

EXPLANATORY MEMORANDUM TO
THE OIL AND GAS AUTHORITY (FEES AND PETROLEUM LICENSING)
(AMENDMENT) REGULATIONS 2017

2017 No. 426

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 amend the fees which may be charged by the Oil and Gas Authority (OGA) to increase the rates for existing and to introduce fees for additional activities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument increases the existing fees charged by the OGA. For example, the daily rate for the determination of certain existing fees is increased from £500 to £595. The existing fees have not changed since 2013 and this increase reflects OGA’s operating costs.

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 amends the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016/904) (the 2016 Regulations) and makes consequential amendments to two other instruments. Pursuant to regulation 4 of the 2016 Regulations (fees payable for consents and pipeline works authorisations), the OGA charges a fee for determining applications for various consents required under different types of licences it administers, as well as consents or authorisations relating to its regulation of submarine pipelines. Regulation 2(4)-(5) of this instrument amends regulation 4 and omits regulation 5 (requests to determine fees under regulation 4) to increase, in line with operating costs, the daily rate used in the formula determining the applicable fee and to provide for charging on the basis of the actual costs incurred in determining an application instead of an estimate.
- 4.2 Pursuant to regulation 6 of the 2016 Regulations (fixed fees payable for other consents), the OGA may charge a fixed fee for determining applications for consent to various activities or matters arising under petroleum licences. Regulation 2(6) of this

instrument inserts a new table in regulation 6 which increases, in line with operating costs, the fees for existing consents. In addition, regulation 2(3) and (6) introduces fees for additional activities or matters, namely the extension of a term of a licence and the amendment of the work programme required during the initial term of a licence.

- 4.3 Regulation 2(3) and (7) of this instrument also insert new regulations introducing fees for additional activities or matters arising under petroleum licences, namely determining applications for consent to a retention or development area proposal (where consent is granted) under a landward petroleum licence, the determination of an oil field (as required for taxation purposes) under the Oil Taxation Act (c. 22) and undertaking various metering examinations and tests. It also introduces a fee for the approval by the OGA of the appointment of a well or installation operator under regulation 5 of the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (S.I. 2015/385) (appointment of operators by offshore licensees) where the OGA consults the competent authority. The amount of the fee is determined by the amount the OGA is charged by the competent authority, which is made up of the Health and Safety Executive and the Secretary of State acting jointly. The fee to be charged by the Secretary of State is being introduced by regulation 5 of the Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/404).
- 4.4 Finally, regulation 3 of this instrument amends the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 (S.I. 2008/225) and the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (S.I. 2014/1686), which set out the model clauses for inclusion in petroleum production licences, to omit the existing provision for charging fees and expenses for metering tests or examinations, which is replaced by the fee introduced by this instrument.

5. Extent and Territorial Application

- 5.1 The extent of this 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 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 *Managing Public Money* policy that the user of a service pays, it is necessary that, where possible, the costs of services are recovered via direct fees rather than via the levy on offshore petroleum licence holders to ensure that only those benefiting from a service will bear its costs.
- 7.2 The OGA already recovers the costs of some its services as fees 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. This instrument will

update these existing fees to reflect increase in the OGA's resource costs such as staff pay. These fees have not been changed since 2013.

- 7.3 To ensure continued compliance to *Managing Public Money* the OGA has undertaken a review of its activities and has determined additional areas which can appropriately be charged as a fee rather than the costs recovered via the levy on offshore petroleum licence holders. This instrument also prescribes these additional applications for which the OGA may charge a fee. These are applications made by the holder of certain petroleum licences for approval of the appointment of a well or installation operator; consent to a retention area proposal (where consent is granted); consent to a development area proposal (where consent is granted); consent to extend a term of a petroleum licence or the final phase of the initial term; determination of oil fields and metering inspections and tests and consent to amend a work programme. It also inserts the relevant definitions in regulation 2 of the Fees Regulations (interpretation). This instrument also amends the 2016 Regulations to provide for those fees which are determined according to a daily rate (i.e., not fixed) to be determined on the basis of the actual number of days and officers required to determine the application rather than on the basis of estimation.
- 7.4 As a result of this instrument, those benefiting from the services will bear the costs in line with HM Treasury Guidance on Managing Public Money and the costs of those services will be excluded from the levy for all offshore petroleum licence holders. The OGA will not make a profit from these fees but merely recovers its costs in carrying out the relevant functions.

Consolidation

- 7.5 There are no plans to consolidate this legislation at this time.

8. Consultation outcome

- 8.1 Pursuant to the requirements of the Energy Act 2016, the BEIS Secretary of State consulted with the OGA regarding amendments to the fees regime. To inform their response the OGA held a consultation exercise between 7th November 2016 and the 5th December 2016 to seek the oil and gas industry's views on proposals to introduce additional fees.
- 8.2 Three charging methodologies were proposed for these services – fixed fees, time-sheeted fees and a bespoke approach for one charge. Fixed and time-sheeted fees reflect the OGA's actual costs for the charge proposed for individual consents or services. The bespoke fee for approval of the appointment of well or installation operator reflects actual charges to the OGA for consulting the competent authority. There were 14 responses to the consultation.
- 8.3 There was support for the introduction of new direct fees with 11 (79%) respondents in favour of the proposals. Of the three respondents who were against the introduction of new fees, only one provided justification and that was that they believed the fees added administrative burden to the OGA which, in their view, would then be passed onto the operators. As a result of these comments the OGA proposed to BEIS that the new fees be introduced.
- 8.4 Of the 14 organisations that responded to the questions on the time-sheeted charges four (28%) were in favour of the proposed methodology. Five (36%) expressed concerns about the lack of certainty of costs, a desire for an upper limit and the

difficulty to budget for open-ended costs. Five (36%) respondents did not provide any specific comments on the proposed charging methodology.

- 8.5 The OGA noted the feedback that open-ended fees and uncertainty make budgeting difficult. The OGA also noted the requests to have more certainty, estimates and upper limits for these charges. The OGA reconsidered the proposed charging methodology for the time-sheeted services, and the resource and processes involved and their revised proposal is a fixed fee that reflects the standard amount of time that these approvals take. The OGA proposed that BEIS introduce regulations that establish fixed fees for retention and development plan approvals, and for the determination or re-determination of a field. The methodology used will be the same as that for the other fixed fees, as set out in the consultation and the charge for these services is set out in regulations.
- 8.6 Of the 14 organisations that responded to the questions on fixed fees, four (28%) were in favour of the proposed methodology but the majority made no comments. Five respondents queried why the charge for onshore inspections was higher than that for offshore inspections. The fee for onshore inspections includes the inspector's travel (i.e. car hire) and hotel accommodation costs, while the cost of helicopter travel and accommodation for offshore inspections is met by the operator directly due to inaccessibility. On the basis of the responses, the OGA proposed that BEIS introduce regulations that establish a fixed fee for metering inspections, attendance at meter flow calibrations, licence extensions and licence amendments.
- 8.7 Of the 14 organisations that responded to the questions on the proposed bespoke fee for approval of the appointment of well or installation operator, eight commented on the methodology; one respondent noted that this fee was not applicable and five respondents made no comments. The OGA noted the requests for an upper limit or a fixed fee for the approvals, but as the work to complete these varies it was not possible to set an upper limit on the charge or a fixed fee. The OGA's IT and administrative costs for OSD approvals are considered nugatory and will be covered by the general levy. On the basis of the responses, the OGA proposed that BEIS introduced regulations that allow recovery of the costs incurred by the OGA in consulting the competent authority.
- 8.8 A summary of the responses to the consultation and the OGA's response dated March 2017 is available on the OGA's website.

9. Guidance

- 9.1 Guidance on the charging of the fees can be viewed at:
<https://www.ogaauthority.co.uk/regulatory-framework/legislative-context/charging-regime/>

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

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 Telephone: 0300 068 6935 or email: jessica.mackenzie@beis.gsi.gov.uk can answer any queries regarding the instrument.