

EXPLANATORY MEMORANDUM TO

THE OIL AND GAS AUTHORITY (LEVY) AND POLLUTION PREVENTION AND CONTROL (FEES) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2019

2019 No. 439

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of Part 1 of this instrument is to make introductory provision, Part 2 is to impose a levy on licensees who hold offshore petroleum licences in order to fund the carrying out of certain functions by the Oil and Gas Authority (“OGA”) in respect of the period running from 1 April 2019 to 31 March 2020 and Part 3 is to increase the hourly rates used in order to determine the fees payable by industry in relation to certain activities with regards to the environmental management of the offshore oil and gas industry.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Part 2: The Department is making these Regulations to impose a levy on licensees who hold offshore petroleum licences to provide funding for the OGA for the period 1 April 2019 to 31 March 2020. The methodology used to calculate the levy is the same as that which was used for the period 1 April 2018 to 31 March 2019. The OGA will not make a profit from this levy but will recover its forward costs.
- 3.2 The increase in the levy from the previous period is primarily due to funding of the UK National Data Repository, which is not reflected in the current OGA Corporate Plan 2016-21. The increase was the subject of a consultation in late 2017.
- 3.3 Part 3: The Department is making these Regulations so that it can recover its costs for providing services to industry, 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 to recover its eligible costs in providing these services.
- 3.4 The increases in eligible costs were identified following a review of the cost base for the current fee schemes. It has become clear that there have been changes to the cost base which are not reflected in the current hourly rates being applied to the provision of the relevant services to industry. As a result, the increases do not relate to the rate of inflation.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.5 As the instrument is not subject to parliamentary procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of Part 2 of this instrument (the OGA levy provisions) 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).

4.3 Part 3 of this instrument amends The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015, The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999, and The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.

4.4 The amendments made by Part 3 of the instrument have the same extent and application as the legislation they amend, as follows:

- The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 and the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 extend to the whole of the UK;
- The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 apply in Great Britain and outside Great Britain in relevant waters (for example, the territorial sea adjacent to Great Britain and any area designated by order under the Continental Self Act 1964). However, they only make material changes in relation to matters within the territorial sea and on the UK Continental Shelf;
- The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 extend to the whole of the UK. However, the regulations that it provides the fee calculation for vary in their extent and applicability:
 - The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, and the Energy Savings Opportunity Scheme Regulations 2014 extend to the whole of the UK;
 - Part 4A of the Energy Act 2008 (including sections 82A to 82Q) extends to the whole of the UK and applies to the UK Continental Shelf and territorial sea except the territorial sea adjacent to Scotland;
 - Section 71 of the Marine and Coastal Access Act 2009 extends to the whole of the UK and applies to all areas except territorial waters adjacent to Scotland;
 - The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 apply in Great Britain and outside Great Britain in external waters (the territorial sea and any area designated under the

Continental Shelf Act 1964). They extend to England and Wales and Scotland;

- The Fluorinated Greenhouse Gases Regulations 2015 extend and apply in full to Great Britain but to Northern Ireland only in respect of certain import, export and trade provisions which are reserved matters; and,
- The Conservation of Offshore Marine Habitats and Species Regulations 2017 apply to all of the UK offshore marine area. This means any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (effectively the United Kingdom sector of the Continental Shelf) and any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man).

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Part 2 of the instrument is the latest in a line of regulations made under section 13 of the Energy Act 2016 pursuant to which the OGA imposes an annual levy on licensees who hold certain kinds of offshore petroleum licence. The most recent of those regulations is the Oil and Gas Authority (Levy) and Pollution Prevention and Control (Fees) (Amendment) Regulations 2018 (“the 2018 Levy Regulations”) which imposed a levy in respect of the charging period beginning on 1 April 2018 and ending on 31 March 2019.

6.2 Regulation 5 of this instrument sets out the total amount to be levied in respect of the charging period beginning on 1 April 2019 and ending on 31 March 2020. Regulation 5 also sets out the methodology in accordance with which the OGA will calculate the proportion of that sum which is payable by licensees who hold particular kinds of offshore petroleum licence (pursuant to section 13(4)(b) of the Energy Act 2016).

6.3 Regulation 9 provides that where the total amount levied in respect of the charging period exceeds the costs in respect of which the levy has been raised, the OGA will return the underspend to licensees (consistent with section 13(2) of the Energy Act 2016).

6.4 Consistent with section 13(2)(b)(i) of the Energy Act 2016, the costs in respect of which the levy has been raised exclude costs incurred in relation to matters in respect of which the OGA may charge fees (which are set out in the Oil and Gas Authority (Fees) Regulations 2016 (S.I.2016/904) (as amended by the Oil and Gas Authority (Fees and Petroleum Licensing (Amendment) Regulations 2017 (S.I. 2017/426)).

6.5 The Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) in BEIS carries out environmental regulation functions for the offshore oil and gas industry. For some of these functions, it charges fees using fee schemes. OPRED first introduced a fee scheme in 2001, provided for by the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001. 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.

6.6 For other statutory functions for which it is appropriate to charge a fee, OPRED's fees are detailed in secondary legislation:

- the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (as amended);
- the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended);
- the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (as amended);
- the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (as amended), which makes provision for charging fees:
 - relating to certain activities under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 and the Fluorinated Greenhouse Gases Regulations 2015;
 - relating to certain licences under regulation 55 of the Conservation of Offshore Marine Habitats and Species Regulations 2017;
 - in connection with consents to locate under section 82A of the Energy Act 2008, and emergency safety notices under sections 82F and 82G(8) of the Energy Act 2008;
 - in respect of monitoring compliance with the requirements of the Energy Savings Opportunity Scheme Regulations 2014; and,
 - for applications for certain licences under section 71 of the Marine and Coastal Access Act 2009.

6.7 The hourly rates used to calculate the fees are being increased. For the fees detailed in secondary legislation, Part 3 of the instrument makes the required changes. The fee schemes (which do not require a legislative change) are updated in parallel with this instrument.

7. Policy background

What is being done and why?

7.1 Part 2 of the instrument: The Energy Act 2016 formally established the OGA as an independent regulator. That Act empowers the Secretary of State to make regulations enabling the OGA to recover its costs from certain categories of persons who hold petroleum licences.

7.2 Some of the OGA's costs are recovered through fees for the delivery of specific services to individual companies. However, the majority of the remainder of the OGA's costs are recovered through a levy. Consistent with the principal objective for the OGA as set out in Part 1A of the Petroleum Act 1998 of maximising economic recovery of petroleum beneath UK waters, the OGA's focus is primarily on the

offshore sector. As a result, the levy is currently imposed on licensees who hold offshore petroleum licences only.

- 7.3 These Regulations make provision for calculating and imposing a levy on licensees in respect of the period beginning on 1 April 2019 and ending on 31 March 2020 ("the relevant charging period"). The costs to be recovered under the levy are the costs of the OGA in carrying out its functions during that period (in addition the cost associated with the provision of tribunals to consider appeals against decisions of the OGA by the Lord Chancellor).
- 7.4 The highest levy rate, the 'production levy', is to be paid in respect of any offshore production licence held by the licensee at the 'relevant time' (as defined in regulation 2) and in respect of which the criteria at regulation 3(2) is satisfied (that is, the licensee is entitled to erect or carry out works either in the licensed area or elsewhere for the purpose of getting petroleum from that area or conveying it to a place on land, or to get petroleum from that area other than in the course of searching for petroleum, drilling or testing wells).
- 7.5 A lower levy rate, the 'non-production levy', is to be paid in respect of (i) any offshore exploration licence held by a licensee at the relevant time or (ii) any offshore production licence held by a licensee at the relevant time in respect of which the criteria at regulation 3(2) is not satisfied.
- 7.6 Licensees which at the relevant time are micro-enterprises and which hold an innovate licence in Phase B of its initial term are entitled to an 80 per cent discount on the non-production levy in respect of that licence.
- 7.7 Licensees which at the relevant time are micro-enterprises and which hold either a promote licence in its promote period or an innovate licence in Phase A of its initial term are entitled to a 90 per cent discount on the non-production levy in respect of that licence.
- 7.8 The levy rates will be calculated using the formula at regulation 5, which divides the OGA's projected leviable costs for the charging period between offshore licensees.
- 7.9 That formula operates on the following basis.
- 7.10 Production levy = $C \times 0.89 / P$
Non-production levy = $\frac{C \times 0.11}{NP100 + \{NP90 \times 0.1\} + \{NP80 \times 0.2\}}$
- Abbreviations
- C = £26,420,000 (OGA levy 2019/20)
- P = Number of Production Licences at 1 April 2019
- NP100 = Number of Non-production Licences which do not qualify for a discount at 1 April 2019
- NP90 = Number of Non-production Licences which qualify for a 90% discount at 1 April 2019
- NP80 = Number of Non-production Licences which qualify for an 80% discount at 1 April 2019
- 7.11 Once those levy rates have been determined, the OGA will issue invoices to relevant licensees. Those invoices are required to be settled within 30 days. If a licensee does not pay the levy within that period, the OGA is entitled to the unpaid amount as a civil

debt (and will charge interest in respect of the period during which it was outstanding).

- 7.12 Part 3 of the Regulations: OPRED charges the offshore oil and gas industry for activities undertaken in relation to environmental legislation. This ensures that, where possible, the costs for providing services to the oil and gas industry are recovered from that industry rather than being passed on to the taxpayer. The existing fee scheme 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 or hours worked by non-specialists on cost recoverable activities multiplied by £82. Environmental specialists are technical staff who carry out the relevant functions of the Secretary of State and non-specialists are administrative staff.
- 7.13 The current hourly rates have been in place since June 2016, although the power to charge fees relating to consents to locate under the Energy Act 2008 has only been in force since December 2016, and in relation to the Energy Savings Opportunity Scheme Regulations 2014 since April 2017. Following a review of the costs base for the Department's environmental regulation of the offshore oil and gas industry, the Department concluded that there have been changes to the cost base which are not reflected in the current hourly rates, being applied to the provision of services to industry.
- 7.14 The hourly rates 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, information technology, office services, etc.), and corporate services (such as human resources, 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 potentially cost recoverable activity and removes the hours spent on leave, bank holidays, staff management, etc.
- 7.15 The new hourly rates are £183.00 for environmental specialists and £98.00 per hour for non-specialists and OPRED intends that they should take effect from 1 April 2019.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are currently no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 This instrument does not require a consultation.
- 10.2 The offshore oil and gas industry were informed by letters sent out in February 2019 of OPRED's plans to increase the hourly rates. Updating the hourly rates to be applied

and a review of the chargeable services provided will be undertaken at least annually, and the industry will be informed of any changes prior to their implementation.

11. Guidance

- 11.1 Once the instrument comes into force, the OGA will issue notifications to licensees with relevant instructions on payment.
- 11.2 The existing Guidance Notes to Industry on OPRED's environmental management regime will be revised in light of the Regulations and an updated version placed on the GOV.UK website in March 2019.

12. Impact

- 12.1 The impact of Part 2 on business is restricted to licensees holding offshore petroleum licences (as at 1 April 2019). Other than the inclusion of additional funding for the cost of establishing and maintaining the National Data Repository (in 2018/19 this was for a partial year, but will be included in full for 2019/20), the total amount of levy paid by licensees holding offshore petroleum licences under the 2018 Levy Regulations is not significantly different in real terms to the amount of levy payable under these Regulations.
- 12.2 The Part 3 amendments impose no significant impact on business. The amendments increase the fees paid by the industry by a small amount, but only to the extent required for OPRED to recover its eligible costs.
- 12.3 There is no, or no significant, impact on charities or voluntary bodies.
- 12.4 There is no, or no significant, impact on the public sector.
- 12.5 An Impact Assessment has not been prepared for this instrument because no or no significant impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 In Part 2, the levy includes a discount for micro-enterprises that hold certain types of licence.
- 13.3 In Part 3, the legislation applies to activities that are undertaken by small businesses, as the environmental regulations apply to all offshore operators and owners. The basis for the final decision on what action to take to assist small businesses is that 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. All businesses operating offshore, regardless of their size, are subject to the same regulatory regime and receive the same level of service to ensure that they continue to provide a high level of protection for the marine environment.
- 13.4 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that as a result of section 28(3)(a) of the Small Business Enterprise and Employment Act 2015, instruments (like this instrument) which contain only provisions relating to a levy or other charge are not subject to the requirement to contain a review clause.

15. Contact

- 15.1 Duncan Ruddy at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 3350 or email: duncan.ruddy@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Helena Charlton, Deputy Director for Oil and Gas Exploration and Production, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Right Honourable Claire Perry MP, Minister of State for Energy and Clean Growth at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.