

EXPLANATORY MEMORANDUM TO
THE OFFSHORE EXPLORATION (PETROLEUM, AND GAS STORAGE AND UNLOADING) (MODEL CLAUSES) REGULATIONS 2009

2009 No. 2814

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument is part of the implementation of a new regulatory regime provided by the Energy Act 2008. This regime requires developers to obtain a licence to store natural gas offshore, or to unload gas offshore that has been imported in the form of liquefied natural gas (“LNG”), and to explore the offshore area for places suitable for such activities. The purpose of the instrument is to prescribe appropriate standard terms (“model clauses”) for exploration licences, which authorise certain kinds of exploration to be carried out throughout the offshore area; and to enable a combined exploration licence to be granted for the purposes of exploring for purposes of gas storage and unloading as well as petroleum production.

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

3.1 None

4. Legislative Context

4.1 Part 1, Chapter 2 (sections 2 to 16), of the Energy Act 2008 provides for a licensing regime governing the offshore storage and unloading of combustible gas (in practice natural gas consisting mainly of methane). The regime applies to storage and unloading within the offshore area comprising both the UK territorial sea, and the area extending beyond the territorial sea that has been designated as a Gas Importation and Storage Zone (“GISZ”) under section 1(5) of that Act. See the Gas Storage and Importation Zone (Designation of Area) Order 2009 (SI 2009/223).

4.2 In making this instrument (and the instrument referred to in paragraph 4.3), the powers in section 7(1) of the Energy Act 2008 are being used for the first time. Section 7(1) enables model clauses to be prescribed for licences. Once prescribed for a category of licences, such model clauses are deemed to be incorporated into licences of that category. However, a clause can be excluded or modified in the case of any particular licence. Similarly, section 4(1) of the Petroleum Act 1998 enables model clauses to be prescribed for petroleum licences granted under section 3 of that Act.

4.3 A related instrument, made at the same time as this instrument, prescribes model clauses for gas storage licences: see the Offshore Gas Storage and Unloading (Licensing) Regulations 2009 (SI 2009/2813). Such licences authorise the use of a specific place within the offshore area for gas storage purposes, and in particular authorise intrusive exploration activities (such as drilling in the seabed below 350 metres).

4.4 By contrast, in this instrument, model clauses are prescribed for exploration licences authorising the *non*-intrusive exploration of *any* place within the offshore area for gas storage and unloading purposes. Model clauses are prescribed, in largely similar terms, for licences granting similar exploration rights in relation to petroleum. As regards licences granted after the commencement of this instrument, the latter model clauses replace those contained in Schedule 1 to the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004 (SI 2004/352).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom but relates solely to offshore activities below the low water mark and out to the seaward limits of the UK Continental Shelf (petroleum licences), or within the UK territorial sea and the GISZ (gas storage and unloading licences).

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 Developers may want to undertake a number of exploratory activities to inform a decision about going ahead with a storage project both in relation to carbon dioxide storage and in relation to the storage of natural gas. The Energy Act 2008 requires a licence for all exploration activities connected with these developments .

7.2 Non-intrusive exploration activities, in areas below the low water mark out to the seaward limits of the UK Continental Shelf (“UKCS”), are already regulated under an Exploration Licence granted under the Petroleum Act 1998. Since the activities involved in such exploration do not depend on its ultimate purpose, in this instrument the existing model clauses prescribed for such licences under the Petroleum Act 1998 are adapted for the purpose of gas storage and unloading. It will then be possible to issue a combined licence, granted under both that Act and the Energy Act 2008, which will be able to cover non-intrusive exploration activities relating to any or all of: petroleum production; storage of natural gas; and unloading of natural gas. In addition, the licence will be able to cover non-intrusive exploration for the purposes of carbon dioxide storage, although these Regulations do not prescribe model clauses for those purposes.

7.3 Such a combined Exploration Licence will apply in all UK waters below the low water mark and within the limits of the UKCS without restriction. The licence will be valid for three years, renewable on request. The cost of an application for an Exploration Licence under the Petroleum Act is currently £500, which covers the internal departmental costs of administering the regime. No additional fee will be payable in respect of the combined Exploration Licence.

7.4 The combined Exploration Licence will cover seismic, gravity and magnetic surveys; sample collection and shallow drilling (i.e. not beyond 350 metres below the seabed surface).

7.5 The model clauses prescribed in the case of non-intrusive exploration for gas storage and unloading are in large part based on relevant provisions prescribed under the Petroleum Act 1998, since most of the issues arising from such exploration of the offshore area for petroleum production are also relevant to its exploration for gas storage and unloading. Furthermore, the petroleum licensing regime is one with which offshore developers are likely to be familiar. Some differences between the two regimes arise from the fact that, in the case of a petroleum licence, contractual rights are also being granted, whereas a gas storage licence is a purely regulatory instrument. In order to facilitate the issue of a combined Exploration Licence, these Regulations also prescribe a new set of model clauses for exploration under the Petroleum Act 1998.

7.6 In its implementation of this Chapter of the Energy Act 2008, DECC is delivering the Government's commitment made in the 2007 White Paper "Meeting the Energy Challenge", in which an undertaking was given at paragraph 4.64 to bring forward legislation to provide a regulatory framework for offshore storage and unloading of natural gas. The impact assessment for the regime concluded that it would provide a tailor-made solution for all developers of gas storage and offshore Liquefied Natural Gas import facilities, including encouraging the best use of innovative technologies. It would provide a regulatory framework that specifically provided for such activities, reduce burden on business by streamlining processes, and maximise the area of the sea-bed available for these activities.

7.7 In addition, DECC is currently consulting on proposals for implementing Directive 2009/31/EC on the geological storage of carbon dioxide, which was adopted on 23 April 2009 and published on the Official Journal of the EU on 5 June 2009. DECC intends to introduce a licensing regime for the offshore area in line with that Directive in April 2010. (The licensing of carbon dioxide storage is covered by Part 1, Chapter 3, of the Energy Act 2008.) However, non-intrusive exploration, of the kind permitted under the combined Exploration Licence envisaged by these Regulations, will not fall within the scope of the Directive. As mentioned in paragraph 7.2, it is intended that the combined licence will also cover the case of non-intrusive exploration for the purposes of carbon dioxide storage.

7.8 The introduction of this combined Exploration Licence will help to provide a streamlined approach to facilitating exploration activities for the types of projects mentioned above.

8. Consultation outcome

8.1 The consultation exercise for the licensing regime concluded that it would provide a tailor-made solution for all developers of gas storage and offshore LNG import facilities, including encouraging the best use of innovative technologies. It would provide a regulatory framework specifically designed for such activities, thereby reducing the burden on business by streamlining processes, maximising the

area of the sea-bed available for these activities, and maintaining appropriate environmental controls.

9. Guidance

9.1 Guidance on the regime will be made available on the DECC website.

10. Impact

10.1 The impact on charities or voluntary bodies is likely to be none, as projects will be taken forward by commercial operators such as gas producers, gas storage companies and LNG importers. The impact on those operators will be positive, as they will benefit from a more streamlined consenting regime tailored to the needs of the industry.

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 has not been prepared for these Regulations. In the case of licences under the Petroleum Act 1998, the model clauses prescribed have no effect on existing licences and are largely similar to those previously prescribed. As regards the clauses prescribed for licences under the Energy Act 2008, the assessment for the proposed offshore licensing regime contained in the Impact Assessment for the Energy Bill 2007-08 is relevant. That assessment is contained in Annex C to the Government's Consultation on the Proposed Offshore Gas Storage and Gas Unloading Licensing Scheme: Implementing the Energy Act 2008, and is updated in section 8 of that document. The document is available at:

<http://www.decc.gov.uk/en/content/cms/consultations/open/gsul/gsul.aspx>.

11. Regulating small business

11.1 The legislation applies to gas storage and unloading activities offshore however carried out.

12. Monitoring & review

12.1 DECC will monitor the licensing arrangements implemented by this instrument, including the demand for licences, and will seek feedback from the industry as to the regime's efficacy. The policy will be reviewed in 2011 to guarantee two full years of operation after the regulations come into force.

13. Contact

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