

<b>Regulatory Triage Assessment</b>	
<b>Title of regulatory proposal</b>	Offshore oil and gas environmental regulations: Fees
<b>Lead Department/Agency</b>	DECC
<b>Expected date of implementation</b>	1 October 2016
<b>Origin</b>	Domestic
<b>Date</b>	3 <sup>rd</sup> July 2016
<b>Lead Departmental Contact</b>	Richard Brooks
<b>Departmental Triage Assessment</b>	Low-cost regulation (fast track)
<b>Rationale for intervention and intended effects</b>	
<p>In 2015 DECC undertook a review of the current fee charging legislation and schemes for the environmental regulation of the offshore oil and gas industry<sup>1</sup>. The purpose of the review was to assess whether existing arrangements were compliant with HMT guidelines on <a href="#">Managing Public Money</a> and to identify whether new fees legislation was required in order to recover future costs associated with delivering services under new or amended regulations. 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 DECC 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.</p> <p>The required primary powers were included in the Energy Act 2016,<sup>2</sup> which received Royal Assent in May 2016. It is now DECC's intention to lay secondary legislation to be able to recover the costs of services provided to industry in relation to the above regimes. It is also intended that the secondary legislation would 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 DECC's current powers to charge for appropriate assessments. Therefore, to summarise, the proposed secondary legislation would cover fees for:</p> <ol style="list-style-type: none"> <li>1. Consents to Locate under Part 4A of the Energy Act 2008;</li> <li>2. Marine licences under Part 4 of the Marine and Coastal Access Act 2009; and</li> <li>3. Appropriate assessments under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.</li> </ol> <p>The charges would be calculated according to the hourly rate set out in the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015. This hourly rate applies to all offshore environmental regulatory services that DECC charges for.</p> <p>The services provided enable the oil and gas industry to undertake its operations in compliance with our regulations in a way that minimises the cost of compliance to the operator.</p> <p>The intended effect of introducing powers to charge fees is to ensure that the costs of environmental regulatory services which are provided by DECC to oil and gas operators are fully recovered from industry. Through the introduction of secondary legislation, the</p>	

<sup>1</sup> The Offshore Oil and Gas Environment and Decommissioning Unit (OGED) in the Department of Energy and Climate Change (DECC) carries out environmental regulation functions for the offshore oil and gas industry. Without the services provided the industry would not be able to continue to operate in UK waters.

<sup>2</sup> UKCS environmental regulations: cost recovery through fees and charges IA15-007B

government will be able to recover costs associated with providing these regulatory services. The measures will relieve the burden on the taxpayer and ensure that those companies directly benefiting from the services pay for them, which should also improve resource allocation.

### **Viable policy options (including alternatives to regulation)**

Two main policy options have been considered:

- Option 1: The 'do nothing' option would constitute a continuation of current arrangements under which central government would fund the cost of the relevant regulatory functions from general taxation. This approach was ruled out as it would not achieve the policy objective.
- Option 2: Introduce secondary legislation that ensures DECC has the necessary powers in place to recover its costs. This is the preferred option as it will ensure companies directly benefiting from the regulatory services meet the cost associated with their provision.

### **Initial assessment of business impact**

For the purposes of this analysis, the counterfactual for estimating the net additional cost of introducing the secondary legislation is assumed to be the continuation of the current arrangements. Under current arrangements DECC meets the costs of providing the relevant regulatory services which are ultimately funded through general taxation. The benefits for industry are that providing these services enables businesses to comply with regulatory requirements.

The cost to business of introducing secondary legislation to charge for functions under Part 4A of the Energy Act 2008 and certain functions under Part 4 of the Marine and Coastal Access Act 2009 is likely to be in the region of £290,000 per annum (real 2015 prices) spread across approximately 40 companies. The cost to business of the proposed changes to charging for appropriate assessments under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 is likely to average approximately £10,000 per annum, as very few applications for Petroleum Act licences, Energy Act licences, or consents pursuant to an Energy Act Licence would qualify for assessment, but the cost per application is likely to be in the region of £2,500 - £7,500.

In total, annual charges of £300,000 result in a NPV of £2.5m (2015 prices, 3.5% real discount rate) over an appraisal period of ten years. These costs would currently be spread across the companies that receive benefits from the services provided and would take effect once secondary legislation is introduced, most likely on 1 October 2016. While annual costs will change to some extent in line with the variable pattern of demand for services, the future costs are based on historical data and reflect years of experience so are not expected to vary significantly from the estimate of £300,000. It should also be recognised that the costs are very small relative to other costs and revenues from upstream oil and gas activities. The measures will relieve the burden on the taxpayer and ensure that those companies directly benefitting from the services pay for them.

There is not expected to be any incremental administrative burden to the companies as a result of paying the fees to DECC relating to these changes. This is because DECC will continue to issue invoices on a quarterly basis to each company, which will reflect the total value of costs incurred across all statutory functions undertaken in the preceding 3 months. There is an established process that industry follows in dealing with invoices; additional fees will be added to each invoice and not be billed separately. The estimated cost of this administrative burden was included in a recent IA<sup>3</sup> related to the introduction of secondary legislation which enabled fees to be recovered for costs incurred under 7 statutory functions for which primary powers already existed. The administrative burden related to processing invoices and making payments was previously estimated at £5,609 per annum going forward

<sup>3</sup> Impact Assessment - DECC0190: UKCS Environmental Regulations: Fees and Charges (Secondary Legislation).

in total for the industry as a whole (NPV of £48,000 over 10 years appraisal period, 2015 prices). Therefore, to avoid double counting, no additional administrative burden has been estimated specifically in relation to this introduction of secondary legislation as it would not reflect the way in which billing will be handled in practice and the costs involved.

The exact number of small or microbusinesses in the exploration or production of the UKCS is unknown. However, the costs of the proposals are not expected to fall disproportionately on small businesses. Businesses of all sizes can participate in UK upstream (exploration and production) oil and gas activities in theory, but very few micro-businesses are likely to be affected as most would lack the requisite resources to participate in offshore work. If a small business becomes involved they would usually only be one of several co-venturers who would make an agreement among themselves governing existing and future operations, including the apportionment of operational costs and associated commercial benefits between the parties so that none of them would be solely responsible for meeting the full costs of the oil and gas operations. Small businesses choosing to participate on this basis would expect to face the same type of costs as other entrants and consequently an exemption from the legislation is not considered necessary or appropriate.

#### **One-in, Three-out status**

The proposed changes are considered out-of-scope of the One-In-Three-Out (OITO) rule under the “Fees and Charges” exemption. The proposal will not expand the scope of regulatory activity undertaken with respect to the range of environmental regulations and the fees will not go beyond cost recovery. The proposal is also consistent with government policy to move towards full cost recovery as set out in HMT’s Managing Public Money guidance.

For the reasons outlined above, there is not expected to be any incremental administrative burden for companies as a result of paying the fees to DECC relating to the additional statutory functions that we propose to charge for.

#### **Rationale for Triage rating**

This measure is considered suitable for the fast-track appraisal route as the proposal as a whole is expected to be low-cost i.e. annual gross costs to business of less than the £1 million per annum gross cost threshold.

#### **Review Clause:**

As a result of s.28(3)(a) of the Small Business Enterprise and Employment Act 2015, SIs 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. The relevant provisions of the SBEEA 2015 have been in place since 1 July 2015 so there was no review clause applied to DECC’s 2015 Fees Regulations or DECC’s 2016 Fees Regulations, which amended the 2015 Fees Regulations.

**Departmental signoff (*Deputy Director*):** Wendy Kennedy Date:07/07/2016

**Better Regulation Unit signoff:** Oscar Diamond      Date: 05/07/2016