

EXPLANATORY MEMORANDUM TO
THE OFFSHORE GAS STORAGE AND UNLOADING (LICENSING)
REGULATIONS 2009

2009 No. 2813

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”). The instrument specifies a licence application fee, and sets out standard terms (“model clauses”) for storage licences. (No model clauses are being specified at this stage for unloading licences.)

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, the powers in sections 5 and 7(1) of the Energy Act 2008 are being used for the first time. Section 5 enables regulations to be made laying down requirements for licence applications, and 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.

4.3 An application fee of £2,100 is prescribed for all licences, with the exception of exploration licences (see paragraph 4.4 below). Model clauses are prescribed for gas storage licences: these licences authorise the use of a specific place within the offshore area for gas storage purposes, including the conversion of a geological feature for the purpose of storing gas, and the carrying on of intrusive exploration activities (such as drilling in the seabed below 350 metres).

4.4 In order to carry on such offshore storage or unloading activities, the developer will also need to obtain a grant of the appropriate rights from The Crown Estate.

4.5 A related instrument, made at the same time as this instrument, prescribes model clauses for exploration licences, i.e. licences that authorise the non-intrusive exploration of any place within the offshore area for gas storage and unloading purposes: see the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009 (SI 2009/2814).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom but relates solely to offshore activities within the UK territorial sea and the GISZ.

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 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 regulatory impact assessment for the regime concluded that it would provide a tailor-made solution for all developers of offshore gas storage and Liquefied Natural Gas import facilities, including encouraging the best use of innovative technologies. It would provide a regulatory framework specifically designed for such activities, both reducing the burden on business by streamlining processes, and maximising the area of the sea-bed available for these activities.

7.2 The application fee of £2,100 for a gas storage or unloading licence is to cover DECC's administration costs in considering the application, and has been set after a fees and charges assessment was made in line with HM Treasury guidance.

7.3 The model clauses prescribed for gas storage licences are in large part based on relevant provisions prescribed for petroleum licences under the Petroleum Act 1998. This is because many of the issues arising from the exploitation of the offshore area for petroleum production purpose are also relevant to its exploitation 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 and proprietary rights are also being granted, whereas a gas storage licence is a purely regulatory instrument. Thus in the case of gas storage, it will also be necessary to obtain the grant of the exclusive right to use the relevant part of the seabed, by way of a lease (or other grant of rights) from The Crown Estate. The "Crown leases" with which the licence is linked will be specified in a Schedule to the licence.

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. However, the assessment for the proposed offshore licensing regime contained in the Impact Assessment for the Energy Bill 2007-08 is relevant. That assessment can be found at 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/gsuls/gsuls.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

Ricki Kiff at the Department of Energy and Climate Change. Tel: 0300 068 6042 or email: ricki.kiff@decc.gsi.gov.uk can answer any queries regarding the instrument.