

EXPLANATORY MEMORANDUM TO
THE OIL AND GAS AUTHORITY (OFFSHORE PETROLEUM) (RETENTION OF
INFORMATION AND SAMPLES) REGULATIONS 2018

2018 No. 514

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument sets out details on what categories of petroleum-related information and samples must be retained, by whom, and for how long. The intent is to ensure that useful industry data is not discarded before it is reported to the regulator, the Oil and Gas Authority (OGA), or held in an information and samples plan for future use.

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 Section 9A of the Petroleum Act 1998 (c.17) establishes the principal objective of maximising the economic recovery of UK petroleum (defined in section 9I as petroleum which for the time being exists in its natural condition in strata beneath the territorial sea adjacent to the United Kingdom or the sea in any area designated under section 1(7) of the Continental Shelf Act 1964 (c.29)) and requires the OGA to produce a strategy for enabling the principal objective to be met. Sections 9B-9C require the OGA, the Secretary of State and certain persons in the petroleum industry to act in accordance with the strategy when exercising certain functions.
- 4.2 Part 2 of the Energy Act 2016 (c.20) provides the OGA with additional powers and functions relating to offshore petroleum to enable it to give effect to the principal objective. This instrument specifies the petroleum-related information and samples which must be retained by specified relevant persons and the duration of such retention. Relevant persons can be sanctioned by the OGA for failing to comply with its requirements, including a fine of up to £1million or licence revocation (section 28(4) and Chapter 5, Part 2 Energy Act 2016).
- 4.3 Petroleum-related information and samples are defined in section 27(1) of the Energy Act 2016, being the information and samples in respect of which an information and samples plan is required under section 31 of the Energy Act 2016 and which the OGA

may require the provision of under section 34 of that Act. Relevant persons are persons listed in s9A(1)(b) of the Petroleum Act 1998 and include holders of licences granted under section 3 of that Act (or section 2 of the Petroleum (Production) Act 1934 (c.36)), persons who own or are planning and commissioning relevant upstream infrastructure (as defined in section 9H of the Petroleum Act 1998 and section 82(1) of the Energy Act 2011 (c.16)) and owners of relevant offshore installations (as defined in section 9HA of the Petroleum Act 1998).

- 4.4 A further instrument is planned to specify the period after which such information and samples (or other “protected material” as defined in section 61(2) of the Energy Act 2016) may be published by the OGA (or a subsequent holder), as provided for in section 66 of that Act.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

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 The 2014 Wood Review into the future of the UK’s offshore petroleum industry recommended that Government, industry and the regulator commit to a principal objective of maximising economic recovery of the UK’s remaining offshore petroleum reserves (MER UK). One of the Review’s key recommendations for achieving MER UK was to enable timely and transparent access for industry to petroleum-related information and samples. Such information and samples for example include data about reservoirs or pieces of strata created or acquired in the course of exploration, drilling or production under an offshore petroleum licence. This can be very useful to wider industry to understand future prospects and as such support further petroleum exploration and extraction. The regulator (OGA) believes that improvements to information retention and disclosure processes are critical to achieving the statutory objective of MER UK and unlocking a potential £140billion additional revenue from oil and gas activity. The Government has therefore worked together with experts in OGA (who have also consulted stakeholders including in industry and academia) to develop these regulations, in line with provisions in the Energy Act 2016, which implemented the Wood Review.
- 7.2 These regulations set out the information and samples which relevant persons must retain, with the aim of providing clarity and avoiding loss of information which may be of use in understanding the subsurface and supporting development of both oil and gas resources and potential alternative uses for infrastructure or installations such as Carbon Capture Utilisation and Storage. Additionally, they set out a clear duration for when retention obligations end (e.g. when reported to the OGA under s.34 of the Energy Act 2016).
- 7.3 Although offshore petroleum licences also contain requirements to retain information and samples, the licence provisions do not extend to all relevant persons such as

owners of infrastructure and installations. The regulations improve on the existing licensing regime, therefore, clearly identifying the information to be retained by relevant persons. After examining the existing provisions in licences, comparable regimes in other petroleum-producing countries and consulting with interested parties, the OGA developed proposals for a regime which the Government considers should capture the petroleum-related information and samples which are of value, and places proportionate and workable parameters around the amount and duration of retention. These have now been incorporated into this instrument.

- 7.4 The regulations will ensure that, should a licence event (e.g. termination of an offshore licence or transfer to another party) occur, the plans required of offshore licensees to preserve or transfer information and samples will be comprehensive as the relevant information and samples will have been retained by industry. Moreover, the OGA has powers in the Energy Act 2016 to obtain such information and samples. Further regulations will set out the period of time after which information so obtained may be published by OGA (or a subsequent holder), to the benefit of wider industry.

Consolidation

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

8. Consultation outcome

- 8.1 A call for evidence was held on implementing the Wood Review recommendations prior to the introduction of the Energy Act 2016, which included broad principles on the retention of petroleum-related information and samples. In response to this, industry supported the need for access to timely and transparent data, but noted that the scope of the data should not be construed too narrowly. There were specific calls for clarity and guidance around the requirements to be placed on industry and the implications for them. Government therefore took a broad power in primary legislation with the intent of providing the detail requested in regulations.
- 8.2 An eight week open consultation on the detailed policy proposals underpinning these regulations was held by OGA in July-August 2017. Stakeholders were alerted by email and open meetings were held in London and Aberdeen with those who will be impacted by the regulations, in order to explain the proposals and allow feedback. Thirty four formal responses to the consultation were received. Feedback was broadly supportive and OGA has continued to work with industry in addressing points raised. A consultation response will be published by OGA in parallel with these regulations: <https://www.ogauthority.co.uk/news-publications/consultations/2017/proposed-regulations-for-the-retention-and-disclosure-of-information-and-samples/>.
- 8.3 The results of the OGA's consultation with industry formed the basis of the policy implemented by these regulations, on which the Secretary of State has consulted the OGA prior to making as required under section 28(5) of the Energy Act 2016.

9. Guidance

- 9.1 As the organisation charged with enforcement of these regulations, OGA intends to issue guidance in April, to aid industry's understanding of and compliance with the regulations. The intent is that this document would provide context and examples of documents that will fall within the different categories of information that the regulations will require to be retained.

10. Impact

- 10.1 The impact on business is expected to fall under the £5million threshold for preparing an Impact Assessment. There are existing obligations on petroleum licensees to retain information and samples. Therefore the key affected group will be owners of infrastructure or installations, as well as those planning and commissioning such infrastructure. They will be subject to new obligations to retain information, where this has been created or acquired by or on behalf of the company. They will incur storage costs unless and until the requirement is lifted when such information is reported to the OGA. All affected businesses will also face familiarisation costs to ensure they are aware of the new regulations. There is no impact on charities or voluntary bodies.
- 10.2 The impact on the public sector is limited to the time taken to prepare these regulations and associated guidance. There will be an impact on the OGA where it utilises powers under section 34 of the Energy Act 2016 to require retained information and samples to be reported to it, in handling and storing that which is provided, but this has been considered separately.
- 10.3 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 retention obligations are related to the scale of a business's activity, so they fall proportionately on businesses of all sizes.

12. Monitoring & review

- 12.1 A statutory review provision is considered disproportionate, given that the impact of the regulations is expected to be below the £5million threshold. The overall effectiveness of the OGA in achieving its objectives is subject to regular review under the provisions of the Energy Act 2016.

13. Contact

- 13.1 Kathryn Aggarwal at the Department for Business, Energy and Industrial Strategy
Telephone: 0300 068 6969 or email: kathryn.aggarwal@beis.gov.uk can answer any queries regarding the instrument.