

**EXPLANATORY MEMORANDUM TO**  
**THE POLLUTION PREVENTION AND CONTROL (FEES) (MISCELLANEOUS**  
**AMENDMENTS) REGULATIONS 2017**

**2017 No. 404**

**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 instrument is to enable fees to be charged in order to recover BEIS's costs in relation to certain activities with regards to the environmental management of the offshore oil and gas industry. The proposed regulations cover fees in relation to:

- assessments relating to discharge and providing advice under the Offshore Chemicals Regulations 2002;
- assessments relating to discharge and providing advice under the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005;
- monitoring compliance and providing advice regarding certain Commission Implementing Regulations for the EU's Fluorinated Gas regulatory regime;
- functions carried out under the Energy Savings Opportunity Scheme Regulations 2014; and
- services provided by BEIS to the Oil & Gas Authority regarding the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (these costs will be recovered from the Oil & Gas Authority).

2.2 All of the charges relate to existing regulatory activity and the charging powers are introduced by way of amendment to relevant regulations.

**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 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 The Offshore Petroleum Regulator for Environment and Decommissioning Unit (OPRED) in BEIS carries out environmental regulation functions for the offshore oil and gas industry.

- 4.2 OPRED first introduced a fee scheme in 2001, provided for by the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001<sup>1</sup>. 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<sup>2</sup>.
- 4.3 For other statutory functions involving the provision of services to the offshore oil and gas industry by OPRED, for which it is appropriate to charge a fee, the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 came into force in July 2015, the Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2016 in June 2016, and the Pollution Prevention and Control (Fees) (Miscellaneous Amendments) (No. 2) Regulations 2016 in December 2016.

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

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 This instrument amends various instruments, the application of which varies.
- 5.3 Regulation 2 provides for fees in relation to certain activities and the provision of advice relevant to the Offshore Chemicals Regulations 2002. These Regulations extend to the whole of the UK.

For offshore petroleum activities they apply to:

- those parts of the sea adjacent to England from the low water mark to the landward baseline of the territorial sea;
- territorial waters adjacent to the United Kingdom, except parts of the sea out to three miles from the baselines from which the territorial sea adjacent to Scotland and Wales is measured; and
- to the sea in any area designated within the meaning of section 1(7) of the Continental Shelf Act 1964.

For offshore storage or unloading activities (which relate to combustible gas and carbon dioxide) they apply to:

- those parts of the sea adjacent to England from the low water mark to the landward baseline of the territorial sea;
- territorial waters adjacent to the United Kingdom, except the territorial sea adjacent to Scotland and Wales; and
- those areas of sea in a Gas Importation and Storage Zone (within the meaning of section 1(5) of the Energy Act 2008).

“Offshore petroleum activities” and “offshore storage or unloading activities” are defined in the Offshore Chemicals Regulations 2002.

- 5.4 Regulation 3 provides for fees in relation to certain activities and the provision of advice relevant to the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005. These Regulations extend to the whole of the UK.

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<sup>1</sup> Now replaced by the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013.

<sup>2</sup> Now replaced by the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

For offshore petroleum activities, they apply to:

- those parts of the sea adjacent to England from the low water mark to the landward baseline of the territorial sea;
- territorial waters adjacent to the United Kingdom, except parts of the sea out to three miles from the baselines from which the territorial sea adjacent to Scotland and Wales is measured; and
- to the sea in any area designated within the meaning of section 1(7) of the Continental Shelf Act 1964.

The definition of “offshore installation” in the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 sets out the scope of offshore petroleum activities.

For offshore storage or unloading activities (which relate to combustible gas and carbon dioxide) they apply to:

- those parts of the sea adjacent to England from the low water mark to the landward baseline of the territorial sea;
- territorial waters adjacent to the United Kingdom, except the territorial sea adjacent to Scotland and Wales; and
- to the sea in any area designated within the meaning of section 1(7) of the Continental Shelf Act 1964.

Offshore storage or unloading activities are those activities within section 2(3) and section 17(2) of the Energy Act 2008.

- 5.5 Regulation 4(1) to 4(4) provides for fees in relation to monitoring compliance and the provision of advice relevant to certain Commission Implementing Regulations for the EU’s Fluorinated Gas regulatory regime. These fees apply where the Secretary of State’s functions set out in regulation 4(2) of the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 relate to (a) offshore installations or (b) Northern Ireland offshore installations, other than such offshore installations used in connection with the production of energy from water or wind. “Offshore installations” and “Northern Ireland offshore installations” are defined in regulation 4 of the Fluorinated Greenhouse Gases Regulations 2015. Those Regulations apply in full to Great Britain but to Northern Ireland only in respect of certain import, export and trade provisions which are reserved matters.
- 5.6 Regulation 4(5) provides for fees in relation to functions carried out under the Energy Savings Opportunity Scheme Regulations 2014. The Energy Savings Opportunity Scheme Regulations 2014 apply in the UK, but the fees provision at regulation 4(5) only applies where the functions of the Secretary of State for Business Energy and Industrial Strategy relate to offshore undertakings.
- 5.7 Regulation 5 provides for fees in relation to services provided by BEIS regarding the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015. Those Regulations extend to the whole of the UK and apply to offshore waters (the territorial sea and any area designated under the Continental Shelf Act 1964).

## **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 In 2015 OPRED undertook a review of the current fee charging legislation and schemes for the environmental regulation of the offshore oil and gas industry. The review's findings identified that whilst the majority of costs were properly covered by pre-existing fees legislation and schemes, BEIS requires further statutory powers in order to recover the cost of certain services provided to industry as part of carrying out its statutory regulatory functions. BEIS is therefore seeking to amend relevant regulations to allow costs to be recovered where possible.
- 7.2 The Department is making these Regulations so that it can recover its costs for providing these services, rather than passing the costs onto the taxpayer. This approach is consistent with the 'polluter pays' principle of environmental law. The Department will not be seeking to make a profit from these charges but merely recover its costs in providing these services. The total cost to industry as a whole of introducing secondary legislation to charge for the above functions is likely to be in the region of £312,000 per annum.
- 7.3 The fee is determined by adding together (1) the recorded number of hours worked by environmental specialists on cost recoverable activities multiplied by £168 plus (2) the number of hours worked by non-specialists on cost recoverable activities multiplied by £82, in accordance with the provisions already set out in the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015. Environmental Specialists are technical staff that carry out the relevant functions of the Secretary of State and non-specialists are administrative staff.
- 7.4 OPRED now operates a work recording system to generate the relevant information.
- 7.5 The hourly rates recovered 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, IT, office services etc.), and corporate services (such as HR, 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 cost recoverable activity and removes the hours spent on leave, bank holidays, staff management etc.

### *Consolidation*

- 7.6 At this stage, the Department does not intend to consolidate (or provide informal consolidated text of) the instruments being amended by these Regulations.

## **8. Consultation outcome**

- 8.1 There was a statutory requirement to consult on amendments to the Offshore Chemicals Regulations 2002 and the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 before making them. The aim of the consultation was to seek views from stakeholders, e.g. offshore oil and gas operators, public bodies and other companies and bodies with an interest in environmental regulation, on BEIS's proposal to amend those Regulations in order to introduce the

power to charge for certain functions. The consultation ran from 6 July 2016 to 6 September 2016.

- 8.2 Responses to the consultation were received from four offshore operators and from Oil and Gas UK, the offshore industry representative body. Three of the five consultees, including Oil & Gas UK were in favour of new charging powers being introduced. Those two companies who were not in favour considered that BEIS should continue current arrangements under which central Government funds the cost of the services provided to industry. BEIS explained that this would not be in line with broader Government policy in the consultation response document. The consultation response document, which states that we will take forward our proposal to amend our current charging powers, was published in December 2016, following which no representations were received. The consultation and consultation response document can be found at:

<https://www.gov.uk/government/consultations/changes-to-regulations-to-recover-costs-of-services-under-offshore-petroleum-activities-oil-pollution-prevention-and-control-regulations-2005-as-am>

- 8.3 The offshore oil and gas industry was informed by letter sent out in early 2017 of OPRD's plans to introduce new charging powers regarding the Fluorinated Gas regulatory regime, the Energy Savings Opportunity Scheme Regulations 2014 and the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015. There was no statutory requirement to consult on these provisions. The Department considered whether to carry out a consultation regarding the introduction of these powers and concluded that as there was no other way in which it wished to ensure that companies directly benefiting from regulatory services meet the cost associated with their provision, it was not appropriate to consult.
- 8.4 Following the letter to industry, no representations were received.
- 8.5 The hourly rates to be applied and the chargeable services being provided will be reviewed regularly, at least annually, and the industry will be informed of any changes prior to their implementation.

## **9. Guidance**

- 9.1 The existing Guide for Industry on Cost Recovery for Offshore Functions will be revised in light of the Regulations and an updated version placed on the GOV.UK website before the Regulations come into force.

## **10. Impact**

- 10.1 There is no impact on charities or voluntary bodies.
- 10.2 The impact on the public sector is negligible as BEIS will be the regulatory authority and will accommodate this work within its current resource head room.
- 10.3 A Regulatory Triage Assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is submitted with this Memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses, as the environmental regulations apply to all offshore operators and owners.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses. 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. It is crucial that all businesses operating offshore, regardless of size, are subject to the same regulatory regime to ensure that they continue to provide a high level of protection for the marine environment. The offshore industry recognises the importance of maintaining a consistent approach to managing their impact on the environment offshore regardless of business size.

## **12. Monitoring & review**

- 12.1 The effectiveness of the Regulations will be monitored on a regular basis, alongside the review of the hourly rates to be applied and the review of chargeable services described in paragraph 8.5.
- 12.2 As a result of s.28(3)(a) of the Small Business Enterprise and Employment Act 2015, instruments (like this instrument) which contain only provision imposing, abolishing or varying any tax, duty, levy or other charge are not subject to the requirement to contain a review clause.

## **13. Contact**

- 13.1 Irene Thomson, BEIS can answer any queries regarding the instrument. Telephone: 01224 254077 or email: Irene.Thomson@beis.gov.uk.