

## EXPLANATORY MEMORANDUM TO

### THE OIL AND GAS AUTHORITY (LEVY AND FEES) REGULATIONS 2024

2024 No. 241

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 offshore petroleum licence holders 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 2024 to 31 March 2025. The purpose of Part 3 of this instrument is to revise existing fee rates for the delivery of specific services by the OGA.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The OGA handles approximately 2,500 applications subject to fees each year. In line with the principles of paragraph 6.2 of HM Treasury’s Managing Public Money, these fees are solely to cover the full costs of providing the service, and do not contain any profit element or cross-subsidisation.
- 3.2 The revised fee rates (increases as well as decreases) are not based on inflation but are due to changes in the amount of staff time and overheads per staff member required to provide the relevant services (including the costs of providing the online portals used for the submission and processing of applications), together with, in some cases, changes in the staff grades necessary to provide the services. Specific reasons for the revisions to existing fee rates made by these Regulations are set out as follows:
  - (a) Change of licensee and operator consents (including carbon storage licences) - due to increase in staff time and staff grade required to undertake the review of potential new licence holders and operators.
  - (b) Metering and flow calibration inspections - the increase in fee amounts reflects the travel costs required for inspections, with in-person inspections increasing since 2021-22.
  - (c) Pipeline Works Authorisations and variations - the increases are due to changes in the staff grades carrying out the work to review the application.
  - (d) Well and drilling permits - reflects that the staff time required to consider an average application has changed.
  - (e) Other changes - the remaining changes to fee rates (increases as well as decreases) are due to changes in the amount of staff time and/or overheads per staff member required to provide the relevant service.

#### **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 (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 2023 (S.I. 2023/228) (the “2023 Regulations”) which imposed a levy in respect of the charging period beginning on 1 April 2023 and ending on 31 March 2024.
- 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 2024 and ending on 31 March 2025. 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) (the “2016 Fees SI”), as last amended by the 2023 Regulations.
- 6.5 These fee rates have been reviewed and Part 3 of the instrument shows revised rates.

#### **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.
- 7.3 This statutory instrument will enable the OGA to impose its levy for the period beginning on 1 April 2024 and ending on 31 March 2025, and revise existing fee rates.
- 7.4 All legislation is in scope of the statutory duty contained in the Environment Act 2021 for Ministers of the Crown to have due regard to the Environmental Principles Policy Statement when making policy. This statutory instrument has been considered in that context and it has been concluded that the proposed revisions to the fee rates will have no environmental effects. As set out in the Environment Act 2021, the requirement to have due regard to the Environmental Principles Policy Statement does not apply to policy so far as relating to taxation, which encompasses levies.

#### *Part 2 of the Regulations*

- 7.5 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.
- 7.6 These Regulations make provision for calculating and imposing a levy on licensees in respect of the period beginning on 1 April 2024 and ending on 31 March 2025 ("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).
- 7.7 This approach follows the approach taken in the 2023 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.
- 7.8 As with the 2023 Regulations the methodology provides 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.
- 7.9 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.
- 7.10 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).)

- 7.11 The OGA will determine the status of an offshore petroleum licence as at 12.01am on 1 April 2024 and that status will determine which levy rate will be applied for that charging period.
- 7.12 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.
- 7.13 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 is to ensure licensees pay the appropriate levy rate.
- 7.14 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***

- 7.15 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 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.
- 7.16 It is the policy of the OGA to regularly review the rates of the fees it charges for its services, typically every two years. Revised rates were last introduced in April 2022; these fees have now been reviewed by the OGA, with the latest revised rates included in this statutory instrument. Given that some of the proposed increases to fee rates are above inflation, details of the fee changes are set out in section three.

## **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 have been consulted and agree with the changes made by the Regulations. As the amounts of the levy and fees relate to actual costs of delivering services, no wider public consultation has been carried out. Representatives of the UK oil and gas and carbon storage industries will be informed before the new fee rates come into effect. Additionally, the new fee rates will only be charged where provision of the services in question starts on or after 1 April 2024, with applicants informed of the new rates.

## **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 impacts 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, amended fees will be paid by companies carrying out activities identified in section 12 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 on 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 Rob Radford at the Department for Energy Security and Net Zero - telephone: 0161 504 3456 or email: [robert.radford@energysecurity.gov.uk](mailto:robert.radford@energysecurity.gov.uk) -, can be contacted with any queries regarding the instrument.
- 15.2 Michael Brannan, Deputy Director for Offshore Energy Transition and Coal Legacy 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 Security and Net Zero at the Department for Energy Security and Net Zero, can confirm that this Explanatory Memorandum meets the required standard.