

EXPLANATORY MEMORANDUM TO

THE OIL AND GAS AUTHORITY (LEVY AND FEES) REGULATIONS 2023

2023 No. 228

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His 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 2 of this instrument is to impose a levy on the holders of offshore petroleum licences, to fund certain functions carried out by the Oil and Gas Authority (“OGA”), whose business name is the North Sea Transition Authority (“NSTA”), during the period from 1 April 2023 to 31 March 2024. The purpose of Part 3 of this instrument is to amend the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016/904), to make changes in respect of fees charged by the OGA for some applications that the OGA already deals with and to introduce fees for some additional types of application. Specifically, the amendments in Part 3 introduce three new fees which are to be timesheet-based in all cases; they change four existing fixed fees so that these are payable as a fixed fee in simpler cases and as a timesheet-based fee in complex cases; and they introduce six new fixed fees.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The changes to fees in Part 3 of this instrument were identified as being necessary following an internal review carried out by the OGA and a public consultation¹. The intention of the changes is to more accurately reflect the actual costs of the services that the OGA provides.
- 3.2 An amended approach to charging fees for complex applications for production and flaring and venting consents could, for some applicants, lead to an increase in fee that would be charged compared to the current approach. This increase would not be based on the rate of inflation.
- 3.3 To explain this further, application fees for consents for production of petroleum and for flaring and venting have required the payment of fixed fees. However, providing consent for some production and flaring and venting applications is becoming increasingly complex. There is a risk that any additional time the OGA spends on these applications could be subsidised by other applications or the levy, which is contrary to the principles of Managing Public Money. Therefore, these Regulations introduce a timesheet-based fee for consideration and authorising of complex applications for production, flaring and venting consents, in a similar way as for complex applications for pipeline works authorisations (PWA). Complex applications

¹ The OGA Consultation - <https://www.nstauthority.co.uk/news-publications/consultations/2022/consultation-on-proposals-on-nsta-fees-and-data-confidentiality-periods/>

for production, flaring and venting consents would be expected to take more than two staff days, rather than four staff days in the case of complex PWA applications.

- 3.4 The OGA would provide notice within seven days of receipt of an application for consent to production, flaring or venting if the OGA considers that the application is complex, and therefore subject to a timesheet-based fee.

4. Extent and Territorial Application

- 4.1 The 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 (that is, the territorial sea adjacent to the United Kingdom and any area designated by order under the Continental Shelf Act 1964).
- 4.3 The territorial application of Part 3 of this instrument (the OGA fee provisions) is Great Britain (excluding the Scottish onshore area and the Welsh onshore area as defined in section 8A of the Petroleum Act 1998) and outside Great Britain in relevant waters (that is, the territorial sea adjacent to the United Kingdom and any area designated by order under the Continental Shelf Act 1964).

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 Fees) Regulations 2022 (“the 2022 Regulations”) which imposed a levy in respect of the charging period beginning on 1 April 2022 and ending on 31 March 2023.
- 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 2023 and ending on 31 March 2024. 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. The fees that the OGA may charge are set out in the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016/904), as last amended by the Oil and Gas Authority (Levy and Fees) Regulations 2022 (S.I. 2022/204).
- 6.5 Part 3 of the instrument introduces new fees for additional activities, relating to the UK petroleum industry and carbon dioxide storage industry, as detailed in section 7, below.

7. Policy background

What is being done and why?

- 7.1 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 undertakings who hold petroleum and carbon dioxide appraisal and storage licences.
- 7.2 Some of the OGA's costs are recovered through fees for the delivery of specific services to individual undertakings. However, the majority of the OGA's costs (including costs for its energy transition work) 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 UK petroleum, 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.

Part 2 of the Regulations

- 7.3 Section 13 of the Energy Act 2016 enables the Secretary of State to make regulations to provide for a levy to be imposed on petroleum licence holders. This is done annually, with the levy providing the OGA's main source of income.
- 7.4 These Regulations make provision for calculating and imposing a levy on licensees in respect of the period beginning on 1 April 2023 and ending on 31 March 2024 ("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 (and, in addition, the cost associated with the provision of tribunals to consider appeals against decisions of the OGA by the Lord Chancellor).
- 7.5 This approach follows the approach taken in the 2022 Regulations. It enables the OGA to apportion the levy between offshore petroleum licence holders using the licence information for the relevant charging period and allows for full cost recovery. This will mean that the OGA remains properly resourced and able to carry out its statutory function to act in accordance with the OGA Strategy, which has the central obligation of securing that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters; and, in doing so, taking appropriate steps to assist the Secretary of State in meeting the UK's Net Zero target.
- 7.6 As with the 2022 Regulations the methodology provides for four different rates for offshore petroleum licence holders: a rate for a production levy, a rate for a non-production levy, and the rate for a non-production levy discounted by 80% or by 90% in certain cases.
- 7.7 Non-producing innovate licences in phase B of their initial term held by a micro-enterprise will be subject to the non-production levy with an 80% discount.
- 7.8 Non-producing promote licences in their 'promote period' and innovate licences in phase A of their initial term that are held by a micro-enterprise will be subject to the non-production levy with a 90% discount. (The terms "innovate licence", "promote licence" and "promote period" are defined in regulation 4(6).)
- 7.9 The OGA will determine the status of an offshore petroleum licence as at 12.01am on 1 April 2023 and that status will determine which levy rate will be applied for that charging period.

- 7.10 If on that date a holder of an offshore petroleum licence has been granted a development and production consent, then they will be issued an invoice for the production levy. If this is not the case, then they will be issued with an invoice for the non-production levy.
- 7.11 The OGA will determine if licensees are eligible for the discounted non-production leviable amounts by assessing the number of staff and revenue against the definition of “micro-enterprise” contained in regulation 4(6), taking account of related provisions. Further to regulation 4(4), a licensee does not qualify to pay the levy at a discounted rate if the licensee has any group undertakings (meaning parent or subsidiary undertakings of the licensee, or other subsidiary undertakings of parent undertakings of the licensee) where the total number of employees of the licensee and its group undertakings is 10 or more, and if the collective turnover or balance sheet assets of the licensee and its group undertakings exceeds the amounts set out in paragraph (a) and/or (b) of the definition of "micro-enterprise". Also, further to regulation 4(5), if the licence is held by more than one undertaking, then each one of the undertakings holding the licence must individually qualify as a “micro-enterprise” for the discount to apply. This change is being made to ensure licensees pay the appropriate levy rate.
- 7.12 By analysing revenue and staff data, the OGA will make determinations of a company’s status and will calculate the levy amounts and issue invoices based on that licence determination. Invoices will be required to be settled within 30 days.

Part 3 of the Regulations

- 7.13 The Department is making Part 3 of these Regulations to recover costs by means of direct fees for specific activities in line with the established principle across regulation and service delivery of 'user pays', where the regulator recovers its costs from those benefitting directly from its services. The current fees and charges regulations are the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016/904) (the “2016 Fees SI”). The 2016 Fees SI was laid under section 12 of the Energy Act 2016, which gives the OGA power to charge such fees as determined and payable in accordance with regulations made by the Secretary of State.
- 7.14 The OGA regularly reviews the fees that it charges. As well as reviewing the rates of existing fees, the OGA also considers the rationale for and calculation of each fee to ensure they remain robust. In 2021, following a consultation, the OGA amended the methodology for setting some fees and introduced fees for additional services. In 2022 the fee rates for specific services were amended. The OGA has now undertaken another review of the fees it charges. Further to that review, the OGA carried out a public consultation exercise between July and September 2022 on potential new and amended fees. Following the consultation process, the OGA has decided to introduce new fees for services provided to holders of carbon dioxide appraisal and storage licences and an amended fee for complex production, flaring and venting consents. The amended fee will introduce a timesheet-based fee for complex applications (detailed in the "Matters of special interest to Parliament” section, above).

Applications relating to carbon storage

- 7.15 The OGA is the licensing and permitting authority for offshore carbon storage, and stewards carbon dioxide appraisal and storage licensees to progress towards carbon dioxide injection. At present the OGA charges fees for the application for carbon dioxide appraisal and storage licence and carbon dioxide storage proposal approval.

OGA and industry activity in this area has increased, however, and is expected to continue to do so in line with the Government's carbon storage targets, including provision of services that, whilst provided for in legislation, have not been or have rarely been used in the past. The OGA, therefore, expects increasingly to provide additional services where no fees are currently charged, though there are currently fees for analogous services provided to petroleum licence holders. These Regulations will remedy that by introducing fees to fund the provision of these services.

- 7.16 The carbon storage licence fees will cover the costs of providing the service and do not contain any profit element or cross-subsidisation and are based on OGA analysis of equivalent oil and gas services. Most of the proposed fees are fixed fees, except for variations of a carbon storage permit, amendments to carbon storage work programmes, and amendments to carbon storage monitoring plan. These fees will be timesheet based, similar to those for amendments for development and production programmes for oil and gas fields. Fee rates will be reviewed on a regular basis, as with all other fees charged by the OGA.

Complex applications for production and flaring and venting consents

- 7.17 Please refer to the "Matters of special interest to Parliament" section, above.

8. European Union Withdrawal and Future Relationship

- 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 The OGA conducted a public consultation between 19 July and 9 September 2022 on the introduction of new fees (please refer to footnote 1). Two responses were received from trade bodies which were broadly supportive of the proposed fees. The OGA set out in its consultation response that it would seek to have the fees introduced as per the consultation.
- 10.2 UK oil and gas industry representatives are routinely informed before new and amended fees come into effect. Additionally, the new and amended fees will only be charged where provision of the services in question start on or after 1 April 2023, with applicants informed of the new rates.
- 10.3 The OGA have been consulted and agree with the changes made by the Regulations.

11. Guidance

- 11.1 Once the instrument comes into force, the OGA will issue invoices to licensees containing relevant instructions on payment.

12. Impact

- 12.1 There is no, or no significant, impact on charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because a small number of businesses will be affected and the impacts on affected businesses will be limited. More specifically, the impact of Part 2 on business is restricted to licensees holding offshore petroleum licences (as of 1 April 2023), and the impact of Part 3 is restricted to companies making applications identified in section 12 of the Energy Act 2016. The new and amended fees reflect the costs of the OGA providing the relevant services. Additionally, no or no significant impact on the voluntary or public sectors are foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses, other than micro-enterprises. To minimise the impact of the requirements on micro-enterprises, the approach taken is that in Part 2, the levy includes a discount for micro-enterprises that hold certain types of offshore petroleum licence. In Part 3, new fees will be paid by companies carrying out activities identified in section 2 of the Energy Act 2016. The proposed charges would not fall disproportionately on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is based off the approach used in previous years. The discount to the levy for micro-enterprises holding certain types of offshore petroleum licence was introduced in April 2017 following a consultation in 2016. With variations in the calculation methodology, micro-enterprises have been eligible for a discount since then.

14. Monitoring & review

14.1 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 charges are not subject to the requirement to contain a review clause.

15. Contact

15.1 Zachary Banks at the Department for Energy Security and Net Zero Telephone: 020 7215 1693 or email: zach.banks@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rebecca Hewstone, Deputy Director for Oil and Gas Exploration and Production, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Graham Stuart MP, Minister of State for Energy and Climate at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.