

**EXPLANATORY MEMORANDUM TO**

**THE OIL AND GAS AUTHORITY (LEVY AND FEES) AND POLLUTION  
PREVENTION AND CONTROL (FEES) (MISCELLANEOUS AMENDMENTS)  
REGULATIONS 2020**

**2020 No. 208**

**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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**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 licensees who hold offshore petroleum licences in order to fund the carrying out of certain functions by the Oil and Gas Authority (“OGA”) in respect of the period running from 1 April 2020 to 31 March 2021. Part 3 revises fees charged by the OGA. Part 4 is to increase the hourly rates used in order to determine the fees payable by industry in relation to certain activities with regards to the environmental management of the offshore oil and gas industry.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Department is making these Regulations to impose a levy on holders of offshore petroleum licences to provide funding for the OGA for the period 1 April 2020 to 31 March 2021 (Part 2), amend the rate of fees for the delivery of specific services by the OGA (Part 3), and recover the Department’s costs for providing environmental regulation functions to industry (Part 4), rather than passing the costs on to the taxpayer. Neither the Department nor the OGA will be seeking to make a profit from these charges, but merely to recover their eligible costs in providing these services.
- 3.2 The changes in eligible costs in Part 3 were identified following a review of the cost base for providing the services, based on the staff time required. As a result, the changes do not relate to the rate of inflation.
- 3.3 The increases in eligible costs in Part 4 were identified following a review of the cost base for the current fee schemes. As a result, the increases do not relate to the rate of inflation.

*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)*

- 3.4 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.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of Part 2 of this instrument (the OGA levy provisions) is Great Britain and outside Great Britain in relevant waters (that is, the territorial sea adjacent to the United Kingdom and any area designated by order under the Continental Shelf Act 1964).
- 4.3 Part 3: The territorial application of Part 3 of this instrument (the OGA fee provisions) is Great Britain (excluding the Scottish onshore area and the Welsh onshore area as defined in s. 8A of the Petroleum Act 1998) and outside Great Britain in relevant waters (that is, the territorial sea adjacent to the United Kingdom and any area designated by order under the Continental Shelf Act 1964).
- 4.4 Part 4 of this instrument amends The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015, The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015, The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 and The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.
- 4.5 The amendments made by Part 4 of the instrument have the same extent and application as the legislation they amend, as follows:
- The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 and the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 extend to the whole of the UK;
  - The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 apply in Great Britain and outside Great Britain in relevant waters (for example, the territorial sea adjacent to Great Britain and any area designated by order under the Continental Shelf Act 1964). However, they only make material changes in relation to matters within the territorial sea and on the UK Continental Shelf; and
  - The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 extend to the whole of the UK. However, the regulations that provide the fee calculation vary in their extent and applicability:
    - The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, and the Energy Savings Opportunity Scheme Regulations 2014 extend to the whole of the UK;
    - Part 4A of the Energy Act 2008 (including sections 82A to 82Q) extends to the whole of the UK and applies to the UK Continental Shelf and territorial sea except the territorial sea adjacent to Scotland;
    - Section 71 of the Marine and Coastal Access Act 2009 extends to the whole of the UK and applies to all areas except territorial waters adjacent to Scotland and the territorial sea adjacent to Wales;
    - The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 apply in Great Britain and outside Great Britain in external waters (the territorial sea and any area designated under the

Continental Shelf Act 1964). They extend to England and Wales and Scotland;

- The Fluorinated Greenhouse Gases Regulations 2015 extend and apply to Great Britain except the territorial sea adjacent to Wales but to Northern Ireland only in respect of certain import, export and trade provisions which are reserved matters; and,
- The Conservation of Offshore Marine Habitats and Species Regulations 2017 apply to all of the UK offshore marine area. This means any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (effectively the United Kingdom sector of the Continental Shelf) and any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man).

## **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 Part 2 of the instrument is the latest in a line of regulations made under section 13 of the Energy Act 2016 pursuant to which the OGA imposes an annual levy on licensees who hold certain kinds of offshore petroleum licence. The most recent of those regulations is the Oil and Gas Authority (Levy) and Pollution Prevention and Control (Fees) (Amendment) Regulations 2019 (“the 2019 Levy Regulations”) which imposed a levy in respect of the charging period beginning on 1 April 2019 and ending on 31 March 2020.

6.2 Regulation 5 of this instrument sets out the total amount to be levied in respect of the charging period beginning on 1 April 2020 and ending on 31 March 2021. Regulation 5 also sets out the methodology in accordance with which the OGA will calculate the proportion of that sum which is payable by licensees who hold particular kinds of offshore petroleum licence (pursuant to section 13(4)(b) of the Energy Act 2016).

6.3 Regulation 9 provides that where the total amount levied in respect of the charging period exceeds the costs in respect of which the levy has been raised, the OGA will return the underspend to licensees (consistent with section 13(2) of the Energy Act 2016).

6.4 Consistent with section 13(2)(b)(i) of the Energy Act 2016, the costs in respect of which the levy has been raised exclude costs incurred in relation to matters in respect of which the OGA may charge fees (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) and The Scotland Act 2016, Wales Act 2017 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018 (S.I. 2018/980)).

6.5 Part 3 Regulation 2(3) and (7) of the instrument also revise the fee rates for additional activities or matters arising under petroleum licences, including applications for consent to carbon dioxide storage proposals, consent to development and production programmes and for development plans; applications for consents to pipeline deposit

proposals and for pipeline works authorisations; other consents including various well consents, getting petroleum, flaring and venting, and petroleum licence term extensions; consents to retention or development area proposals; determination of oil fields; metering examinations and tests; applications for petroleum licences; applications for gas storage licences and applications for carbon dioxide appraisal and storage licences.

- 6.6 Part 4: The Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) in BEIS carries out environmental regulation functions for the offshore oil and gas industry. For some of these functions, it charges fees using fee schemes. OPRED first introduced a fee scheme in 2001, provided for by the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001. In subsequent years, three further fees schemes were introduced under the Offshore Chemicals Regulations 2002, the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 and the Greenhouse Gas Emissions Trading Scheme Regulations 2005.
- 6.7 For other statutory functions for which it is appropriate to charge a fee, OPRED's fees are detailed in secondary legislation:
- The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (as amended);
  - The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended);
  - The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (as amended);
  - The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (as amended), which makes provision for charging fees:
    - relating to certain activities under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 and the Fluorinated Greenhouse Gases Regulations 2015;
    - relating to certain licences under regulation 55 of the Conservation of Offshore Marine Habitats and Species Regulations 2017;
    - in connection with consents to locate under section 82A of the Energy Act 2008, and emergency safety notices under sections 82F and 82G (8) of the Energy Act 2008;
    - in respect of monitoring compliance with the requirements of the Energy Savings Opportunity Scheme Regulations 2014; and
    - for applications for certain licences under section 71 of the Marine and Coastal Access Act 2009.
- 6.8 The hourly rates used to calculate the fees are being increased. For the fees detailed in secondary legislation, Part 4 of the instrument makes the required changes. The fee schemes (which do not require a legislative change) are updated in parallel with this instrument.

## 7. Policy background

### *What is being done and why?*

#### *Part 2 of the Regulations*

- 7.1 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 certain categories of persons who hold petroleum licences.
- 7.2 Some of the OGA's costs are recovered through fees for the delivery of specific services to individual companies. However, the majority of the remainder of the OGA's costs are recovered through a levy. Consistent with the principal objective for the OGA as set out in Part 1A of the Petroleum Act 1998 of maximising economic recovery of petroleum beneath UK waters, the OGA's focus is primarily on the offshore sector. As a result, the levy is currently imposed on licensees who hold offshore petroleum licences only.
- 7.3 These Regulations make provision for calculating and imposing a levy on licensees in respect of the period beginning on 1 April 2020 and ending on 31 March 2021 ("the relevant charging period"). The costs to be recovered under the levy are the costs of the OGA in carrying out its functions during that period (in addition the cost associated with the provision of tribunals to consider appeals against decisions of the OGA by the Lord Chancellor).
- 7.4 This approach follows the approach used in the 2019 Regulations. It enables the OGA to apportion the levy between offshore petroleum licence holders using the licence information for the relevant charging period and allows for full cost recovery. This will mean that the OGA remains 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).
- 7.5 As with the 2019 Levy Regulations the methodology provides for four different rates for offshore petroleum licence holders.
- 7.6 There is an increase to the levy in comparison with the 2019 Levy Regulations, as agreed by the OGA Board in order to fund the OGA's work, including new work on digital energy platform, governance and supporting delivery of the UK net zero target.
- 7.7 Non-producing innovate licences in phase B of their initial term held by a micro enterprise will be subject to the non-production levy with an 80% discount.
- 7.8 Non-producing promotes licences in their 'promote period' and innovate licences in phase A of their initial term that are held by a micro enterprise will be subject to the non-production levy with a 90% discount.
- 7.9 On 1 April 2020, the OGA will need to determine the status of an offshore petroleum licence and that status will determine which levy rate will be applied for that charging period.
- 7.10 If on that date a holder of an offshore petroleum licensee is found to have been granted a development and production consent, then they will be issued an invoice for a production licence. If an FDP hasn't been granted, then they will be issued with an invoice for a non-production licence.
- 7.11 The OGA will identify which businesses are eligible for the discounted non-production leviable amounts by assessing the company's revenue and staff against the

EU definition of “micro-enterprise”. If the licence is held by more than one company, all of the companies holding the licence must qualify as “micro-enterprises” for the discount to apply.

- 7.12 Following that determination, the OGA will calculate the levy amounts and issue invoices based on the licence determination. Invoices will be issued and will be required to be settled within 30 days.

### ***Part 3 of the Regulations***

- 7.13 The Department is making these Regulations to recover costs by means of direct fees for specific activities in line with the established principle across regulation and service delivery of 'user pays', where the regulator recovers its costs from those benefitting directly from its services. The current fees and charges regulations are The Oil and Gas Authority (Fees) Regulations 2016, as amended by The Oil and Gas Authority (Fees and Petroleum Licensing) (Amendment) Regulations 2017 and The Scotland Act 2016, Wales Act 2017 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018 (S.I. 2018/980), the “2016 Fees SI”). These regulations were laid under Section 12 of the Energy Act 2016, which gives the OGA power to charge such fees as determined and payable in accordance with regulations made by the Secretary of State.
- 7.14 At present, the rate of the direct fees is set out in the 2016 Fees SI, (as amended). The rates have not been amended since 2017.
- 7.15 The costs of the fees are calculated in line with HM Treasury’s ‘Managing Public Money’.
- 7.16 The Regulations make amendments to the 2016 Fees SI.

### ***Part 4 of the Regulations***

- 7.17 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. The existing fee scheme is determined by adding together (1) the recorded number of hours worked by environmental specialists on cost recoverable activities multiplied by £183 plus (2) the number or hours worked by non-specialists on cost recoverable activities multiplied by £98. Environmental specialists are technical staff who carry out the relevant functions of the Secretary of State and non-specialists are administrative staff.
- 7.18 The current hourly rates have been in place since April 2019. Following a review of the costs base for the Department’s environmental regulation of the offshore oil and gas industry, the Department concluded that the hourly rates needed to be increased to fully reflect the cost of the provision of services to industry.
- 7.19 The hourly rates are calculated in accordance with HM Treasury’s ‘Managing Public Money’ and include the full cost of all the resources used in carrying out and supporting the cost recoverable activities. This includes the gross salaries of staff carrying out the work, relevant costs relating to their line managers and support staff, general administrative expenditure (such as accommodation, information technology, office services, etc.), and corporate services (such as human resources, senior management, finance and learning and development). The hourly rate has been calculated by taking these costs and dividing them by 1,243 hours. The figure of

1,243 represents the average number of hours per annum spent on potentially cost recoverable activity and removes the hours spent on leave, bank holidays, staff management, etc.

- 7.20 The new hourly rates are £190.00 for environmental specialists and £101.00 per hour for non-specialists and OPRED intends that they should take effect from 1 April 2020.

## **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 currently no plans to consolidate this legislation.

## **10. Consultation outcome**

- 10.1 This instrument does not require a public consultation.
- 10.2 The offshore oil and gas industry have been informed of the changes to the OGA levy and fees in early 2020.
- 10.3 The offshore oil and gas industry were informed by letters sent out in early 2020 of OPRED's plans to increase the hourly rates. Updating the hourly rates to be applied and a review of the chargeable services provided will be undertaken at least annually, and the industry will be informed of any changes prior to their implementation.

## **11. Guidance**

- 11.1 Once the instrument comes into force, the OGA will issue notifications to licensees with relevant instructions on payment.
- 11.2 The OGA will inform industry of the proposed changes to the OGA fee rates before they are introduced.
- 11.3 The existing Guidance Notes to Industry on OPRED's environmental management regime will be revised in light of the Regulations and an updated version placed on the GOV.UK website in March 2020.

## **12. Impact**

- 12.1 The impact of Part 2 on business is restricted to licensees holding offshore petroleum licences (as at 1 April 2020). The total amount of levy paid by licensees holding offshore petroleum licences under the 2019 Levy Regulations will increase for the reasons outlined in paragraph 7.6 above. Outside the inclusion of new work as agreed by the OGA Board, the total amount of levy paid by offshore licence holders under the 2019 Regulations is not significantly different in real terms to the amount of levy payable under these Regulations.
- 12.2 The impact of Part 3 on business is restricted to companies using the services outlined in s.12 of the Energy Act 2016. Some fee rates have decreased, while others have increased. The changes to rates reflect the costs of work done in providing the services.

- 12.3 The Part 4 amendments impose no significant impact on business. The amendments increase the fees paid by the industry by a small amount, but only to the extent required for OPRED to recover its eligible costs.
- 12.4 There is no, or no significant, impact on charities or voluntary bodies.
- 12.5 There is no, or no significant, impact on the public sector.
- 12.6 An Impact Assessment has not been prepared for this instrument because no or no significant impact on the private, voluntary or public sectors is foreseen.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 In Part 2, the levy includes a discount for micro-enterprises that hold certain types of offshore petroleum licence.
- 13.3 In Part 3, the revised fee rates will be paid by companies carrying out activities identified in s.12 of the Energy Act 2016. As noted below, very few of them are small firms and the proposed charges would not fall disproportionately on them.
- 13.4 In Part 4, the legislation applies to activities that are undertaken by small businesses, as the environmental regulations apply to all offshore operators and owners. The basis for the final decision on what action to take to assist small businesses is that of the companies who are active in exploration for and production of oil and gas, very few of them are small firms and the proposed charges would not fall disproportionately on them. All businesses operating offshore, regardless of their size, are subject to the same regulatory regime and receive the same level of service to ensure that they continue to provide a high level of protection for the marine environment.
- 13.5 No specific action is proposed to minimise regulatory burdens on small businesses.

### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that as a result of section 28(3)(a) of the Small Business Enterprise and Employment Act 2015, instruments (like this instrument) which contain only provisions relating to a levy or other charge are not subject to the requirement to contain a review clause.

### **15. Contact**

- 15.1 Duncan Rutty at the Department for Business, Energy and Industrial Strategy  
Telephone: 020 7215 3350 or email: duncan.rutty@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 The Right Honourable Kwasi Kwarteng, Minister of State for Business, Energy and Clean Growth at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.