

EXPLANATORY MEMORANDUM TO
THE PETROLEUM (TRANSFER OF FUNCTIONS) REGULATIONS 2016

2016 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to transfer functions currently exercised by the Secretary of State for Energy and Climate Change to the Oil and Gas Authority (“the OGA”). These functions primarily relate to the licensing of oil and gas which are set out in Part 1 of the Petroleum Act 1998. It makes provision for the transitional period until relevant functions are transferred to Scottish Ministers and provision that will take effect once the relevant functions are transferred to Scottish Ministers (the Scotland Act 2016 provides for the devolution of onshore oil and gas licensing). The instrument also transfers to the OGA certain functions relating to the taxation of oil and gas and makes other consequential amendments that are necessary as a result of the transfer of those functions.

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 Disregarding minor or consequential changes, the territorial application of this instrument varies between provisions.

4. Legislative Context

- 4.1 This instrument is being made in order to transfer existing oil and gas licensing and some taxation functions to the OGA and to make certain consequential amendments. The relevant licensing functions are set out in Part 1 of the Petroleum Act 1998. The relevant taxation functions are set out in the Oil Taxation Act 1975 and Part 8 of the Corporation Tax Act 2010 and consequential amendments are made to those Acts as well as the Taxation of Chargeable Gains Act 1992, the Capital Allowances Act 2001, and a number of Finance Acts (Part 4 of the instrument).
- 4.2 The Scotland Act 2016, which devolves onshore oil and gas licensing to Scottish Ministers, also amends Part 1 of the Petroleum Act 1998 and the Oil Taxation Act 1975. As referenced above, this instrument makes amendments which have effect from the time when the OGA begins exercising its functions as the new regulator until the transfer of functions to the Scottish Ministers under the Scotland Act (Part 2 of the instrument). It also makes amendments which take effect immediately after the transfer of functions to the Scottish Ministers (Part 3 of the instrument).

4.3 The intention is that a further instrument will be brought forward that will transfer functions and make consequential amendments to secondary legislation.

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 The Minister of State, Andrea Leadsom, has made the following statement regarding Human Rights:

“In my view the provisions of the Petroleum (Transfer of Functions) Regulations 2016 are compatible with the Convention rights.”

7. Policy background

7.1 One of the key recommendations of the Wood Review into maximising 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 set out 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 set out in this instrument.

7.3 Wherever possible, provision to transfer oil and gas regulatory functions to the OGA was made in Schedule 1 to the Energy Act 2016. However, because provision was simultaneously being made through the Scotland Act 2016 to amend Part 1 of the Petroleum Act 1998 to devolve onshore oil and gas licensing in Scotland, and to also amend paragraph 1(2) of Schedule 1 to The Oil Taxation Act 1975 to devolve the function of determining onshore oil fields to Scottish Ministers which is required for the purposes of assessing tax liability, a decision was taken that these OGA amendments should be grouped together and made by regulations. The aim here was to avoid repeated amendments to the two Bills during their passage through Parliament.

7.4 Once the Scotland Act 2016 provisions concerning onshore oil and gas and Part 3 of this instrument are fully in force, onshore oil and gas licensing in Scotland will be the responsibility of Scottish Ministers and they will be responsible for granting relevant licences. At that point the OGA will be responsible for granting onshore oil and gas licences in England and Wales and offshore oil and gas licences concerning the United Kingdom territorial sea and United Kingdom Continental Shelf.

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

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 engage with the OGA as an executive agency of DECC on all relevant regulatory matters, this change should have no impact on processes and as such no specific guidance is planned on this particular instrument. However, Government will clearly communicate to all relevant stakeholders ahead of vesting the OGA 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 Part 1 of the Petroleum Act 1998 or to the taxation legislation.

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.

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.

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>

12. Monitoring & review

- 12.1 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 regulatory provisions that are being amended are contained in primary legislation, and are outside the scope of the policy objectives as set out in the statutory guidance, which relate to the inclusion of review provisions in secondary legislation.

13. Contact

- 13.1 Sam Franklin at the Department of Energy and Climate Change Telephone: 0300 068 6921 or email: Samuel.franklin@decc.gsi.gov.uk can answer any queries regarding the instrument.