

EXPLANATORY MEMORANDUM TO
THE POLLUTION PREVENTION AND CONTROL (FEES) (MISCELLANEOUS
AMENDMENTS) (No. 2) REGULATIONS 2016

2016 No. 1042

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to enable fees to be charged in order to recover BEIS's costs in relation to certain activities with regards to the environmental management of the offshore oil and gas industry. The proposed regulations cover fees in relation to:

- Consents to Locate under Part 4A of the Energy Act 2008;
- Marine licences under Part 4 of the Marine and Coastal Access Act 2009; and
- Appropriate assessments under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.

2.2 All of the charges relate to existing regulatory activity and the charging powers are introduced by way of amendment to relevant regulations.

3. Matters of special interest to Parliament

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Offshore Oil and Gas Environment and Decommissioning Unit (OGED) in BEIS 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.

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.

- 4.3 For other statutory functions involving the provision of services to the offshore oil and gas industry by OGED, for which it is appropriate to charge a fee, the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 came into force in July 2015, and the Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2016 in June 2016.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 This instrument amends various instruments, the application of which vary.
- 5.3 Regulation 2(1) provides for fees in relation to certain activities and the provision of advice relevant to Consents to Locate under Part 4A of the Energy Act 2008. Part 4A extends to the whole of the UK and applies to the UK Continental Shelf and territorial sea except the territorial sea adjacent to Scotland.
- 5.4 Regulation 2(2) provides for fees regarding the marine licencing regime under Part 4 of the Marine and Coastal Access Act 2009, in connection with carrying out functions and the provision of advice that relate to oil and gas activities (i.e. those for which BEIS is responsible). Part 4 extends to the whole of the UK and applies to all areas, subject to exceptions regarding Scotland and the territorial sea adjacent to Scotland.
- 5.5 Regulations 3 and 4 provides for fees in relation to making an appropriate assessment under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 via amendment to those Regulations and to the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010. Those Regulations and the relevant article of the Order extend to the whole of the UK and apply in all areas.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 In 2015 OGED undertook a review of the current fee charging legislation and schemes for the environmental regulation of the offshore oil and gas industry. The review's findings identified that whilst the majority of costs were properly covered by pre-existing fees legislation and schemes, primary legislation was required in order to recover the costs of two specific services delivered by OGED to industry. These are for functions relating to Consents to Locate under Part 4A of the Energy Act 2008 and for certain functions relating to marine licences under Part 4 of the Marine and Coastal Access Act 2009.
- 7.2 The required primary powers were included in the Energy Act 2016, which received Royal Assent in May 2016. The purpose of these Regulations is to allow for the recovery of the costs of services provided to industry in relation to the above regimes. Also, these Regulations amend the charging powers for the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 so that a fee can be charged where an appropriate assessment is undertaken to support a decision on a specific application for a Petroleum Act licence, Energy Act licence, or consent that is

pursuant to an Energy Act Licence. This is a minor amendment to BEIS's current powers to charge for appropriate assessments.

- 7.3 The Department is making these Regulations so that it can recover its costs 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. The total cost to industry as a whole of introducing secondary legislation to charge for the above functions is likely to be in the region of £300,000 per annum.

The fee is determined by adding together (1) the recorded number of hours worked by environmental specialists on cost recoverable activities multiplied by £168 plus (2) the number of hours worked by non-specialists on cost recoverable activities multiplied by £82, in accordance with the provisions already set out in the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 and the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001. Environmental Specialists are technical staff who carry out the relevant functions of the Secretary of State and non-specialists are administrative staff.

- 7.4 OGED now operates a work recording system to generate the relevant information.
- 7.5 The hourly rates 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 the cost recoverable activities. This includes the gross salaries of staff carrying out the work, relevant costs relating to their line managers and support staff, general administrative expenditure (such as accommodation, IT, office services etc.), and 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.

Consolidation

- 7.6 At this stage, the Department does not intend to consolidate (or provide informal consolidated text of) the instruments being amended by these Regulations.

8. Consultation outcome

- 8.1 There is no statutory requirement to consult on these Regulations before making them. The Department considered whether to carry out a consultation and concluded that as there was no other way in which it wished to ensure that companies directly benefiting from regulatory services meet the cost associated with their provision, it was not appropriate to consult. The Department wrote to the Offshore Oil and Gas industry in May 2016 to inform it of the proposed additional charging powers and the decision not to consult, following which no representations were received.
- 8.2 Previously, the Offshore Oil and Gas industry was informed by letter that a new fee regime would be put in place in 2015 to regularise the fee schemes in line with the "polluter pays" principle of environmental regulation. Following the letter to industry, no representations were received. Going forwards, updates to the hourly rates to be applied and a review of the chargeable services provided will be undertaken regularly,

at least annually, and the industry will be informed of any changes prior to their implementation.

9. Guidance

- 9.1 The existing Guide for Industry on Cost Recovery for Offshore Functions will be revised in light of the Regulations and an updated version placed on the GOV.UK website before the Regulations come into force.

10. Impact

- 10.1 There is no impact on charities or voluntary bodies.
- 10.2 The impact on the public sector is negligible as BEIS will be the regulatory authority and will accommodate this work within its current resource head room.
- 10.3 A Regulatory Triage Assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is submitted with this Memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses, as the environmental regulations apply to all offshore operators and owners.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses. Of the companies who are active in exploration for and production of oil and gas, very few of them are small firms 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 on a regular basis, alongside the update of the hourly rates to be applied and the review of chargeable services described in paragraph 8.2.
- 12.2 As a result of s.28(3)(a) of the Small Business Enterprise and Employment Act 2015, instruments (like this instrument) which contain only provision imposing, abolishing or varying any tax, duty, levy or other charge are not subject to the requirement to contain a review clause.

13. Contact

- 13.1 Richard Brooks, BEIS can answer any queries regarding the instrument. Telephone: 01224 254131 or email: richard.brooks@decc.gsi.gov.uk.