EXPLANATORY MEMORANDUM TO

THE ADDITIONALLY-DEVELOPED OIL FIELDS ORDER 2013

2013 No. 2910

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ('HMRC') and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments

2. Purpose of the instrument

2.1 Additionally-developed oil fields ("ADOF") are eligible for a tax relief (referred to as a field allowance). An oil field becomes an ADOF when a project meeting such conditions as the Commissioners for Her Majesty's Revenue and Customs may specify is authorised in relation to that field. This Order specifies the conditions which a project must satisfy in order for that oil field to be an ADOF; in addition it specifies how the amount of field allowance for an ADOF is to be calculated, and makes certain minor and consequential amendments.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 This Order is treated as having come into force on 1 April 2013, this is the date that the remaining amendments made to Part 8 of the Corporation Tax Act 2010 by Schedule 22 to the Finance Act 2012 come into force by virtue of the Finance Act 2012, Schedule 22 (Reduction of Supplementary Charge for Certain Oil Fields) (Appointed Day) Order 2013 (S.I. 2012/744 C. 34). This will allow companies with an expected year of first production of 2013 in relation to an ADOF, to activate a field allowance for an accounting period beginning on or after 1 January 2013 and ending on or after 1 April 2013. Authority for this limited retrospective effect is given by section 349(3)(b) of the CTA 2010.

4. Legislative Context

4.1 Part 8 of the Corporation Tax Act 2010 ("CTA 2010") puts a "ring fence" around a company's profits from oil and gas production to ensure they are not reduced by losses the company may incur in other areas of its business. Ring fence profits are subject to corporation tax and to an additional tax called the supplementary charge.

4.2 When a field meets certain criteria a field allowance is available to a company that is a licensee in the field. The field allowance reduces the ring fence profits to which the supplementary charge applies. The field allowance

was introduced by Schedule 44 to the Finance Act 2009 (c.10) and is now found in Chapter 7 of Part 8 of the CTA 2010.

4.3 The field allowance regime currently applies to any oil field that satisfies one of a number of descriptions of "eligible oil field" that are set out in sections 349A to 355C of the CTA 2010, while section 356 CTA 2010 specifies the amount of the total field allowance to which a particular description of oil field is entitled.

4.4 Section 350 of the CTA 2010 provides that an eligible oil field is one which meets the requirements for an "additionally developed oil field" or a "new oil field". Section 349A of the CTA 2010 states that an oil field is an "additionally-developed oil field" where a national authority has authorised a project in relation to that field and that project meets such conditions as the Commissioners for Her Majesty's Revenue and Customs may specify.

4.5 This Order specifies the conditions that a project must satisfy in order for that oil field to be an ADOF; it takes effect in relation to project authorised on or after 7 September 2012 and as such, (and in accordance with section 349(3)(b) of the CTA 2010), the Order may have effect in relation to accounting periods both before and after the date upon which it comes into force.

4.6 This Order is the first exercise of the power in section 349A and, as at the date at which this Order is to take effect, there are no ADOFs in existence; as such the CTA 2010 makes no provision for how the amount of the field allowance for an ADOF is to be calculated.

4.7 Section 349(2) of the CTA 2010 enables the Commissioners for Her Majesty's Revenue and Customs to make provision about the amount of the total field allowance for any description of eligible oil field. This Order inserts a new section 356A into the CTA 2010 which specifies the way in which the total field allowance for an ADOF is to be determined.

4.8 Finally, this Order makes certain consequential amendments to Chapter 7 of Part 8 of the CTA 2010; firstly, to specify the time at which a company holding an interest in an ADOF is able to benefit from the field allowance and, secondly, to amend section 349A(1) of the CTA 2010 so that the language of that provision more accurately reflects the way in which projects are approved.

4.9 The intention to make provision for ADOF (also referred to as "brownfield" sites) within the field allowance regime was first announced at Budget 2012, while the conditions to be satisfied by a project for a field to be an ADOF were announced by HM Treasury on 7 September 2012.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom, and any area designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964 (c.29).

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

> In my view the provisions of the Additionally-Developed Oil Fields Order 2013 are compatible with the Convention rights.

7. Policy background

What is being done and why?

7.1 The policy aim of the field allowance is to provide an incentive to increase the economic production of oil and gas in the UK Continental Shelf by encouraging the development of technically or commercially challenging oil and gas fields. It does this by a statutory mechanism which operates so as to provide that some profits from such fields are subject to a lower rate of taxation than that to which oil extraction activities would usually be subject. Maximising the economic recovery of the UK's indigenous hydrocarbons benefits UK taxpayers and supports the security of the UK's energy supply.

7.2 This instrument furthers the policy aim of the field allowance by providing an allowance for commercially challenging projects in existing oil and gas fields. The Government believes that introducing an allowance for certain projects in existing fields will contribute to the economic production of oil and gas by facilitating additional investment.

7.3 This instrument inserts the changes to the field allowance legislation in the primary legislation while retaining in the instrument the conditions that a project must satisfy for a field to be an ADOF.

Consolidation

7.4 At present there are no plans to consolidate Chapter 7 of Part 8 of the CTA 2010.

8. Consultation outcome

8.1 HMRC has followed the consultation procedure set out in the Tax Consultation Framework.

8.2 Consultation on the form of the draft legislation has been undertaken with the oil and gas industry tax representative bodies over a 4 week period. ending on 26 April 2013. The draft legislation was also published on the HMRC website. Following responses from industry a further version of the draft legislation was made available to industry tax representative bodies on 27 June 2013. Some further comments were received and, as a result, minor drafting amendments were made.

9. Guidance

9.1 HMRC will publish guidance on this Order shortly.

10. Impact

10.1 No regulatory impact on business, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Impact Note covering this instrument was published on 23rd October 2012 on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation provides for a relief from a tax to which all oil and gas production companies operating in the UK or UK Continental Shelf are already subject. It is not considered that legislation providing for this relief from tax would have any adverse impact upon small business.

12. Monitoring & review

12.1 These Regulations will not be subject to specific monitoring or review although the field allowance legislation is regularly reviewed to ensure it meets its policy objectives.

13. Contact

13.1 Tony Chanter at HMRC (Tel: 03000 589073 or email: tony.chanter@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.