

**EXPLANATORY MEMORANDUM TO**  
**THE OIL AND GAS AUTHORITY (FEES) REGULATIONS 2016**  
**2016 No. 904**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (“DBEIS”) 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 make provision for the Oil and Gas Authority (“the OGA”) to charge a fee when a person applies to the OGA for a licence or seeks the consent or authorisation of the OGA to a particular activity or matter. This could be in relation to a carbon dioxide appraisal and storage licence, a gas storage licence, a petroleum licence, or certain matters relating to submarine pipelines.
- 2.2 Where the fee payable is an estimate and is to be determined by reference to the resources used, the process for requesting a fee determination and the methodology for setting the fee is set out in the Regulations. The fee is based on the daily rate multiplied by an estimate of the number of officers and an estimate of the number of days required to consider the application for the consent or authorisation.
- 2.3 The Regulations also set out the fixed fees for certain applications and consents.

**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 makes provision under section 12 of the Energy Act 2016 for the OGA to charge fees to recoup the costs associated with providing services to businesses. First, those costs relate to applications for petroleum licences, gas storage

licences and carbon dioxide appraisal and storage licences. Secondly, those costs relate to various consents and authorisations. Previously DBEIS charged industry under the following Regulations: (1) the Offshore Gas Storage and Unloading (Licensing) Regulations 2009 (S.I. 2009/2813) (“the 2009 Regulations”), (2) the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) (“the 2010 Regulations”), (3) the Gas and Petroleum (Consents) Charges Regulations 2013 (S.I. 2013/1138) (“the 2013 Regulations”) and (4) the Petroleum Licensing (Applications) Regulations 2015 (S.I. 2015/766) (“the 2015 Regulations”). These new Regulations are necessary given that the OGA rather than the Secretary of State will now be considering the relevant applications, and has the effect of consolidating the fees provisions set out in those Regulations.

- 4.2 As a result of these Regulations, those benefiting from the services will bear the costs. In addition, charging industry for providing these functions rather than them being borne by the taxpayer should allow the maintenance of these services within satisfactory timescales in the face of future constraints on public expenditure allocations.
- 4.3 The Energy Act 2016 made provision for the OGA to charge fees for other categories of services not covered by these Regulations. The intention is to bring forward a further set of fees regulations which will come into force in April 2017.

## **5. Extent and Territorial Application**

- 5.1 The extent of the instrument is the United Kingdom.
- 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 the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 In line with HM Treasury policy, it is necessary that the OGA recovers costs wherever possible.
- 7.2 The OGA will recover the costs of its services including for consents issued under petroleum licences, development plans for the storage of combustible gas, storage proposals under carbon dioxide storage licences, and for pipeline works authorisations issued under Part 3 of the Petroleum Act 1998, as well as applications for certain licences, rather than passing the costs onto the taxpayer. The OGA will not make a profit from these fees but merely recovers its costs in carrying out the relevant functions.

### *Consolidation*

- 7.3 These Regulations consolidate the fees provision that was previously set out in the 2009 Regulations, 2010 Regulations, the 2013 Regulations and the 2015 Regulations.

## **8. Consultation outcome**

- 8.1 A six week consultation was carried out from 24th October to 5th December 2012 on the proposals which led to the 2013 Regulations, which these new Regulations replace. Generally the industry was supportive and understood the resource pressures the Department of Energy and Climate Change (“DECC”) (as it then was) may face in future in view of the constrained public expenditure allocations. A number of respondents pointed out that the industry already pays significant sums in the form of licence rentals and suggested that these rentals should be diverted to cover DECC’s expenses in administering its consenting regime. However this would not be consistent with Government accounting practice for the treatment of economic rents under Managing Public Money. The method proposed in the consultation exercise means that the administration costs are transparent and open to scrutiny and there is a clear link between the charge paid and the benefits received. A number of other clarifications were sought and these were also addressed in the consultation response.
- 8.2 The Department’s response to the consultation is available at:  
<https://www.gov.uk/government/consultations/cost-recovery-for-oil-and-gas-consents>

## **9. Guidance**

- 9.1 Guidance on the charging of the fees can be viewed at:  
<https://www.gov.uk/guidance/oil-and-gas-charging-regime-for-licensing-exploration-and-development>.

## **10. Impact**

- 10.1 There is no impact on business since there has been no change to the range of applications for which fees are charged and the way those fees are determined. The amount of each fee has not increased. These Regulations merely ensure that OGA can charge fees under the new power as a result of the relevant functions having been transferred from the Secretary of State to the OGA. There is no impact on charities or voluntary bodies.
- 10.2 The impact on the public sector has been negligible and has been limited to the time taken to prepare these Regulations and update the guidance.
- 10.3 An impact assessment has not been produced for this instrument. However, an impact assessment was prepared for the Energy Bill 2015-16, to which this instrument relates. A copy of that impact assessment is available from DBEIS, 3 Whitehall Place, London, SW1A 2AW and is available at [www.legislation.gov.uk](http://www.legislation.gov.uk). The provisions consolidated by this instrument have been the subject of previous impact assessments which are available from DBEIS at the above address.

## **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 Of the companies who are active in the exploration for and production of oil and gas and, going forward, the geological storage of gas, the vast majority are part of large multi-national companies: very few of them are small businesses and the fees would not fall disproportionately on them.

**12. Monitoring & review**

- 12.1 A review provision is not appropriate. The exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 applies due to the nature of the charge imposed.

**13. Contact**

- 13.1 Jessica Mackenzie at DBEIS Tel: 0300 068 6935 or email: [jessica.mackenzie@decc.gsi.gov.uk](mailto:jessica.mackenzie@decc.gsi.gov.uk) can answer any queries regarding the instrument.