

EXPLANATORY MEMORANDUM TO
THE ENERGY (TRANSFER OF FUNCTIONS, CONSEQUENTIAL AMENDMENTS
AND REVOCATION) REGULATIONS 2016

2016 No. 912

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to transfer functions currently exercised by the Secretary of State for Business, Energy and Industrial Strategy to the Oil and Gas Authority (“the OGA”). It also makes various amendments and revocations consequential to the transfer of these functions to the OGA under the Energy Act 2016. The functions transferring to the OGA primarily relate to the licensing, exploration and production of oil and gas and the storage and unloading of gas and carbon dioxide. The functions in respect of which consequential amendments are needed relate to the Secretary of State’s environmental, conservation and pollution prevention obligations, the taxation of oil and gas, town and country planning and obligations of the Health and Safety Executive in relation to offshore installations. The instrument also makes provision for the continuity of acts, instruments and documents in place before the transfer of functions to the OGA. Finally, this instrument revokes existing provisions relating to fees charged by the Secretary of State for applications for licences and various consents related to the licensing of oil, gas and carbon dioxide storage as these fees will now be charged by the OGA instead.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Regrettably, these Regulations will come into force within 21 days of being laid. Unfortunately, problems arose after the regulations had been made which meant that we missed the 3pm Friday deadline for laying. The Department apologises and is considering what can be done to prevent this in the future. We do not think those regulated by the instrument will be adversely affected; the only material effect is to transfer functions from the Secretary of State to the OGA. The Secretary of State for Business, Energy and Industrial Strategy announced his intention that the transfer would take effect from 1st October on 9th August 2016.

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 This instrument transfers functions and makes amendments consequential to the transfer of functions from the Secretary of State to the OGA by Schedule 1 to the Energy Act 2016 (c. 20) and the Petroleum (Transfer of Functions) Regulations 2016 (S.I. 2016.898). The functions are related to the licensing, exploration and production of oil and gas (for both landward and seaward areas) (governed by Parts 1 to 3 of the Petroleum Act 1998 (c. 17) and Chapter 3 of Part 2 of the Energy Act 2011 (c. 16)) and the licensing of the storage and unloading of combustible gas and the storage of carbon dioxide (governed by Chapters 2 and 3 of Part 1 of the Energy Act 2008 (c. 32), respectively).
- 4.2 This instrument also makes revocations consequential to the repeal of provision for the Secretary of State to charge fees for applications for licences, authorisations or consents relating to the transferred functions in Schedule 1 to the Energy Act 2016. These fees will be charged by the OGA instead pursuant to section 12 of the Energy Act 2016 and the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016.904).

5. Extent and Territorial Application

- 5.1 An amendment made by this instrument has the same extent as the provision to which it relates.
- 5.2 The territorial application of this instrument 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).

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 One of the key recommendations of the Wood Review into maximising economic recovery of oil and gas from the United Kingdom Continental Shelf¹ was the creation of a new arm's length body, to be charged with effective stewardship and regulation of hydrocarbon recovery, and with maximising collaboration to improve exploration, development and production. In responding to the Review, the Government accepted this recommendation and set out its intention to establish the OGA².
- 7.2 The OGA has been established as a company under the Companies Act 2006. It will have the existing functions transferred to it in Schedule 1 to the Energy Act 2016 and the new functions under Part 2 of that Act. It will also have the oil and gas licensing and taxation functions transferred to it in the Petroleum (Transfer of Functions) Regulations 2016 (S.I. 2016.898) and this instrument.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471452/UKCS_Maximising_Recovery_Review_FINAL_72pp_locked.pdf

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330927/Wood_Review_Government_Response_Final.pdf

Transfer of Oil and Gas Licensing Functions

- 7.3 This instrument makes the following amendments to the secondary legislation governing the petroleum licensing regime to reflect the fact that the administration of petroleum licensing is being transferred from the Secretary of State to the OGA. Where appropriate, these regulations also make provision for the Secretary of State to review those regulations in line with Section 28 of the Small Business, Enterprise and Employment Act 2015 (c. 26).
- 7.4 Regulation 5 amends the Hydrocarbons Licensing Directive Regulations 1995 (S.I 1995/1434) which restricts the criteria which the Secretary of State may take into account when considering an application for a licence for the prospection, exploration and production of petroleum.
- 7.5 Regulation 6 amends Petroleum (Production) Landward Areas) Regulations 1995 (S.I 1995/1436) which sets out the current model clauses for methane drainage licences.
- 7.6 Regulation 13 amends the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 (S.I 2008/225, amended by S.I 2009/229 and S.I 2009/3283) which sets out the current model clauses for seaward area petroleum production licences.
- 7.7 Regulation 14 amends the Offshore Gas Storage and Unloading (Licensing) Regulations 2009 (S.I 2009/2813) which establishes a licensing regime for the offshore storage and unloading of combustible gas.
- 7.8 Regulation 15 amends the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009 (S.I 2009/2814). These Regulations prescribe model clauses for offshore exploration licences granted under section 3 of the Petroleum Act 1998, and under section 4 of the Energy Act 2008. Exploration licences allow a licensee to undertake the exploration of the entire offshore area below the low-water line, out to the seaward limits of the United Kingdom Continental Shelf, but only by means of non-intrusive methods such as seismic surveys and shallow drilling. A gas storage licence allows a licensee to store methane in offshore geological structures. These amendments are required because all these licences will now be granted by the OGA.
- 7.9 Regulation 19 amends the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011 (S.I 2011/1483). These regulations form part of the implementation by the United Kingdom of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide. In particular, they implement Articles 18 and 20 on the transfer of responsibility for a closed storage site and the associated funding to the appropriate Minister upon termination of the licence. The amendments reflect the role of the OGA up to and including service of a termination notice.
- 7.10 Regulation 23 amends the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (S.I 2014/1686) which set out model clauses for incorporation in petroleum licences for landward areas.
- 7.11 Regulation 25 amends the Petroleum Licensing (Applications) Regulations 2015 (S.I 2015/766) which set out the requirements for applications for certain licences.

Consequential Amendments to the Environmental, Conservation and Pollution Prevention Regime and the Health and Safety Regime

- 7.12 In relation to the environmental, conservation, pollution prevention and health and safety obligations, most relevant functions remain with the Secretary of State, or the Health and Safety Executive. The Secretary of State and the Health and Safety Executive will therefore continue to undertake the relevant environmental and health and safety assessments, but the relevant secondary legislation needs amending to reflect the OGA's new role in granting licences, consents, authorisations or other approvals to which the obligations pertain.
- 7.13 Regulation 7 amends the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (S.I 1999/360), amending references to relevant consenting and authorisation functions for production, pipeline and drilling operations to refer to the OGA, but making the exercise of those functions subject to the agreement of the Secretary of State and the conditions of that agreement.
- 7.14 Regulation 8 amends the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (S.I 2001/1754), amending the definition of "relevant functions" relating to licences, consents, authorisations or approvals to reflect the role of the OGA, and requiring the OGA to obtain the agreement of the Secretary of State before undertaking those relevant functions.
- 7.15 Regulation 9 amends the Offshore Chemicals Regulations 2002 (S.I 2002/1355), revising the definition of "offshore petroleum activities" to include activities in respect of which the OGA exercises functions, and amending a reference to pipelines that are now authorised by the OGA instead of the Secretary of State. The regulation also introduces a requirement to review substantive provisions of the Offshore Chemicals Regulations, in line with current legislative policy.
- 7.16 Regulation 10 amends the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (S.I 2005/2055), revising the definition of "offshore installation" to include functions exercised by the Secretary of State or the OGA, and amending a reference to pipelines that are now authorised by the OGA instead of the Secretary of State.
- 7.17 Regulation 12 amends the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (S.I 2007/1842), revising the provisions relating to the protection of European offshore marine sites and European sites and the review of existing decisions and consents to extend the exemption provisions to include relevant decisions and consents made or issued by the OGA.
- 7.18 Regulation 16 amends the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010 (S.I 2010/1513), revising the references to "relevant function" and "relevant power" to which the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 apply to include functions or powers exercised by the OGA under Parts 1 to 3 of the Petroleum Act 1998, Part 1 of the Energy Act 2008, or any Energy Act licence. The regulation also introduces a requirement to review substantive provisions of the Order, in line with current legislative policy.
- 7.19 Regulation 21 amends the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 (S.I 2013/971), revising the definition of "carbon dioxide storage or unloading platform" to refer to activities within section 17(2) of the

Energy Act 2008 that are licensed under section 18 of that Act by the OGA, replacing the reference to the function being undertaken by the Secretary of State.

- 7.20 Regulation 11 amends the Offshore Installations (Safety Case) Regulations 2005 (S.I 2005/3117), replacing references to the Department of Energy and Climate Change with the OGA in line with the transfer of relevant functions. The regulation also introduces a requirement to review substantive provisions of the Offshore Installations (Safety Case) Regulations 2005, in line with current legislative policy.
- 7.21 Regulation 24 amends the Offshore Installations (Offshore Safety Directive) (Safety Case) Regulations 2015 (S.I 2015/398), replacing references to the Department of Energy and Climate Change with the OGA in line with the transfer of relevant functions.

Consequential Amendments to Other Regimes

- 7.22 Regulation 4 makes a consequential amendment to the provisions of the Oil Taxation (Gas Banking Schemes) regulations 1982 to reflect the transfer of oil and gas licensing functions from the Secretary of State to the OGA.
- 7.23 Regulations 17 and 18 amend the Storage of Carbon Dioxide (licensing etc) Regulations 2010 (S.I 2010/2221) and the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (S.S.I 2011/24) respectively to reflect the role the OGA will have in issuing licences for the storage of carbon dioxide.
- 7.24 Regulations 20 and 26 amend the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (S.I 2012/801) and the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I 2015/595) to require the Local Planning and Mineral Planning Authority respectively to notify the OGA of planning applications relating to land which contains oil and gas.

Revocation of Fee Provisions

- 7.25 Regulation 22 revokes the Gas and Petroleum (Consents) Charges Regulations 2013 (S.I 2013/1138), which set out the fees charged by the Secretary of State for granting various authorisations and consents, as the functions to which they relate will be transferred to the OGA and the existing fee charging powers repealed in the Energy Act 2016.
- 7.26 Regulations 14(2), 17(3) and 25(5) revoke existing provisions relating to fees charged by the Secretary of State for applications for licences which, upon transfer of the licensing functions, will be charged by the OGA.
- 7.27 The OGA will be charging the respective fees itself under a new power contained in the Energy Act 2016. The Oil and Gas Authority (Fees) Regulations 2016 provide for these fees.

Continuity and Validity

- 7.28 Regulation 2 provides for the continuity and validity of things done by the Secretary of State before this instrument comes into force where they relate to functions which are being transferred to the OGA. For example, this will ensure licences made before the relevant date will continue to have effect once the functions contained therein are transferred to the OGA. In addition, it enables the OGA to continue anything which was underway at the time of the transfer of functions and modifies any instrument

made, granted or given before the transfer of functions so that it has effect as if references to the Secretary of State were or included references to the OGA.

Consolidation

7.29 BEIS has no current plans to consolidate the principal regulations.

8. Consultation outcome

8.1 Government conducted a call for evidence on *Implementing the Wood Review Recommendations*³ in November-December 2014. This included a number of workshops. In addition, 52 written responses were received. The Government Response to the call for evidence was published in March 2015⁴. The call for evidence revealed strong support from industry for establishing the OGA as a government company and transferring the existing oil and gas licensing and taxation functions of the Secretary of State to the new body.

9. Guidance

9.1 As industry already engages with the OGA as an executive agency of BEIS on all relevant licensing and oil and gas regulatory matters, and existing liaison and approval procedures involving the Secretary of State's role in respect to the environmental, conservation and pollution prevention regimes and the Health and Safety Executive are being maintained, the transfer of functions and consequential amendments should have no impact on processes and as such no specific guidance is planned on this particular instrument. However, The OGA will clearly communicate to all relevant stakeholders ahead of its vesting as a government company.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal as there is no material change to the substance of any of the legislation amended by this Statutory Instrument.

10.2 The impact on the public sector is also expected to be minimal and limited to time taken preparing these regulations.

10.3 An Impact Assessment has not been prepared for this instrument, as there is expected to be no direct cost to business from these regulations. Moreover, the power to transfer functions to the OGA was covered in the Impact Assessment accompanying the Energy Bill⁵. This outlined that it is reasonable to assume that the transfer of existing functions will result in zero or negligible costs to business relative to existing arrangements. It also noted that the cost to the public sector would be limited to those involved in preparing the relevant legislation. There has been no change which merits updating these assumptions.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371357/20141105_WR_autumn_document-draft_-_FINAL.pdf

⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414444/Call_for_Evidence_Govt_Response-FINAL_120315.pdf

⁵<http://www.parliament.uk/documents/impact-assessments/IA15-007A.pdf>

- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The basis for the final decision on what action to take to assist small businesses was the call for evidence on *Implementing the Wood Review Recommendations*, which received strong support for establishing the OGA as an independent regulator. Where small businesses are already active in this area and engage with the existing regulator, the change to a new regulator is only expected to have a minimal impact on these businesses.

12. Monitoring & review

- 12.1 Review provisions, as required by section 28 of the Small Business, Enterprise and Employment Act 2015, have been included where appropriate.

13. Contact

- 13.1 Jess Mackenzie at the Department of Business, Energy and Industrial Strategy
Telephone: 0300 068 6935 or email: jessica.mackenzie@beis.gov.uk can answer any queries regarding the instrument.