

EXPLANATORY MEMORANDUM TO

THE OIL AND GAS AUTHORITY (LEVY) AND POLLUTION PREVENTION AND CONTROL (FEES) (AMENDMENT) REGULATIONS 2018

2018 No. 311

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 Part 1 of this instrument is to make introductory provision, Part 2 is to impose a levy on holders of offshore petroleum licences for the period 1 April 2018 to 31 March 2019 (“the charging period”) to fund the carrying out of certain functions by the Oil and Gas Authority (the “OGA”) and Part 3 is to make minor changes to the Offshore Petroleum Regulator for Environment and Decommissioning’s (OPRED’s) fee charging legislation in relation to environmental permits and consents for oil and gas activities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative 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 Part 2 of the instrument is the latest in a line of regulations that allow the OGA to impose its annual levy for the charging period and follows on from the Oil and Gas (Levy) Regulations 2017 (“the 2017 Levy Regulations”) which imposed a levy for the period beginning on 1 April 2017 and ending on 31 March 2018.
- 4.2 Regulation 5 contains a methodology by which the OGA is able to calculate the amount of levy payable based on the leviable costs for the charging period. This is the first use of the power in 13(4)(b) of the Energy Act 2016. Consistent with section 13(2)(a)(i), regulation 9 provides that the OGA is required to refund the levy where the total amount levied for the charging period exceeds the actual leviable costs. Consistent with section 13(2)(b)(i) of the Energy Act 2016, the leviable costs exclude costs incurred in relation to matters for which fees may be charged by the OGA, which are set out in the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016/904) (as amended by the Oil and Gas Authority (Fees and Petroleum Licensing) (Amendment) Regulations 2017 (S.I. 2017/426)).

- 4.3 Part 3 of the instrument: OPRED (which is part of BEIS) carries out environmental regulation functions relating to the offshore oil and gas industry. OPRED first introduced a fee scheme in 2001 (through the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001). Additional fee-charging provisions have been introduced since 2001, including the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (“the 2015 Fees Regulations”). The 2015 Fees Regulations came into force in July 2015 and included powers to charge fees in respect of activities carried out under the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007.
- 4.4 The 2015 Fees Regulations have been amended by three instruments, the relevant ones being: the Pollution Prevention and Control (Fees) (Miscellaneous Amendments) (No. 2) Regulations 2016 which introduced a new regulation 5A; and the Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2017 which introduced regulation 5B. The 2016 Regulations were made under section 82OA of the Energy Act 2008; the 2017 Regulations under section 56 of the Finance Act 1973. The amendment of regulation 7 of the 2015 Fees Regulations to insert a missed cross reference is therefore made under both these powers.
- 4.5 For completeness, the amendment to the 2015 Fees Regulations to reflect the replacement of the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007 with the Conservation of Offshore Marine Habitats and Species Regulations 2017 is made under section 56 of the Finance Act 1973.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of Part 2 of this instrument (the OGA levy provisions) is Great Britain and outside Great Britain in relevant waters (i.e. the territorial sea adjacent to the United Kingdom and any area designated by order under the Continental Shelf Act 1964).
- 5.3 Part 3 of this instrument amends the 2015 Fees Regulations, which allow fees to be charged in respect of various instruments, the extent and application of which vary.

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

- 7.1 Part 2 of the instrument: the Energy Act 2016 formally established the OGA as an independent regulator. That Act empowers the Secretary of State to make regulations enabling the OGA to recover its costs from persons benefiting from its services in line with established practice across regulation and service delivery.
- 7.2 Some of the OGA’s costs are recovered through fees for the delivery of specific services to individual persons. The majority of the OGA’s costs are recovered through a levy. Consistent with the principal objective set out in Part 1A of the Petroleum Act 1998, one of the OGA’s primary areas of focus is on the offshore oil and gas sector. The levy has been imposed on offshore petroleum licence holders since 1 October 2015. Holders of licences relating to the unloading and storage of carbon dioxide and onshore petroleum licences do not currently pay a levy.

- 7.3 The costs of the OGA and Lord Chancellor which may be recovered by levy (“leviable costs”) are apportioned between licences which entitle the holder to produce petroleum (“production licences”) and those that do not (or do not yet) provide such an entitlement (“non-production licences”). Around 89% of the OGA’s leviable costs are allocated to production licences, and 11% to non-production licences. The apportionment of costs between production and non-production licences is based on an assessment of the costs the OGA incurs in relation to each group, and has also been used to calculate the levy payable by different classes of licensees in previous years. Apportioning the levy in this way is consistent with Managing Public Money which recognises it can be appropriate to charge different levies to different kinds of licences depending on what is being provided by the regulator.
- 7.4 The amount of levy for each licence type is currently specified in the 2017 Levy Regulations in accordance with section 13(4)(a) of the Energy Act 2016.
- 7.5 It is now intended through this instrument to set out the methodology used to calculate the levy as provided for at provision 13(4)(b) of the Energy Act 2016.
- 7.6 This approach, in contrast to that used in previous OGA levy regulations, will enable the OGA to apportion the leviable costs between licensees using the latest licence information for the relevant charging period and allow for full cost recovery. This will mean that the OGA is properly resourced and able to carry out its statutory function to deliver the objective of maximising the economic recovery of offshore UK petroleum (MER UK).
- 7.7 The leviable costs will continue to be apportioned on an 89%/11% split between production and non-production licences and the same discounts will apply to Licensees that are a micro enterprise (enterprises with fewer than 10 employees and whose annual turnover and/or annual balance sheet total does not exceed €2 million - defined by article 2(3) of the Annex to Commission Recommendation 2003/361/EC) holding certain licences. If multiple companies jointly hold a licence, all licensees need to be a micro enterprise to be eligible for the reduced levy amount.
- 7.8 These regulations provide for four different levy rates to be established for offshore licence holders.
- 7.9 The first rate, the production levy, will apply where a licensee is entitled to erect or carry out works either in the licensed area or elsewhere for the purpose of getting petroleum from that area or conveying it to a place on land, or get petroleum from that area otherwise than in the course of searching for petroleum, drilling or testing wells..
- 7.10 The second rate, the non-production levy, will apply to those licensees who hold an offshore exploration licence; or an offshore production licence but who are not required to pay the first rate.
- 7.11 The third rate, the non-production levy discounted by 80%, will apply to those licensees that are a micro enterprise and who hold an Innovate Licence in Phase B of its Initial Term.
- 7.12 The fourth rate, the non-production levy discounted by 90%, will apply to those licensees that are a micro enterprise and who hold either a Promote Licence in its ‘Promote Period’ or an Innovate Licence in Phase A of its Initial Term.
- 7.13 The levy rates will be calculated using formulae which divide the OGA’s projected leviable costs for the charging period between offshore Licensees.

- 7.14 The OGA will determine the status of each licence at the start of the charging period and that status will establish which of the four levy rates will be applied for that charging period.
- 7.15 Following that determination, the OGA will calculate the levy amounts and issue notification as to the levy payable based on the licence determination. These will be required to be settled within 30 days. If the amount so levied is not paid within this period then the OGA can charge interest on the amount and can recover the amount as a civil debt.
- 7.16 Part 3 of the Regulations: OPRED charges the offshore oil and gas industry for activities undertaken in relation to environmental legislation. This ensures that, where possible, the costs for providing services to the oil and gas industry are recovered from that industry rather than being passed on to the taxpayer. This approach is consistent with the ‘polluter pays’ principle of environmental law.
- 7.17 Following a recent review, a missed cross-reference in the 2015 Fees Regulations has been identified.
- 7.18 In addition, OPRED was notified recently that the Department for the Environment, Food and Rural Affairs (Defra) had revoked the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007 and replaced them with the Conservation of Offshore Marine Habitats and Species Regulations 2017. OPRED has functions under those Regulations, and the 2015 Fees Regulations contain provisions for OPRED to charge for activities carried out when exercising those functions. It is, therefore, desirable to amend the 2015 Fees Regulations to reflect the changes made by Defra. These amendments to the 2015 Fees Regulations required HM Treasury consent, which has been provided.

Consolidation

- 7.19 There are no plans to consolidate this legislation at this time.

8. Consultation outcome

- 8.1 Offshore licensees have certain obligations under Section 34 of the Energy Act 2016 (“Section 34”) to report licence-related information. The OGA does not currently have the in-house means to receive, curate, retain or publish this information.
- 8.2 Many licensees fulfil some of their obligations under Section 34 by submitting relevant information to UKOilandGasData.com, a digital data repository operated by Common Data Access Limited (CDA) a wholly owned subsidiary of Oil & Gas UK, which is a trade association for the UK offshore oil and gas industry. Licensees which are not CDA members fulfil their relevant reporting obligations for well data by providing a copy of their data to the OGA’s appointed data release agents.
- 8.3 The OGA held a consultation exercise between 10 November 2017 and 8 December 2017 to seek the oil and gas industry’s views on: a proposed increase to the levy to cover the cost of bringing this functionality in-house by establishing and maintaining a United Kingdom Oil and Gas National Data Repository (NDR), matched by a removal of equivalent CDA fees from January 2019; and, the imposition of a small charge to allow non-levy payers to access disclosed data.

- 8.4 The OGA proposed that the contract with CDA for the initial provision of this service would commence on 1 January 2019 to coincide with the CDA membership calendar year. CDA members would cease to pay membership fees from this point. The 2018/19 levy would therefore be increased to satisfy the contract running in the final quarter of the OGA's financial year. The proposed increase to the 2018/19 levy, to fund the NDR in this initial quarter, is £925K, equating to <5% increase in the total levy.
- 8.5 In 2019/2020 the funding required to run the NDR for the first full year is expected to be £3.35M. This additional funding constitutes a 16% increase on the levy from the current financial year.
- 8.6 There was overwhelming support for the proposal to increase the levy to fund the NDR with 28 (90%) of respondents in favour. There was strong support for the proposal to introduce a small charge facilitated by CDA, to allow non-levy payers to access disclosed data, with 26 (81%) of respondents in favour. Most respondents who supported the imposition of a charge suggested that the access fee should be low to encourage non-levy payers to access the data. The OGA considered the responses and proposes to increase the levy to establish and maintain the NDR, which is considered the most sustainable approach to maximising value from information and industry collaboration in the long term, and best supports the OGA's regulatory function.
- 8.7 A summary of the responses to the consultation and the OGA's response dated March 2018 is available on the OGA's website.

9. Guidance

- 9.1 Once the instrument comes into force, the OGA will issue notifications to licensees with relevant instructions on payment.

10. Impact

- 10.1 Impact on business is restricted to offshore petroleum licence holders (as at 1 April 2018). Outside the inclusion of additional funding for the cost of establishing and maintaining the NDR, the total amount of levy paid by offshore petroleum licence holders under the 2017 Regulations is not significantly different in real terms to the amount of levy payable under these Regulations. The Part 3 minor amendments impose no impact on business.
- 10.2 There is no impact on charities or voluntary bodies.
- 10.3 The impact on the public sector is minimal.
- 10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The basis for the decision on what action to take to assist small business was based on a 2016 consultation available on the OGA website with a wide range of stakeholders to ensure that their views were taken into account in the development of the OGA's Activity plan and levy. BEIS and the OGA intend to keep the levy methodology under review to ensure that it remains fair and proportionate.

12. Monitoring & review

- 12.1 As a result of section 28(3)(a) of the Small Business Enterprise and Employment Act 2015, instruments (like this instrument) which contain only provision relating to a levy or other charge are not subject to the requirement to contain a review clause.

13. Contact

- 13.1 Duncan Ruddy at BEIS - telephone, 020 7215 3350; email, duncan.ruddy@beis.gov.uk - can answer any queries about the instrument.