

EXPLANATORY MEMORANDUM TO
THE POLLUTION PREVENTION AND CONTROL (FEES) (MISCELLANEOUS
AMENDMENTS AND OTHER PROVISIONS) REGULATIONS 2015

2015 No. 1431

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 The purpose of this instrument is to enable fees to be charged in order to recover the Secretary of State for Energy and Climate Change's costs in relation to certain activities with regards to the environmental management of the offshore oil and gas industry.

2.2 The fees are determined by adding together (1) the number of hours worked by specialists multiplied by an hourly rate plus (2) the number of hours worked by non-specialists multiplied by a lower hourly rate.

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

3.1 None

4. **Legislative Context**

4.1 The Offshore Oil and Gas Environment and Decommissioning Unit (OGED) in the Department for Energy and Climate Change carries out environmental regulation functions for the offshore oil and gas industry.

4.2 OGED first introduced a fee scheme in 2001, provided for by the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001¹. In subsequent years, three further fees schemes were introduced under the Offshore Chemicals Regulations 2002, the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 and the Greenhouse Gas Emissions Trading Scheme Regulations 2005².

4.3 For other statutory functions of OGED, specific charging regulations have not previously been made. The Secretary of State has had powers in primary legislation to introduce further charging regulations, but those powers have not previously been exercised.

¹ Now replaced by the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013.

² Now replaced by the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

4.4 In addition, OGED have certain new functions which include providing services to the offshore oil and gas industry, for which it is appropriate to charge a fee. These Regulations make provision for such fees.

5. Territorial Extent and Application

5.1 Regulation 2 (fees relating to oil pollution emergency plans) applies where the Secretary of State functions set out in regulation 2(2) relate to (a) oil handling facilities which are pipelines; (b) oil handling facilities which would be offshore installations were they in offshore waters; (c) offshore installations and their connected infrastructure in offshore waters or (d) well operations.

Each of those terms is defined in, and the functions referred to are under, the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, which extend to the whole of the UK.

5.2 Regulation 3 makes provision for fees relating to functions carried out by the Secretary of State under the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015. Those Regulations apply in Great Britain and outside Great Britain in external waters (the territorial sea and any area designated under the Continental Shelf Act 1964). They extend to England and Wales and Scotland.

5.3 Regulation 4 (fees relating to offshore installations: Fluorinated Greenhouse Gases Regulations 2015) applies where the Secretary of State's functions set out in regulation 4(2) relate to (a) offshore installations or (b) Northern Ireland offshore installations, other than such offshore installations used in connection with the production of energy from water or wind. "Offshore installations" and "Northern Ireland offshore installations" are defined in regulation 4 of the Fluorinated Greenhouse Gases Regulations 2015. Those Regulations apply in full to Great Britain but to Northern Ireland only in respect of certain import, export and trade provisions which are reserved matters.

5.4 Regulation 5 makes provision for fees relating to certain licences granted under the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007. Those Regulations extend to the whole of the UK and apply to the United Kingdom's offshore marine area, which means any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (effectively the United Kingdom sector of the continental shelf) and any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man).

5.5 Regulation 6 makes provision for fees for certain marine licence applications where an application for a licence under section 71 of the Marine and Coastal Access Act 2009 relates to oil and gas activities (i.e. those for which the Secretary of State for Energy and Climate Change is responsible). Section 71 of that Act extends to the whole of the UK and applies to all areas except territorial waters adjacent to Scotland.

5.6 Regulations 8 and 9 amend the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 and the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 to include a power to charge

fees in relation to certain activities under those Regulations. Both those Regulations extend to the whole of the UK.

6. European Convention on 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 Following a review of the current fee schemes for the Department's environmental regulation of the offshore oil and gas industry, it has become clear that whilst the majority of the cost recovered from industry is properly covered by the existing fee schemes, there are services for which fees have been charged that did not have the requisite legislative cover.

7.2 There are also services being carried out for which fees have not been charged, for example regulatory activities with respect to the Fluorinated Greenhouse Gases Regulations 2015.

7.3 In addition, OGED has recently taken on new activities in relation to the environmental regulation of the offshore oil and gas industry (for example following the implementation of the Offshore Safety Directive).

7.4 The Department is making these Regulations in order for the Department to have the appropriate legislative power in place so that it can recover its costs (going forward) for providing these services, rather than passing the costs onto the taxpayer. This approach is consistent with the 'polluter pays' principle of environmental law. The Department will not be seeking to make a profit from these charges but merely recover its costs in providing these services.

7.5 The principal services to the oil and gas industry for which the Department will recover its costs, as a result of these Regulations, are:

- i. Considering and approving oil pollution emergency plans (OPEPs – including amended OPEPs and descriptions of amendments to be made to an OPEP) and monitoring the readiness of the operator to implement the approved OPEP through their exercises and training records during offshore inspection activity.
- ii. Providing advice in relation to, and assessing, the environmental elements of a safety case, a design notification, a relocation notification and combined operations or well operations, as well as monitoring compliance with the duties in the Safety Case Regulations relating to the environment.
- iii. Monitoring and compliance activities carried out during annual Environmental Emissions Monitoring System returns and during offshore inspections.
- iv. The modification, transfer, surrender or revocation of, or considering but not granting, a licence under regulation 49 of the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007.
- v. Considering and approving marine licences for activities under section 71 of the Marine and Coastal Access Act.

- vi. Considering, determining, accepting or rejecting an environmental statement relevant to the drilling of a well, a development, the construction of a pipe-line for the conveyance of petroleum other than one which is to form an integral part of any development, or the use of a mobile installation for the extraction of petroleum where the principal purpose of the extraction is the testing of any well.
- vii. Granting, rejecting, modifying, transferring, surrendering or revoking consents under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.
- viii. Making an appropriate assessment under regulation 5(1) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 to support a decision on a specific application for a consent, authorisation or approval.
- ix. Consulting any environmental authority under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 or nature conservation bodies under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.
- x. Considering, accepting or rejecting an environmental statement under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999. Additionally making determinations or giving directions under those Regulations.
- xi. Serving notices and carrying out monitoring and compliance activities during inspections under the Fluorinated Greenhouse Gases Regulations 2015
- xii. Undertaking an offshore environmental inspection.

7.6 The fee is determined by adding together (1) the number of hours worked by specialists multiplied by £167 plus (2) the number of hours worked by non-specialists multiplied by a £72. Specialists are those who actually carry out the relevant functions of the Secretary of State, for example determining applications for licences, providing advice in relation to the preparation of documentation under the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 and carrying out inspections. Non-specialists are those engaged to provide administrative support to those specialists.

7.7 The fee is calculated on the basis of the time spent on the particular cost recoverable activity multiplied by a predetermined hourly rate. DECC will operate a work recording system to generate the relevant information. The costs recovered are calculated in accordance with HM Treasury's Managing Public Money and include the full cost of all the resources used in carrying out and supporting that cost recoverable activity. This includes the gross salaries of staff carrying out the work, their line managers and support staff, general administrative expenditure (such as accommodation, IT, office services etc.), corporate services (such as HR, Senior Management, Finance and Learning and Development). The hourly rate has been calculated by taking these costs and dividing them by 1,243 hours. The figure of 1,243 represents the average number of hours per annum spent on cost recoverable activity and removes the hours spent on leave, bank holidays, staff management etc.

8. Consultation outcome

8.1 The Offshore Oil and Gas industry was informed that a new fee regime would be put in place to regularise the fee schemes in line with the polluter pays principle of

environmental regulation. Following the letter to industry, no representations were received.

9. Guidance

9.1 Guidance on the charging mechanism will be made available on the DECC Website in July 2015 before these Regulations come into force.

9.2 Further, the existing Guidance Notes to Industry on our environmental management regime will also be revised in light of the Regulations and an updated version placed on DECC's website in July 2015.

10. Impact

10.1 The impact on charities or voluntary bodies is likely to be none.

10.2 The impact on the public sector is negligible as DECC will be the regulatory authority and will accommodate this new area of work within its current resource head room.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11 Regulating small business

11.1 The legislation applies to small business, as the environmental regulations apply to all offshore operators and owners.

11.2 Of the companies who are active in exploration for and production of oil and gas and very few of them are small firms (i.e. companies with less than ten employees) and the proposed charges would not fall disproportionately on them. It is crucial that all businesses operating offshore, regardless of size, are subject to the same regulatory regime to ensure that they continue to provide a high level of protection for the marine environment. The offshore industry recognises the importance of maintaining a consistent approach to managing their impact on the environment offshore regardless of business size.

12 Monitoring & review

12.1 The effectiveness of the Regulations will be monitored in conjunction with industry with a review planned for 2018.

13. Contact

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