

2018 No. 311

ENVIRONMENTAL PROTECTION

PETROLEUM

The Oil and Gas Authority (Levy) and Pollution Prevention and Control (Fees) (Amendment) Regulations 2018

<i>Made</i> - - - -	<i>6th March 2018</i>
<i>Laid before Parliament</i>	<i>9th March 2018</i>
<i>Coming into force</i> - -	<i>1st April 2018</i>

The Secretary of State, in exercise of the powers conferred by sections 13(1) to (4) and 14(1) and (3) to (9) of the Energy Act 2016(a), section 82OA(2) of the Energy Act 2008(b) and section 56(1) and (2) of the Finance Act 1973(c), makes the following Regulations.

The Secretary of State has consulted the Oil and Gas Authority in accordance with section 13(8) of the Energy Act 2016.

The Secretary of State has obtained the consent of the Treasury in accordance with section 56(1) of the Finance Act 1973.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Oil and Gas Authority (Levy) and Pollution Prevention and Control (Fees) (Amendment) Regulations 2018 and come into force on 1st April 2018.

PART 2

The Oil and Gas Authority Levy

Interpretation

2. In this Part—

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- (a) 2016 c.20.
(b) 2008 c.32. Section 82OA is inserted by the Energy Act 2016.
(c) 1973 c.51. Section 56 is amended by S.I. 2011/1043.

“leviable costs” means the sum of the costs incurred by the OGA(a) and the Lord Chancellor in exercising the functions referred to in section 13(2)(a) of the Energy Act 2016 excluding any costs incurred in the exercise of functions referred to in section 13(2)(b) of that Act;

“licensee” means a person holding a petroleum licence;

“non-production levy” means the licensing levy payable by a licensee for the relevant charging period to which regulation 4 applies;

“offshore exploration licence” means a petroleum licence of the sort referred to in regulation 2(2)(a) of the Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009(b), relating to an area any part of which lies within offshore waters;

“offshore production licence” means a petroleum licence relating to an area any part of which lies within offshore waters which is not an offshore exploration licence;

“offshore waters” means—

- (a) the waters comprising the territorial sea of the United Kingdom, and
- (b) the sea in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964(c);

“production levy” means the licensing levy payable by a licensee for the relevant charging period to which regulation 3 applies;

“petroleum licence” means a licence granted under—

- (a) section 2 of the Petroleum (Production) Act 1934(d) (licences to search for and get petroleum); or
- (b) section 3 of the Petroleum Act 1998(e) (licences to search for and bore for and get petroleum),

which is not an excluded licence(f) in relation to the relevant charging period;

“relevant charging period” means the period beginning on 1st April 2018 and ending on 31st March 2019; and

“relevant time” means 12.01a.m. on 1st April 2018.

Liability to pay production levy

3.—(1) This regulation applies to a licensee who at the relevant time—

- (a) holds an offshore production licence; and
- (b) in accordance with that licence, is entitled to—
 - (i) erect or carry out any relevant works (within the meaning of the licence) either in the licensed area or elsewhere, for the purpose of getting petroleum from that area or for the purpose of conveying to a place on land petroleum got from that area, or
 - (ii) get petroleum from that area otherwise than in the course of searching for petroleum, drilling wells or testing wells.

(2) Where this regulation applies, the licensee is liable to pay the production levy in respect of each offshore production licence held by the licensee to which the criteria in paragraph (1)(b) applies.

(3) Where the licensee is more than one person, the liability under paragraph (2) is joint and several.

(a) “OGA” is defined in section 1(4) of the Energy Act 2016 as the Oil and Gas Authority.

(b) S.I. 2009/2814; this instrument is amended by S.I. 2016/912 and S.I. 2016/992.

(c) 1964 c.29; section 1(7) is amended by the Oil and Gas (Enterprise) Act 1982 (c.23) section 37, schedule 3, paragraph 1.

(d) 1934 c.36; this Act is repealed by the Petroleum Act 1998 (c.17), section 51 and Schedule 5, subject to the savings provisions set out in Schedule 3.

(e) 1998 c.17; section 3 is amended by the Scotland Act 2016 section 48(1) to (4) and by S.I. 2016/898.

(f) “Excluded licence” is defined by section 13(10) of the Energy Act 2016.

Liability to pay non-production levy

4.—(1) This regulation applies to a licensee who at the relevant time holds either—

- (a) an offshore exploration licence; or
- (b) an offshore production licence where regulation 3(1)(b) does not apply.

(2) Subject to paragraph (3), where paragraph (1) applies, the licensee is liable to pay the non-production levy in respect of each licence to which the criteria in paragraph (1)(a) or (b) applies, held by the licensee.

(3) Paragraph (2) does not apply where at the relevant time a licensee is a micro-enterprise and—

- (a) holds an innovate licence in phase B of its initial term; or
- (b) holds—
 - (i) a promote licence in its promote period; or
 - (ii) an innovate licence in phase A of its initial term.

(4) A licensee to whom the criteria referred to in paragraph (3)(a) apply is liable to pay the non-production levy discounted by 80 per cent in respect of that licence.

(5) A licensee to whom the criteria referred to in paragraph (3)(b) apply is liable to pay the non-production levy discounted by 90 per cent in respect of that licence.

(6) Where the licensee is more than one person—

- (a) the liability under this regulation is joint and several, and
- (b) the licensee is only a micro-enterprise for the purposes of paragraph (3) if every person who is the licensee is a micro-enterprise.

(7) In this regulation—

“innovate licence” means an offshore production licence in which, in accordance with the model clauses, the initial term of the licence (within the meaning of the licence) is divided into phases;

“micro-enterprise” has the meaning given in article 2(3) of the Annex to Commission Recommendation 2003/361/EC of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises^(a);

“model clauses” means model clauses prescribed by the Petroleum Licensing (Production) (Seawards Areas) Regulations 2008^(b);

“promote licence” means an offshore production licence in which, in accordance with the terms of the licence—

- (a) a “Promote Period” is specified, and
- (b) a clause is included concerning the effect of the expiry of the Promote Period in relation to the continuation of that licence beyond that period.

Calculation of production levy and non-production levy

5.—(1) For the purposes of regulation 3, the OGA must calculate the production levy in accordance with the formula—

$$\frac{C \times 0.89}{P}$$

(2) For the purposes of regulation 4, the OGA must calculate the non-production levy in accordance with the formula—

(a) OJ L 124, 20.5.2003, p36.

(b) S.I. 2008/225. This instrument is amended by S.I. 2009/3283; S.I. 2016/912, S.I. 2017/426 and S.I. 2017/855.

$$\frac{Cx0.11}{N100+(N90 \times 0.1)+(N80 \times 0.2)}$$

(3) In this regulation—

“C” is £22,750,000, which are the leviable costs for the relevant charging period;

“N100” is the total number of licences for which a licensee is liable to pay the non-production levy under regulation 4(2);

“N90” is the total number of licences for which a licensee is liable to pay the non-production levy under regulation 4(5);

“N80” is the total number of licences for which a licensee is liable to pay the non-production levy under regulation 4(4); and

“P” is the total number of offshore production licences for which a licensee is liable to pay the production levy under regulation 3(2).

Payment of the levy

6. Where a licensee is liable to pay a levy to the OGA in accordance with these regulations, the OGA must notify the licensee in writing by 31st May 2018 as to—

- (a) whether the licensee is liable for the production levy or the non-production levy;
- (b) the amount so payable;
- (c) the date by which that amount is to be paid, being a date not less than 30 days after the date of the notification; and
- (d) details of how the payment can be made.

Interest payable on late payment of the levy

7.—(1) Where any amount of a levy notified to a licensee is not paid in accordance with the notification under regulation 6, the licensee is liable to pay to the OGA interest calculated in accordance with paragraph (2) on the amount of the levy which remains unpaid.

(2) The interest payable under paragraph (1) is simple interest calculated from day to day on the unpaid amount from the date by the amount is required until the date when payment is made, at a rate of five per cent over the Bank of England base rate from time to time.

(3) For the purpose of this regulation, the “Bank of England base rate” means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or
- (b) where an order under section 19 of the Bank of England Act 1998(a) (reserved powers) is in force, any equivalent rate determined by the Treasury under that section.

Recovery of the levy

8. Where any amount of the levy notified to a licensee is not paid in accordance with the notification under regulation 6, that unpaid amount, together with any interest due in accordance with regulation 7, is recoverable as a civil debt due to the OGA.

(a) 1998 c.11.

Repayment or credit of the levy under these Regulations

9.—(1) This regulation applies where the total amount of the levy exceeds the leviable costs in respect of the relevant charging period.

(2) Where this regulation applies, after the relevant charging period the OGA must divide the leviable costs by the total amount of the levy to 3 decimal places to give the relevant multiplier.

(3) The OGA must then adjust the levy payable by a relevant person (“the original levy”) by multiplying the amount of the original levy by the relevant multiplier to give the new levy figure payable by that person for the relevant charging period (“the new levy”).

(4) The new levy is to be substituted for the original levy in any notification given, or to be given, under regulation 6, and regulation 7 is to be construed accordingly.

(5) If a relevant person to whom a notification is given under regulation 6 pays more than the new levy, the OGA must, by 31st December 2019, pay to the person the difference between the new levy and the amount the person actually paid (after deducting any repayment of this amount that has already been made).

(6) In this regulation—

“relevant person” means a person who is liable to pay a levy under either regulation 3 or 4 of these Regulations (and includes a person who has discharged that liability in whole or in part); and

“total amount of the levy” means the total amount notified to licensees under regulation 6.

PART 3

Pollution Prevention and Control (Fees)

Amendments to the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015

10. In the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015(a)—

- (a) in the heading of regulation 5, for “regulation 49 of the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007(b)”, substitute “regulation 55 of the Conservation of Offshore Marine Habitats and Species Regulations 2017(c)”;
- (b) in regulation 5(2), for “regulation 49 (power to grant licences) of the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007”, substitute “regulation 55 (power to grant licences) of the Conservation of Offshore Marine Habitats and Species Regulations 2017”, and
- (c) in regulation 7(3) (calculation of fees), in paragraph (a) of the definition of “specialist officers”, for “5”, substitute “5B”.

5th March 2018

Claire Perry
Minister of State for Energy and Clean Growth
Department for Business, Energy and Industrial Strategy

6th March 2018

Craig Whittaker
Rebecca Harris
Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 2015/1431; this instrument is amended by S.I. 2016/529, S.I. 2016/1042 and S.I. 2017/404.

(b) S.I. 2007/1842; this instrument was amended by S.I. 2009/7, 2010/491 and 2012/928 and revoked by S.I. 2017/1013.

(c) S.I. 2017/1013.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for calculating and imposing a levy on the holders of petroleum licences in respect of the period beginning on 1st April 2018 and ending on 31st March 2019 (“the relevant charging period”). The levy is payable to meet costs incurred by the Oil and Gas Authority (“the OGA”) in carrying out its functions as well as costs incurred by the Lord Chancellor in connection with the provision of Tribunals to consider appeals against the decision of the OGA.

The Regulations also make minor amendments to the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (S.I. 2015/1431) (“the 2015 Regulations”).

Regulation 3 sets out liability to pay the production levy for the relevant charging period. This is the highest rate of levy and is to be paid by those licensees to which regulation 3(1)(b) applies (those who are producing petroleum or have received all necessary consents and approvals to do so). The regulation also makes provision for joint and several liability when the licensee is more than one person.

Regulation 4 sets out the type of licensee who is liable to pay the non-production levy for the relevant charging period. The non-production levy is to be paid by licensees holding offshore exploration licences or offshore production licences where regulation 3(1)(b) does not apply. Paragraphs (3) to (5) provide that micro-enterprises holding promote or innovate licences in certain circumstances qualify to pay the non-production levy at discounted rates. Where the licensee is more than one person, paragraph (6) makes provision for joint and several liability and also provides that a licensee only qualifies as a micro-enterprise when each of the parties to the licence is a micro-enterprise.

Regulation 5 provides the methodology for calculating the production levy and the non-production levy.

Regulations 6 to 8 provide for the process by which licensees are notified as to the amount of levy payable, for interest to be payable on late payments and for the OGA to be able to take action to recover any unpaid levy as a civil debt.

Regulation 9 requires the amount of the levy to be paid by licensees under regulation 3 or 4 to be adjusted if the total amount of the levy to be recovered under these Regulations exceeds the leviable costs incurred by the OGA and Lord Chancellor in respect of the relevant charging period.

Regulation 10 makes amendments to cross-references in the 2015 Regulations. The first amends regulation 5 (fees relating to certain licences under regulation 49 of the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007) to reflect that those regulations (S.I. 2007/1842) have been revoked and replaced by the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013). The second updates regulation 7 (calculation of fees) to reflect the insertion of new regulation 5A (fees relating to consents to locate) by S.I. 2016/1042 and regulation 5B (fees relating to offshore undertakings: Energy Savings Opportunity Scheme Regulations 2014) by S.I. 2017/404.

A full impact assessment has not been produced for this instrument as no or no significant impact on the private, voluntary or public sectors is foreseen. An impact assessment was produced for the original levy regulations, the Oil and Gas Authority (Levy) Regulations 2015 and is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London SW1H 0ET and on www.legislation.gov.uk.

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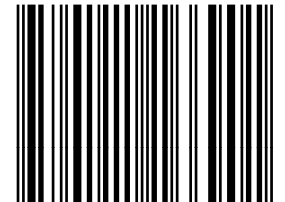
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