.1 The new Model Clauses will be judged a success if a large proportion of interested companies are attracted to apply for licences on these terms in the 14<sup>th</sup> Landward Licensing Round. Given that much acreage is already licensed, applications for 30 blocks would be a good response.

**13. Contact**

Mike Hawkins at the Department of Energy and Climate Change. Tel: 0300 068 6038 or email: [mike.hawkins@decc.gsi.gov.uk](mailto:mike.hawkins@decc.gsi.gov.uk) with any queries regarding the instrument.