

EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 2016, WALES ACT 2017 AND ONSHORE PETROLEUM (CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISIONS AND MODEL CLAUSES) REGULATIONS 2018

2018 No. 980

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 this statutory instrument is threefold. Firstly, it makes amendments consequential on the transfer of functions for onshore petroleum licensing currently exercised by the Oil and Gas Authority or the Secretary of State to Welsh Ministers, as provided for by section 23 of, and Schedule 6 to, the Wales Act 2017. Secondly, it prescribes the model clauses relating to reserved matters which are to be included in petroleum licences granted by Welsh Ministers. Thirdly, it amends the Scotland Act 2016 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018 in order to reinstate licence clauses relating to the measurement of petroleum and keeping of accounts which are necessary for Scottish Ministers to perform their devolved functions relating to onshore petroleum licensing. This statutory instrument will commence on 1 October 2018.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is being made to make amendments and modifications to the existing regime for the licensing of petroleum consequent on sections 3 and 23 of, and Schedules 1 and 6 to, the Wales Act 2017, which devolve responsibility within the “Welsh onshore area” (as defined in section 23 of that Act).
- 6.2 The secondary legislation relevant to the licensing of petroleum in landward areas in Great Britain consists of the Hydrocarbons Licensing Directive Regulations 1995 (S.I. 1995/1434), which implements Council Directive 94/22/EC on the conditions for advertising and granting and the terms of petroleum licences; the Petroleum (Production) (Landward Areas) Regulations 1995 (S.I. 1995/1436), which prescribe the model clauses for incorporation in methane drainage licences; the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations (S.I. 2014/1686), which prescribe the model clauses for incorporation in petroleum licences for landward areas; the Petroleum Licensing (Applications) Regulations 2015 (S.I. 2015/766), which set out the requirements for applications for petroleum licences; and the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016/904), which make provision for the fees which the Oil and Gas Authority may charge for different types of applications and activities.
- 6.3 This instrument amends those instruments to reflect the revised competence of the Secretary of State and the Oil and Gas Authority. Using the power in s4(1B) Petroleum Act 1998 (which will be amended by Schedule 6 to the Wales Act 2017 at the same time as these regulations commence), this instrument sets out the model clauses relating to reserved matters to be included in licences granted by Welsh Ministers.
- 6.4 In addition, this instrument amends the thirteen existing licences in the Welsh onshore area (some of which incorporate the model clauses contained in the Petroleum (Production) (Landward Areas) Regulations 1995 and the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004 (S.I. 2004/352), since replaced by the 2014 regulations) to reflect the transfer of functions to the Welsh Ministers and, with some exceptions, modifies the secondary legislation relevant to petroleum licensing in landward areas so that it applies in relation to licences in respect of areas within the Welsh onshore area (with appropriate modifications) until such time as the Welsh Ministers make their own legislation. The exceptions are the Petroleum (Production) (Landward Areas) Regulations 1995 which are not required by Welsh Ministers, and the Oil and Gas Authority (Fees) Regulations 2016, which are not modified so as to apply in relation to licences in the Welsh onshore area because the regulations were made under section 12 of the Energy Act 2016 (c.20) and the charging power which has been transferred to Welsh Ministers is that in section 188 of the Energy Act 2004 (c.20).
- 6.5 This instrument also amends the Scotland Act 2016 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018 which made similar provision in respect of petroleum licensing within the Scottish onshore area (as defined in section 47 of the Scotland Act 2016 (c.11)). This is necessary in order to reinstate licence clauses relating to the measurement of petroleum and keeping of accounts within existing licences and the model clauses for new licences which have been identified as necessary for Scottish Ministers to perform their devolved functions relating to onshore petroleum licensing.

7. Policy background

What is being done and why?

- 7.1 The Wales Act 2017 implements the Silk Commission Agreement by devolving a range of powers to the National Assembly for Wales and the Welsh Government. As recommended by the Silk Commission, it was agreed that powers related to onshore oil and gas licensing, except for consideration payable, would be devolved to Wales. This was set out in sections 3 and 23 to 25 of, Schedules 1 and 6 to, the Wales Act 2017.
- 7.2 While the Welsh Government already holds responsibility for the planning and environmental aspects of the onshore oil and gas regime, the intent is to provide it with greater control over the development of such resources in onshore Wales by devolving the UK's licensing regime in current form to Welsh Ministers. This will provide Welsh Ministers with the powers to administer the existing onshore oil and gas licensing regime in Wales, and create a bespoke licensing regime if they wish. The Scottish Government already has these further powers (subject to the further amendments made by this instrument which will align the position in Scotland and Wales).
- 7.3 The only functions related to onshore oil and gas licensing in Wales that will remain reserved to the UK are those relating to consideration in the form of taxation type payments imposed on licensees under petroleum licences and the power for the Secretary of State to revoke a licence for non-payment.
- 7.4 This instrument makes consequential amendments to relevant oil and gas licensing legislation to reflect the transfer of functions of onshore oil and gas licensing in Wales to Welsh Ministers and the resulting limitation of the competence of the Secretary of State and the Oil and Gas Authority to England and offshore. This is achieved in Part 2 of this statutory instrument.
- 7.5 Part 2 of this statutory instrument disapplies the relevant legislation in relation to licences granted by Welsh Ministers (except in so far as it remains relevant for reserved purposes, such as prescribing model clauses relating to consideration).
- 7.6 Part 2 of this statutory instrument also amends legislation which made similar provision on the devolution of onshore oil and gas licensing powers to Scotland in order to reinstate certain licensing provisions which have since been identified as necessary for Scottish Ministers to perform their devolved functions. These amendments will align the position for Scottish and Welsh Ministers so that they have powers necessary to administer the existing onshore oil and gas licensing regime in their respective areas of competence.
- 7.7 In addition to consequential amendments, the instrument prescribes the model clauses relating to reserved matters, such as consideration, for inclusion in any future licences granted by Welsh Ministers. This ensures that the Secretary of State's rights in relation to reserved matters are protected, including the right to revoke licences for non-payment of consideration. This is also included in Part 2 of the statutory instrument.
- 7.8 Part 3 of this statutory instrument modifies thirteen existing landward area licences (EXL203, PEDL014, PEDL100, PEDL147, PEDL148, PEDL149, PEDL157, PEDL184, PEDL214, PEDL215, PEDL216, PEDL217, PEDL224), to reflect the transfer of functions to Welsh Ministers and include the reserved model clauses

prescribed by the Secretary of State relating to reserved matters, such as consideration. Two of these licences (PEDL147 and PEDL184) are cross-border licences which cover an area which is partly in England and partly in Wales. From 1 October 2018 each of these licences will have effect as two separate licences covering the English and Welsh areas respectively. This is the result of a separate direction made by the Secretary of State under section 24(3)(a) of the Wales Act 2017. The modifications made by this instrument will apply only to those licences which relate to the Welsh onshore area.

- 7.9 Part 4 of this instrument deals primarily with what will be devolved matters and makes transitional modifications to the legislation relevant to onshore licensing to enable Welsh Ministers to use it until they make their own. This is done by way of transitional modification (rather than textual amendment), as the intention is for Welsh Ministers to introduce their own legislation in due course, but allow Welsh Ministers the necessary time to introduce their own legislation governing tendering and applying for licences and the model clauses to be included in relation to devolved matters. Welsh Ministers will need to introduce their own legislation if they wish to charge fees, however, because the existing legislation is made under a different power to that which has been transferred and therefore it cannot be modified to apply in relation to licences in the Welsh onshore area.
- 7.10 Once the Wales Act 2017 provisions concerning onshore oil and gas are fully in force, onshore oil and gas licensing in Wales will be the responsibility of Welsh Ministers and they will be responsible for granting and administering relevant licences.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

- 10.1 There has been no public consultation on these technical amendments since they are necessary to the effective operation of the provisions set out in the Scotland Act 2016 and the Wales Act 2017, following recommendations from the Smith Commission and the Silk Commission respectively, which were consulted on separately.
- 10.2 Transferring powers from the UK administration to a devolved administration does not count as a regulatory provision so we are not required to produce a regulatory impact assessment.
- 10.3 However, BEIS officials have worked closely with Welsh Government officials, where relevant, to develop the policy and prepare the statutory instrument. BEIS officials have informed Scottish Government officials of the minor technical measures in regulation 7 of this statutory instrument that affect Scotland, and Scottish Ministers have given consent to those amendments which affect the Scottish onshore area. There has also been a technical consultation with the Oil and Gas Authority under s.4(3ZA) of the Petroleum Act 1998.

11. Guidance

- 11.1 These are technical amendments relating to or adapting existing powers and functions and as such no specific guidance is planned on this particular instrument. However, the Oil and Gas Authority has clearly communicated to the thirteen existing licence holders in Wales and the three existing licence holders in Scotland who are affected, ahead of commencement of these provisions.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is expected to be minimal as there is no material change to secondary legislation.
- 12.2 Thirteen existing landward area licences in Wales will be amended to reflect the transfer of functions to Welsh Ministers and include the reserved model clauses prescribed by the Secretary of State relating to reserved matters, such as consideration. As the amendments transfer existing powers and functions (and in relation to the reserved model clauses, adapt existing provisions), the instrument should have no impact on these licence holders.
- 12.3 Three existing landward area licences in Scotland will be impacted on by the minor technical measures in regulation 7 of this statutory instrument that affect Scotland, but this will be minimal since none of them are currently in production phase.
- 12.4 The impact on the public sector is minimal for the UK Government, the Oil and Gas Authority and for the Welsh and Scottish Governments as it is limited to the activities anticipated in devolving onshore licensing to the Welsh and Scottish Governments, as set out in the Wales Act 2017 and the Scotland Act 2016 respectively.
- 12.5 An Impact Assessment has not been prepared for this instrument because there is expected to be no direct cost to business from these regulations. A similar transfer was considered in the Impact Assessment which accompanied the Energy Bill 2015. This outlined that it is reasonable to assume that transferring these existing functions will result in zero negligible cost to business relative to existing arrangements.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that if only functions in relation to large businesses were transferred, it would not give effect to the new devolution settlement.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that a review provision, as required by section 28 of the Small Business, Enterprise and Employment Act 2015, is not appropriate in these regulations because the statutory instrument does not make new regulatory provision. For Wales, the statutory instrument only changes the identity of the regulatory body, not the nature of the functions. For Scotland, the statutory instrument only reinstates pre-existing licence clauses relating to the measurement of petroleum and keeping of accounts which are necessary for Scottish Ministers to fully perform their devolved functions relating to onshore petroleum licensing.

15. Contact

- 15.1 Duncan Ruddy at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 3350 or email: duncan.ruddy@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Helena Charlton, Deputy Director for Oil and Gas Exploration and Production, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Claire Perry at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.