

**2019 No. 439**

**ENVIRONMENTAL PROTECTION**

**PETROLEUM**

**The Oil and Gas Authority (Levy) and Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2019**

<i>Made</i> - - - -	<i>3rd March 2019</i>
<i>Laid before Parliament</i>	<i>7th March 2019</i>
<i>Coming into force</i> - -	<i>1st April 2019</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 67(2) and (3)(b) of the Marine and Coastal Access Act 2009(b), section 82OA(2) of the Energy Act 2008(c), section 302(1) of the Merchant Shipping Act 1995(d) and section 56(1) and (2) of the Finance Act 1973(e), 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 302(1) of the Merchant Shipping Act 1995 and 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) (Miscellaneous Amendments) Regulations 2019 and come into force on 1st April 2019.

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(a) 2016 c.20.  
(b) 2009 c.23. The Secretary of State makes these Regulations as the appropriate licensing authority under section 113(2)(a), (4)(a), (6)(a) and (8) of the Marine and Coastal Access Act 2009.  
(c) 2008 c.32. Section 82OA is inserted by the Energy Act 2016.  
(d) 1995 c.21.  
(e) 1973 c.51. Section 56 is amended by S.I. 2011/1043.

## PART 2

### The Oil and Gas Authority Levy

#### Interpretation

##### 2. In this Part—

“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, in respect of the relevant charging period;

“licensee” means a person who holds a petroleum licence or, where a petroleum licence is held by more than one person, together the persons who hold that petroleum licence;

“non-production levy” means the levy which is payable in respect of the relevant charging period in accordance with regulation 4 and which is calculated in accordance with the formula at regulation 5(2);

“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);

“payment notice” means a notice given to a licensee in accordance with regulation 6 in respect of the relevant charging period;

“production levy” means the levy which is payable in respect of the relevant charging period in accordance with regulation 3 and which is calculated in accordance with the formula at regulation 5(1);

“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 2019 and ending on 31st March 2020;

“relevant time” means 12.01a.m. on 1st April 2019; and

“total amount of levy” means the total amount of levy payable by licensees in accordance with regulations 3 and 4, being £26,420,000.

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(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 and by the Energy Act 2011 (c.29) section 103.  
(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 (c.11) 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 production levy**

**3.—**(1) A licensee is liable to pay the production levy in respect of each offshore production licence which is held by the licensee at the relevant time and in respect of which the criterion at paragraph (2) is satisfied.

(2) The criterion is that at the relevant time the licensee is, in accordance with that licence, entitled to—

- (a) 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
- (b) get petroleum from that area otherwise than in the course of searching for petroleum, drilling wells or testing wells.

(3) Where the licensee is more than one person, the liability under paragraph (1) is joint and several.

### **Liability to pay non-production levy**

**4.—**(1) Subject to any discount to be applied in accordance with paragraphs (2) and (3), a licensee is liable to pay the non-production levy in respect of each of the following kinds of licence held by the licensee at the relevant time—

- (a) an offshore exploration licence;
- (b) an offshore production licence in respect of which the criterion at regulation 3(2) is not satisfied.

(2) A licensee which at the relevant time—

- (a) is a micro-enterprise; and
- (b) holds an innovate licence in phase B of its initial term,

is liable to pay the non-production levy discounted by 80 per cent in respect of that licence.

(3) A licensee which at the relevant time—

- (a) is a micro-enterprise; and
- (b) holds either—
  - (i) a promote licence in its promote period; or
  - (ii) an innovate licence in phase A of its initial term,

is liable to pay the non-production levy discounted by 90 per cent in respect of that licence.

(4) 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 paragraphs (2) and (3) if every person who is the licensee is a micro-enterprise.

(5) 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<sup>(a)</sup>;

“model clauses” means model clauses prescribed by the Petroleum Licensing (Production) (Seawards Areas) Regulations 2008<sup>(b)</sup>;

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(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.

“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) The OGA must calculate the production levy in accordance with the formula—

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

(2) The OGA must calculate the non-production levy in accordance with the formula—

$$\frac{C \times 0.11}{N100 + (N90 \times 0.1) + (N80 \times 0.2)}$$

(3) In this regulation—

“C” is £26,420,000 (being the total amount of levy);

“N100” is the total number of licences in respect of which a licensee is liable to pay the non-production levy under regulation 4(1) and in respect of which neither the criterion at regulation 4(2) nor the criterion at regulation 4(3) is satisfied;

“N90” is the total number of licences in respect of which a licensee is liable to pay the non-production levy discounted by 90 per cent under regulation 4(3);

“N80” is the total number of licences in respect of which a licensee is liable to pay the non-production levy discounted by 80 per cent under regulation 4(2); and

“P” is the total number of offshore production licences in respect of which a licensee is liable to pay the production levy under regulation 3(1).

### **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 2019 as to—

- (a) whether the licensee is liable to pay the production levy, the non-production levy or both;
- (b) the total amount of levy payable by the licensee;
- (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 levy is not paid in accordance with a payment notice, 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) Interest payable under paragraph (1) is simple interest calculated from day to day on the unpaid amount from the date by which 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) Where the licensee is more than one person the liability under this regulation is joint and several.

(4) 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<sup>(a)</sup> (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

### **Recovery of the levy**

**8.** Where any amount of levy is not paid in accordance with a payment notice, that unpaid amount, together with any interest due in accordance with regulation 7, is recoverable as a civil debt due to the OGA.

### **Repayment or credit of the levy under these Regulations**

- 9.**—(1) This regulation applies where the total amount of levy exceeds the leviable costs.
- (2) The OGA must, by 31st December 2020, return to each licensee the difference between—
- (a) the amount paid by or on behalf of that licensee in accordance with the relevant payment notice (including any interest paid by or on behalf of that licensee in accordance with regulation 7); and
  - (b) the recalculated amount of levy payable by that licensee.
- (3) Any payment notice in respect of which sums remain outstanding shall be construed as referring to the recalculated amount of levy payable by the relevant licensee (and regulation 7 shall be construed accordingly).
- (4) In this regulation—
- “recalculated amount of levy payable” means the sum of—
- (a) the amount of levy payable by a licensee in accordance with a payment notice; and
  - (b) any amount of interest which became payable by that licensee in accordance with regulation 7,
- multiplied by the relevant multiplier; and
- “relevant multiplier” means the figure calculated by dividing the leviable costs by the total amount of levy, expressed to three decimal places.

## **PART 3**

### **Pollution Prevention and Control - Fees**

#### **Amendments to the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999**

**10.** In the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999<sup>(b)</sup>, in regulation 17A(2)—

- (a) for “£168” substitute “£183”;
- (b) for “£82” substitute “£98”.

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(a) 1998 c.11.

(b) S.I. 1999/360. Regulation 17A is inserted by S.I. 2015/1431 and amended by S.I. 2016/529 and S.I. 2017/582.

### **Amendments to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001**

11. In the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(a), in regulation 20A(2)—

- (a) for “£168” substitute “£183”;
- (b) for “£82” substitute “£98”.

### **Amendments to the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015**

12. In the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015(b), in regulation 13A(2)—

- (a) for “£168” substitute “£183”;
- (b) for “£82” substitute “£98”.

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

13. In the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015(c), in regulation 7(1)—

- (a) for “£168” substitute “£183”;
- (b) for “£82” substitute “£98”.

3rd March 2019

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

28th February 2019

*Rebecca Harris*  
*Jeremy Quin*  
Two of the Lords Commissioners of Her Majesty’s Treasury

### **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 2019 and ending on 31st March 2020 (“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.

These Regulations also make provision to increase certain fees charged in relation to activities carried out by the Secretary of State relating to environmental regulation of the offshore oil and gas industry.

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 in respect of any offshore production licence which is

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(a) S.I. 2001/1754. Regulation 20A is inserted by S.I. 2015/1431 and amended by S.I. 2016/529 and S.I. 2016/1042.  
(b) S.I. 2015/385. Regulation 13A is inserted by S.I. 2017/404.  
(c) S.I. 2015/1431. This instrument is amended by S.I. 2016/529, S.I. 2016/1042, S.I. 2017/404 and S.I. 2018/311.

held by a licensee at the relevant time provided that the criterion at regulation 3(2) is satisfied (the licensee is at the relevant time producing petroleum or has 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 liability to pay the non-production levy for the relevant charging period. The non-production levy is to be paid in respect of any offshore exploration licence which is held by a licensee at the relevant time or any offshore production licence held by a licensee at the relevant time in respect of which the criterion at regulation 3(2) is not satisfied. Paragraphs (2) and (3) provide that micro-enterprises holding promote or innovate licences at the relevant time in certain circumstances qualify to pay the non-production levy at discounted rates in respect of those licences. Where the licensee is more than one person, paragraph (4) 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 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.

Regulations 10 to 13 increase the hourly rates used to calculate fees charged under:

- (a) the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/360);
- (b) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (S.I. 2001/1754);
- (c) the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (S.I. 2015/385);
- (d) the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (S.I. 2015/1431), which makes provision for charging fees:
  - (i) relating to certain activities under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 (S.I. 1998/1056), the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (S.I. 2015/398) and the Fluorinated Greenhouse Gases Regulations 2015 (S.I. 2015/310);
  - (ii) relating to certain licences under regulation 55 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013);
  - (iii) in connection with consents to locate under section 82A of the Energy Act 2008 (c.32), and emergency safety notices under sections 82F and 82G(8) of the Energy Act 2008;
  - (iv) in respect of monitoring compliance with the requirements of the Energy Savings Opportunity Scheme Regulations 2014 (S.I. 2014/1643); and
  - (v) for applications for certain licences under section 71 and for stop notices and emergency safety notices under sections 102-105 of the Marine and Coastal Access Act 2009 (c.23).

Each of those fees is calculated by first determining the number of hours work carried out by specialist and non-specialist officers and then multiplying those numbers by the relevant hourly rate. In each case these Regulations increase the hourly rate for specialist officers from £168 to £183 and for non-specialist officers from £82 to £98.

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](http://www.legislation.gov.uk).

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