

**2018 No. 56**

**PETROLEUM**

**DEVOLUTION, SCOTLAND**

**The Scotland Act 2016 and Onshore Petroleum (Consequential,  
Transitional and Saving Provisions and Model Clauses)  
Regulations 2018**

*Made* - - - - *17th January 2018*

*Laid before Parliament* *19th January 2018*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State for Business, Energy and Industrial Strategy makes the following Regulations in exercise of the powers conferred by section 4(1), (1B), (2) and (3) of the Petroleum Act 1998<sup>(a)</sup> and sections 49(1) and (3) and 71(1), (2), (5) and (6) of the Scotland Act 2016<sup>(b)</sup>.

**PART 1**

**General**

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Scotland Act 2016 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018.

(2) These Regulations come into force immediately after section 48 of the Scotland Act 2016.

(3) An amendment or modification made by these Regulations has the same extent as the provision to which it relates.

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<sup>(a)</sup> 1998 c.17. Section 4 was amended by S.I. 2016/898. Amendments are also made to section 4 that have not yet entered into force. Section 4(1B) is to be inserted with the commencement of section 48(7) of the Scotland Act 2016 (c.11) (on a date to be appointed). Section 4 is further amended by the Wales Act 2017 (c.4), Schedule 6, paragraph 15 (on a date to be appointed) and by Part 3 of S.I. 2016/898, regulation 3(3).

<sup>(b)</sup> 2016 c.11.

## PART 2

### Amendments to secondary legislation

#### Hydrocarbons Licensing Directive Regulations 1995

- 2.—(1) The Hydrocarbons Licensing Directive Regulations 1995(a) are amended as follows.  
(2) After regulation 1, insert—

##### “Application

1A.—(1) Except for regulations 2, 4 and 5(2), these Regulations do not apply in relation to a licence in respect of an area within the Scottish onshore area.

(2) In this regulation, “Scottish onshore area” has the meaning given in section 8A(3) of the Petroleum Act 1998(b).”.

- (3) In regulation 5(2), for “invites” substitute “or the Scottish Ministers invite”.

#### Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014

- 3.—(1) The Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014(c) are amended as follows.  
(2) After regulation 1, insert—

##### “Application

1A.—(1) Except for regulations 1(2) and 2(1A) and Schedules 2A and 3A, these Regulations do not apply in relation to a landward petroleum exploration licence or a petroleum exploration and development licence in respect of an area within the Scottish onshore area.

(2) In this regulation, “Scottish onshore area” has the meaning given in section 8A(3) of the Petroleum Act 1998.”.

- (3) In regulation 1(2), for the definition of “landward area” substitute—

““landward area” means an area of Great Britain that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea)(d).”.

- (4) After regulation 2(1), insert—

“(1A) For the purposes of section 4(1B) of the Petroleum Act 1998—

- (a) the model clauses prescribed for petroleum exploration and development licences are those set out in Schedule 2A; and  
(b) the model clauses prescribed for landward petroleum exploration licences are those set out in Schedule 3A.”

- (5) Omit Schedule 1.

- (6) After Schedule 2, insert Schedule 2A as set out in Schedule 1 to these Regulations.

- (7) After Schedule 3, insert Schedule 3A as set out in Schedule 2 to these Regulations.

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(a) S.I. 1995/1434, amended by S.I. 2016/912.

(b) 1998 c.17. Section 8A is inserted by section 48(16) of the Scotland Act 2016 from a date to be appointed.

(c) S.I. 2014/1686, amended by S.I. 2016/912 and 2017/855.

(d) 1987 c.49. The existing baselines were established by S.I. 2014/1353.

## **Petroleum Licensing (Application) Regulations 2015**

- 4.—(1) The Petroleum Licensing (Application) Regulations 2015(a) are amended as follows.
- (2) In regulation 2—
- (a) for the definition of “landward area” substitute—
- ““landward area” means an area of Great Britain that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea);”;
- (b) for the definition of “low water line” substitute—
- ““low water line” means the line so marked on the Ordnance map on a scale of 1:25,000 in the case of maps relating to Great Britain, and 1:50,000 in the case of maps relating to Northern Ireland, in the edition for the areas to which they respectively relate last published prior to the date on which these Regulations are made;”, and
- (c) for paragraph (a) in the definition of “seaward area” substitute—
- “(a) islands on the seaward side of the baselines around Great Britain established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987,”.
- (3) At the beginning of regulation 3(1), insert “Subject to paragraph (1A),”.
- (4) After regulation 3(1), insert—
- “(1A) These Regulations do not apply in relation to a landward petroleum exploration licence or a petroleum exploration and development licence in respect of an area within the Scottish onshore area.
- (1B) In this regulation, “Scottish onshore area” has the meaning given in section 8A(3) of the Petroleum Act 1998.”
- (5) Omit Schedule 1.

## **Oil and Gas Authority (Fees) Regulations 2016**

- 5.—(1) The Oil and Gas Authority (Fees) Regulations 2016(b) are amended as follows.
- (2) After regulation 1, insert—

### **“Application**

- 1A.**—(1) These Regulations do not apply in relation to a petroleum licence in respect of an area within the Scottish onshore area.
- (2) In this regulation, “Scottish onshore area” has the meaning given in section 8A(3) of the Petroleum Act 1998.”.

## **PART 3**

### **Amendments to existing licences, transitional provision and savings**

#### **Interpretation**

- 6.** In this Part, “existing licence” has the meaning given in section 49(5) of the Scotland Act 2016(c).

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(a) S.I. 2015/766, amended by S.I. 2016/912 and 2017/855.  
(b) S.I. 2016/904, amended by S.I. 2017/426.  
(c) 2016 c.11. “Existing licence” is defined in s49(5) as a licence granted, before the commencement of section 47, under section 3 of the Petroleum Act 1998, or section 2 of the Petroleum (Production) Act 1934, in respect of an area all or part of which is within the Scottish onshore area, within the meaning given by Section D2 of Part 2 of Schedule 5 to the Scotland Act 1998.

## **Amendment to existing licences**

7.—(1) Subject to paragraph (3), any existing licence has effect as if—

- (a) in clauses or parts of clauses corresponding to clause 1(1) of the relevant Schedule, in the definition of “Block”, for the words “London, SW1” there were substituted “Glasgow, G2 8LU”;
- (b) in clauses or parts of clauses corresponding to clauses 4(1)(a) or 5(1) of the relevant Schedule, the words “to payment of those sums hereinafter provided for and” were omitted;
- (c) clauses or parts of clauses corresponding to clauses 9 to 11, 25(1)(e) and (5), 31, 32 or 36(2)(a) of the relevant Schedule were omitted;
- (d) any reference to a clause corresponding to clause 10 of the relevant Schedule were omitted, and
- (e) except in the definition of “the OGA”, references to “the OGA” (including references having effect as such), “the Secretary of State” or “the Minister” were references to “the Scottish Ministers”.

(2) Any existing licence has effect as if the clauses in Schedule 3 to these Regulations were incorporated in the licence.

(3) Paragraph (1) does not apply to any clause incorporated under paragraph (2).

(4) In this regulation, “the relevant Schedule” means Schedule 6 to the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004(a).

## **Transitional modification of the Hydrocarbons Licensing Directive Regulations 1995**

8.—(1) This regulation applies until any legislation made by the Scottish Ministers or Scottish Parliament relating to any matter to which the Hydrocarbons Licensing Directive Regulations 1995 relate comes into force.

(2) In relation to any application for a licence to be determined by the Scottish Ministers or any licence granted by the Scottish Ministers under section 3 of the Petroleum Act 1998(b), the Hydrocarbons Licensing Directive Regulations 1995 have effect as if they had been made by the Scottish Ministers.

(3) In relation to any application for a licence to be determined by the Scottish Ministers or any licence granted by the Scottish Ministers under section 3 of the Petroleum Act 1998, the Hydrocarbons Directive Licensing Regulations 1995 have effect as if—

- (a) regulation 1A as inserted by regulation 2(2) of these Regulations were omitted, and
- (b) with the exception of regulation 5(2), references to “the OGA” were references to “the Scottish Ministers”.

## **Transitional modification of the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014**

9.—(1) This regulation applies until the Scottish Ministers exercise section 4(1)(e) of the Petroleum Act 1998(c).

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- (a) S.I. 2004/352, amended by section 77 of, and paragraph 20 of Schedule 3 to, Energy Act 2008 (c.32), S.I. 2006/784, S.I. 2009/229 and S.I. 2009/3283. Schedule 6 is disapplied by regulation 2(2) of S.I. 2014/1686 in relation to any licence granted on or after the commencement of that instrument.
  - (b) Section 3 is modified by S.I. 2016/898, regulation 2(2). Amendments are also made to section 3 that have not yet entered into force. Section 3 is to be amended by section 48(2) to (4) of the Scotland Act 2016 (c.11) (on a date to be appointed) and Part 3 of S.I. 2016/898, regulation 3(2).
  - (c) Section 8A(2), inserted by s48(16) Scotland Act 2016 (on a date to be appointed), provides that in relation to the Scottish onshore area, the Scottish Ministers are the “appropriate Minister” for purposes of s4(1) (as amended by s48(6) on a date to be appointed).

(2) Subject to paragraph (3), in relation to any licence granted by the Scottish Ministers under section 3 of the Petroleum Act 1998, the 2014 Regulations have effect as if they had been made by the Scottish Ministers.

(3) Paragraph (2) does not apply for the purposes of regulation 2(1A) and Schedules 2A and 3A as inserted by regulation 3(4), (6) and (7) of these Regulations.

(4) In relation to any licence granted by the Scottish Ministers under section 3 of the Petroleum Act 1998, the 2014 Regulations have effect as if—

- (a) regulation 1A as inserted by regulation 3(2) of these Regulations were omitted;
- (b) in Schedule 2—
  - (i) in clause 1(1)—
    - (aa) in the definition of “Block”, for the words “Aberdeen, AB10” there were substituted “Glasgow, G2 8LU, and
    - (bb) the definition of “the OGA” were omitted;
  - (ii) in clauses 5(1)(a) and 7(1), the words “to payment of those sums hereinafter provided for and” were omitted;
  - (iii) in clause 6(2), the words “to payment of the sums specified in Schedule 2 and” were omitted;
  - (iv) in clause 20(11), the reference to “OGA” were a reference to “Scottish Ministers or the Secretary of State”;
  - (v) the following were omitted—
    - (aa) clauses 12 to 14;
    - (bb) clause 30(1)(e) and (5);
    - (cc) in clause 35, the reference to clause 13
    - (dd) clauses 36 and 37;
    - (ee) clause 41(2)(a), and
    - (ff) clause 44(4), and
  - (vi) any other references to “the OGA” were references to “the Scottish Ministers”, and
- (c) in Schedule 3—
  - (i) in clause 1(1), the definition of “the OGA” were omitted;
  - (ii) in clause 2(1), for the words “payments provided for in clause 7” there were substituted “the sums payable to the Oil and Gas Authority”;
  - (iii) clauses 7 and 18(2)(a) were omitted;
  - (iv) in clause 20(2)—
    - (aa) for “arbitrator” there were substituted “arbiter”, and
    - (bb) for “the Lord Chief Justice of England” there were substituted “the Lord President of the Court of Session”, and
  - (v) clause 20(3) were omitted, and
  - (vi) any other references to “the OGA” were references to “the Scottish Ministers”.

(5) In relation to any review under regulation 3 of the 2014 Regulations, regulation 3(1)(a) has effect as if, after “Regulations” there were inserted “, except in so far as they apply to any function exercised by the Scottish Ministers”.

(6) In this regulation, the “2014 Regulations” means the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014.

### **Transitional modification of the Petroleum Licensing (Applications) Regulations 2015**

**10.—**(1) This regulation applies until the Scottish Ministers exercise section 4(1)(a), (b) or (d) of the Petroleum Act 1998.

(2) In relation to any application for a licence to be determined by the Scottish Ministers or any licence granted by the Scottish Ministers under section 3 of the Petroleum Act 1998, the 2015 Regulations have effect as if they had been made by the Scottish Ministers.

(3) In relation to any application for a licence to be determined by the Scottish Ministers or any licence granted by the Scottish Ministers under section 3 of the Petroleum Act 1998, the 2015 Regulations have effect as if—

- (a) in regulation 2—
  - (i) in the definition of “model clauses” after the words “section 4(1)(e)” there were inserted “or section 4(1B)”, and
  - (ii) the definition of “the OGA” were omitted, and
  - (iii) in the definition of “seaward petroleum exploration licence”, the words after “seaward area” were omitted;
- (b) regulation 3(1A) and (1B) as inserted by regulation 4(4) of these Regulations were omitted;
- (c) for regulation 4(2) there were substituted—
  - “(2) Applications must be—
    - (a) made in writing, and
    - (b) accompanied by such evidence and particulars or documents in support as are specified in these Regulations in respect of the licence being applied for, and are appropriate to that application.”;
  - (d) any other references to “the OGA” were references to “the Scottish Ministers”.

(4) In relation to any review under regulation 9 of the 2015 Regulations, regulation 9(1)(a) has effect as if, after “Regulations” there were inserted “, except in so far as they apply to any function exercised by the Scottish Ministers”.

(5) In this regulation, the “2015 Regulations” means the Petroleum Licensing (Applications) Regulations 2015.

## Savings

**11.—**(1) Anything which, at the commencement of these Regulations, is in the process of being done by or in relation to the OGA<sup>(a)</sup> in connection with a transferred function may be continued by or in relation to the Scottish Ministers.

(2) Anything done (or having effect as if done) by or in relation to the OGA before the commencement of these Regulations in connection with a transferred function has effect, so far as is necessary for continuing its effect after the commencement of these Regulations, as if done by or in relation to the Scottish Ministers.

(3) Any instrument (except an existing licence, an Act or subordinate legislation) made, granted or given before the commencement of these Regulations has effect, so far as is appropriate in connection with a transferred function, as if references to the OGA (and references which are to be read as references to the OGA) were or included references to the Scottish Ministers.

(4) These Regulations do not affect the validity of anything done (or having effect as if done) by or in relation to the OGA in connection with a transferred function before the commencement of these Regulations.

(5) In this regulation—

“instrument” includes awards, authorisations, consents, approvals, judgments, decrees and other documents granted or given in connection with a transferred function but does not include any enactment;

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(a) The “OGA” is defined as the Oil and Gas Authority in section 1(4) of the Energy Act 2016 (c.20).

“OGA” means the Oil and Gas Authority; and

“transferred function” means a function transferred to the Scottish Ministers in respect of the Scottish onshore area as a result of section 48 of the Scotland Act 2016(a).

17th January 2018

*Richard Harrington*  
Parliamentary Under Secretary of State, Minister for Energy and Industry  
Department for Business, Energy and Industrial Strategy

## SCHEDULES

### SCHEDULE 1

Regulation 3(6)

#### New Schedule 2A to the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014

### “SCHEDULE 2A

#### Model clauses for petroleum exploration and development licences granted by the Scottish Ministers

##### **Interpretation**

1. In these clauses, the following expressions have the following meanings—

“the Licensed Area” means the area for the time being in which the Licensee may exercise the rights granted by this licence;

“the Licensee” means the person (or all the persons) specified as such in this licence or the licence holder, as relevant to this licence;

“OGA” means the Oil and Gas Authority;

“Petroleum” includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

##### **Provision of contact details to the OGA**

2.—(1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of these clauses is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.

(2) The Licensee must supply the OGA with the name and address of a person to whom notices, directions or other documents are to be given.

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(a) 2016 c.11.

(3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, notices, directions or other documents should be sent in accordance with paragraph (2), the OGA is notified of the change as soon as is reasonably practicable.

(4) If the Licensee fails to comply with paragraph (2) the OGA may give the Licensee a notice which—

- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice; and
- (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the OGA in the notice.

#### **Payment of consideration for Licence**

3.—(1) The Licensee must make to the OGA, as consideration for the grant of this licence, payments in accordance with the Schedule setting out the consideration payable under the licence.

(2) The Licensee may not by reason of the determination of this licence or the surrender of any part of the Licensed Area be entitled to be repaid or allowed any sum payable to the OGA pursuant to this licence before the date of such determination or surrender.

#### **Right of Secretary of State to revoke licence**

4.—(1) The Secretary of State may revoke the licence for failure to pay any consideration payable under the licence.

(2) Any revocation under paragraph (1) is without prejudice to any obligation or liability incurred by the Licensee or imposed upon the Licensee by or under the terms and conditions of the licence.

#### **Diligence**

5. If and whenever any of the payments mentioned in clause 3(1) of this licence or any part thereof are in arrears or unpaid for 28 days after any of the days whereon the same ought to be paid (whether the same has been legally demanded or not), then and so often as the same may happen the OGA may (as an additional remedy and without prejudice to any other rights and remedies to which they would be entitled) do diligence in respect thereof in like manner as a landlord may do diligence in respect of unpaid arrear of rent and such diligence may be effectual to attach all or any of the stocks of Petroleum, engines, machinery, tools, implements and other effects belonging to the Licensee which are found on or about any of the Licensee's installations and equipment used or to be used in connection with searching, boring for or getting Petroleum in the Licensed Area, and where in pursuance of such a diligence a sale of such effects as have been attached thereby takes place, the OGA may out of the proceeds thereof retain and pay all the arrears of the said payments and also the expenses of and incident to such diligence and sale and must then pay the surplus thereof (if any) to the Licensee.

#### **Indemnity against third party claims**

6. The Licensee must at all times keep the Secretary of State and the OGA effectually indemnified against all actions, proceedings, costs, charges, claims and demands whatsoever which may be made or brought against the Secretary of State or the OGA by any third party in relation to or in connection with these clauses or any matter or thing done or purported to be done in pursuance thereof.



## **Arbitration**

7.—(1) If at any time any dispute, difference or question arises between the licensee and the Secretary of State or the OGA as to any matter arising under or by virtue of these clauses or as to their respective rights and liabilities in respect thereof then the same may, except where it is expressly provided by these clauses that the matter or thing to which the same relates is to be determined, decided, directed, approved or consented to by the Secretary of State, be referred to arbitration as provided by paragraph (2).

(2) The arbitration referred to in the foregoing paragraph must be by a single arbiter who, in default of agreement between the Secretary of State or the OGA and the Licensee as to the appointment, must be appointed by the Lord President of the Court of Session.”

## **SCHEDULE 2**

Regulation 3(7)

### **New Schedule 3A to the Petroleum Licensing (Exploration and Production) Regulations 2014**

#### **“SCHEDULE 3A**

#### **Model clauses for landward petroleum exploration licences granted by the Scottish Ministers**

### **Interpretation**

1. In these clauses, the following expressions have the following meanings—

“the Exploration Area” means the area comprising all the areas in which the Licensee may for the time being exercise any of the rights granted by this licence;

“the Licensee” means the person (or all the persons) specified as such in this licence or the licence holder, as relevant to this licence;

“OGA” means the Oil and Gas Authority.

### **Provision of contact details to the OGA**

2.—(1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of these clauses is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.

(2) The Licensee must supply the OGA with the name and address of a person to whom notices, directions or other documents are to be given.

(3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, notices, directions or other documents should be sent in accordance with paragraph (2), the OGA is notified of the change as soon as is reasonably practicable.

(4) If the Licensee fails to comply with paragraph (2) the OGA may give the Licensee a notice which—

- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice; and
- (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the OGA in the notice.

### **Payment of consideration for Licence**

3.—(1) The Licensee must make to the OGA, as consideration for the grant of this licence, payments in accordance with the Schedule setting out the consideration payable under the licence.

(2) The Licensee may not by reason of the determination of this licence or any reduction in the Exploration Area be entitled to be repaid or allowed any part of any sum payable to the OGA pursuant to this licence.

### **Right of Secretary of State to revoke licence**

4.—(1) The Secretary of State may revoke the licence for failure to pay any consideration payable under the licence.

(2) Any revocation under paragraph (1) is without prejudice to any obligation or liability incurred by the Licensee or imposed upon the Licensee by or under the terms and conditions of the licence.

### **Indemnity against third party claims**

5. The Licensee must at all times keep the Secretary of State and the OGA effectually indemnified against all actions, proceedings, costs, charges, claims and demands whatsoever which may be made or brought against the Secretary of State or the OGA by any third party in relation to or in connection with these clauses or any matter or thing done or purported to be done in pursuance thereof.

### **Arbitration**

6.—(1) If at any time any dispute, difference or question arises between the Licensee and the Secretary of State or the OGA as to any matter arising under or by virtue of these clauses or as to their respective rights and liabilities in respect thereof then the same may, except where it is expressly provided by these clauses that the matter or thing to which the same relates is to be determined, decided, directed, approved or consented to by the Secretary of State, be referred to arbitration as provided by paragraph (2).

(2) The arbitration referred to in the foregoing paragraph must be by a single arbiter who, in default of agreement between the Secretary of State or the OGA and the Licensee as to the appointment, must be appointed by the Lord President of the Court of Session.”

## **SCHEDULE 3**

Regulation 7(2)

### **New model clauses for existing licences in the Scottish onshore area**

#### **Interpretation**

1. In these clauses, the following expressions have the following meanings—

“the Licensed Area” means the area for the time being in which the Licensee may exercise the rights granted by this licence;

“the Licensee” means the person or persons to whom this licence is granted, his personal representatives and any person or persons to whom the rights conferred by this licence may lawfully have been assigned;

“OGA” means the Oil and Gas Authority;

“Petroleum” includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

### **Payment of consideration for Licence**

2.—(1) The Licensee must make to the OGA, as consideration for the grant of this licence, payments in accordance with the Schedule setting out the consideration payable under the licence.

(2) The Licensee may not by reason of the determination of this licence or the surrender of any part of the Licensed Area be entitled to be repaid or allowed any sum payable to the OGA pursuant to this licence before the date of such determination or surrender.

### **Right of Secretary of State to revoke licence**

3.—(1) The Secretary of State may revoke the licence for failure to pay any consideration payable under the licence.

(2) Any revocation under paragraph (1) is without prejudice to any obligation or liability incurred by the Licensee or imposed upon the Licensee by or under the terms and conditions of the licence.

### **Diligence**

4. If and whenever any of the payments mentioned in clause 2(1) of this licence or any part thereof are in arrears or unpaid for 28 days after any of the days whereon the same ought to be paid (whether the same has been legally demanded or not), then and so often as the same may happen the OGA may (as an additional remedy and without prejudice to any other rights and remedies to which they would be entitled) do diligence in respect thereof in like manner as a landlord may do diligence in respect of unpaid arrear of rent and such diligence may be effectual to attach all or any of the stocks of Petroleum, engines, machinery, tools, implements and other effects belonging to the Licensee which are found on or about any of the Licensee's installations and equipment used or to be used in connection with searching, boring for or getting petroleum in the Licensed Area, and where in pursuance of such a diligence a sale of such effects as have been attached thereby takes place, the OGA may out of the proceeds thereof retain and pay all the arrears of the said payments and also the expenses of and incident to such diligence and sale and must then pay the surplus thereof (if any) to the Licensee.

### **Indemnity against third party claims**

5. The Licensee must at all times keep the Secretary of State and the OGA effectually indemnified against all actions, proceedings, costs, charges, claims and demands whatsoever which may be made or brought against the Secretary of State or the OGA by any third party in relation to or in connection with these clauses or any matter or thing done or purported to be done in pursuance thereof.

### **Arbitration**

6.—(1) If at any time any dispute, difference or question arises between the licensee and the Secretary of State or the OGA as to any matter arising under or by virtue of these clauses or as to their respective rights and liabilities in respect thereof then the same may, except where it is expressly provided by these clauses that the matter or thing to which the same relates is to be determined, decided, directed, approved or consented to by the Secretary of State, be referred to arbitration as provided by paragraph (2).

(2) The arbitration referred to in the foregoing paragraph must be by a single arbiter who, in default of agreement between the Secretary of State or the OGA and the Licensee as to the appointment, must be appointed by the Lord President of the Court of Session.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments and modifications to the existing regime for the licensing of petroleum consequent on sections 47 and 48 of the Scotland Act 2016 (c. 11) (“the 2016 Act”), which devolve legislative competence to the Scottish Parliament and transfer certain functions and powers to the Scottish Ministers for the granting and regulation of licences to search and bore for and get petroleum within the “Scottish onshore area” (as defined in section 47 of that Act), and related matters. The Regulations come into force on commencement of section 48 of the 2016 Act. These Regulations also amend existing licences in the Scottish onshore area as provided for in section 49 of the 2016 Act and prescribe the model clauses relating to reserved matters which must be included in any licence granted by the Scottish Ministers (pursuant to section 4(1B) of the Petroleum Act 1998, as inserted by section 48 of the 2016 Act).

Part 2 amends secondary legislation relevant to the licensing of petroleum, including substituting a new definition of the line dividing landward and seaward areas for the purposes of petroleum licensing to reflect the approach adopted in section 47 of the 2016 Act (regulations 3(3) and (5) and 4(2) and (5)). Regulation 3(4), (6) and (7) prescribes new model clauses relating to reserved matters for incorporation in licences granted by the Scottish Ministers. Finally, Part 2 of these Regulations also makes consequential amendments to secondary legislation to reflect the transfer of functions to the Scottish Ministers (regulations 2, 3(2), 4(3) and (4) and 5).

Part 3 of these Regulations amends existing licences in the Scottish onshore area consequent on the division of competence between the Scottish Ministers and the Secretary of State and transfer of functions to the former (regulation 7). Part 3 also modifies the secondary legislation relevant to petroleum licensing in the Scottish onshore area until such time as the Scottish Ministers make their own legislation (regulations 8 to 10) and makes provision for savings (regulation 11).

A full regulatory impact assessment has not been produced for these Regulations as no impact on the private or voluntary sectors is foreseen.

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