EXPLANATORY MEMORANDUM TO

THE OIL AND GAS AUTHORITY (OFFSHORE PETROLEUM) (DISCLOSURE OF PROTECTED MATERIAL AFTER SPECIFIED PERIOD) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Oil and Gas Authority (OGA) has powers under Chapter 3 of the Energy Act 2016 (c.20) to obtain petroleum-related information and samples from certain persons engaged in offshore petroleum production and related activities. These regulations set out the time at or after which the OGA (or a subsequent holder) may publish or otherwise make this material available, enabling its use by industry generally and the wider public.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Part 1A of the Petroleum Act 1998 (c.17) establishes the principal objective of maximising the economic recovery of UK petroleum (meaning that beneath relevant UK waters), requires the OGA to produce a strategy for enabling the objective to be met and requires the OGA and certain relevant persons to act in accordance with that strategy. Part 2 of the Energy Act 2016 provides the OGA with the full functions and powers it needs to give effect to the principal objective. Chapter 3 of that Act gives the OGA powers to obtain petroleum-related information and samples (as defined in section 27). This could be through an information and samples plan as required under section 31 of that Act or pursuant to a notice under section 34.

4.2 Section 61 of that Act prohibits the OGA (or a subsequent holder) from disclosing information or samples obtained by the OGA under Part 2 ("protected material") (as other functions of the OGA under Part 2 may result in the acquisition of such material). Section 66 provides an exemption to that prohibition in respect of material obtained under Chapter 3 (only). These regulations implement section 66 by specifying the time at, or after which, certain protected material may be published or otherwise made available to the public.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The [Minister of State for Energy and Clean Growth] has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Oil and Gas Authority (Offshore Petroleum) (Disclosure of Protected Material after Specified Period) Regulations 2018 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The 2014 Wood Review[1] into the future of the UK's offshore petroleum industry recommended that the Government, industry and the regulator commit to a principal objective of maximising economic recovery of the UK's remaining offshore petroleum reserves (MER UK). One of the Review's key recommendations for achieving MER UK was to enable timely and transparent access for industry to petroleum-related information and samples. Such information and samples for example include data about reservoirs or pieces of strata created or acquired in the course of exploration, drilling or production under an offshore petroleum licence, or about offshore infrastructure and installations. This can be very useful to the wider petroleum industry, other industries, academia and the public, for a variety of purposes.

7.2 The regulator (OGA) believes that improvements to information retention and disclosure processes are critical to achieving the statutory objective of MER UK, and could unlock a potential £140billion additional revenue from oil and gas activity. The Government has therefore worked together with experts in OGA (who have also consulted stakeholders including in industry and academia), to develop these regulations, which are intended to improve access to petroleum-related information and samples in conjunction with provisions in the Energy Act 2016 and previous regulations, as outlined below.

7.3 The Oil and Gas Authority (Offshore Petroleum) (Retention of Information and Samples) Regulations 2018 (S.I. 2018/514) set out the information and samples which certain persons engaged in offshore petroleum production and related activities must retain, and for how long. The OGA's powers to obtain petroleum-related information and samples (including but not necessarily limited to that covered by the aforementioned regulations) are set out in Chapter 3 of the Energy Act 2016. Section 61 of that Act places a general prohibition on disclosure of protected material, subject to certain exemptions outlined in Chapter 6 of the Act. Section 66 allows for publication of certain protected material obtained by the OGA or a subsequent holder at, or after, a certain time, which is now specified in these regulations.

7.4 The protected material to which the regulations apply includes the following:

[1] https://www.gov.uk/government/groups/wood-review-implementation-team#the-wood-review

- general information about the circumstances of geological surveys conducted as part of the exploration permitted under an offshore licence;

- information relating to such a survey carried out by or on behalf of a production licence holder (i.e. a survey seeking to ascertain the prospects within the area of the production licence) or for commercial purposes (i.e. for the purpose of selling the results to third parties for their further use);

- general information relating to the circumstances of wells drilled under offshore licences such as the location, construction and operation of such a well and any petroleum encountered during activities other than production;

- information about petroleum production (and associated activities such as the flaring or venting of gas during production) which is consolidated (either by reference to the field in question or on a monthly basis) as well as non-consolidated information which provides a more detailed picture of the quantities and chemical composition of the petroleum being produced from individual wells;

- computerised models, which utilise various sources of information (e.g. surveys, production information, geological reports) to model the subsurface or a reservoir over time in order to assess prospects and inform operations over the course of production;

- the dates on which production starts, permanently ceases and any description of any elements or compounds in the petroleum which may affect production or transportation of petroleum (i.e., corrosive or hazardous substances which may necessitate particular equipment or activities to process the petroleum or may limit the pipelines through which it can be transported or the terminals which can receive it);

- information relating to the geotechnical engineering or analysis required to erect the installations or other structures needed for production which is contained in a development plan (as required under an offshore licence);

- samples of petroleum, other fluids or strata (such as drilling cuttings or core samples) acquired or created when drilling or producing from a well;

- general information about the circumstances of a pipeline for the construction or use of which the OGA has granted authorisation, the date of the actual or expected cessation of use of such a pipeline, the date of its removal and information about the circumstances of deposits of material on the seabed during the construction or use of such a pipeline;

- general information about the circumstances of installations and infrastructure (other than pipelines) used in petroleum production as well as more extensive information about the location, construction and operation of such installations or infrastructure which are no longer used for production.

7.5 In determining the appropriate time period after which disclosure of protected material is permitted under these regulations, the Secretary of State has had regard to the factors listed in section 66(5) of the Energy Act 2016. These include allowing the owners of protected material a reasonable time to satisfy the purpose for which it was created or acquired, the risk of discouraging such activity in future, and the benefit of disclosure to the petroleum industry. For example, geological survey or production information can be used to understand adjacent or analogous prospects and as such support further petroleum exploration and extraction, including in areas currently considered hard to reach, or to avoid drilling wells at significant cost for no benefit.

Geological information and information about pipelines, installations and infrastructure can inform consideration of potential alternative uses, such as Carbon Capture Utilisation and Storage (CCUS) and inform decision making and potential cost reduction when decommissioning of infrastructure is planned. However, some of this information is created for commercial purposes at considerable expense, such as undertaking geological surveys across a broad area. International experience shows that disclosing such material too early could lead to a decline in investment in such research, which could be detrimental to the achievement of the MER UK strategy. Similarly, detailed production information could be commercially sensitive, and as such this will be kept confidential for longer.

7.6 In most cases the regulations will not apply to information or samples created or acquired before the regulations come into force. In the case of geological survey information, the regulations will apply where the end of the calendar year in which the survey is conducted occurs after the commencement of the regulations.

7.7 Where the regulations permit the publication of information on the determination of the licence, in cases of partial determination (i.e. where the licence is determined in respect of only part of the licence area), only the information relating to that part of the licence may be published (unless/until the licence is determined in respect of all areas).

7.8 Whilst care has been taken to ensure that the specified time (after which publication is permissible) is set appropriately, the regulations are permissive, meaning that the OGA is not obliged to publish any of the information. Companies may therefore make representations to the OGA if they have concerns that the disclosure of information otherwise permitted by the regulations would be particularly detrimental in the circumstances. In considering any such representations OGA would need to take into account the impact of any further delay in publication on achieving the MER UK objective and the anticipated benefits identified by the Wood Review from swift and transparent access to information.

Consolidation

7.9 There are no plans to consolidate the legislation at this time.

8. Consultation outcome

8.1 A call for evidence was held on implementing the Wood Review recommendations[2] prior to the introduction of the Energy Act 2016, which included broad principles on the disclosure of petroleum-related information and samples. In response to this, industry supported the need for access to timely and transparent data, but noted that the scope of the data should not be construed too narrowly. There were specific calls for clarity and guidance around the requirements to be placed on industry and the implications for them. The Energy Act 2016 included a broad power with the intention that the necessary detail would be provided in regulations.

8.2 An eight week open consultation on the policy proposals underpinning these regulations was held by OGA in July-August 2017. Stakeholders were alerted by email and social media, and open meetings were held in London and Aberdeen with those who will be impacted by the regulations, in order to explain the proposals and allow feedback. Thirty four formal responses to the consultation were received,

[2] https://www.gov.uk/government/groups/wood-review-implementation-team#call-for-evidence

including from oil and gas companies of varying sizes, the trade association, contractors and service providers, and other interested companies and individuals. Feedback was broadly supportive but some concerns were raised during the course of consultation (for example about the proposed immediate release of certain types of information). As a result, the regulator subsequently worked with industry and representative bodies to understand the points raised and made some adjustments to its proposals (for example to exclude more subjective data from immediate release). OGA has now published a formal consultation response[3]. The results of the OGA's consultation with industry formed the basis of the policy implemented by these regulations. No further consultation was carried out by BEIS, as this would be unnecessary having had regard to that carried out by OGA (as permitted under section 66(4) of the Energy Act 2016).

9. Guidance

9.1 OGA will issue guidance to industry on its application of these regulations before they come into force.

10. Impact

10.1 The impact on business is expected to fall under the £5million threshold for preparing an Impact Assessment. There are existing conditions in petroleum licences which permit the publication of certain information and samples after set periods, so although exact terms and use vary the direct impact on business from disclosure should be marginal. There will be some familiarisation costs with affected businesses seeking to understand the impact of the regulations on them. There may be some distributional impact; for example foregone revenues if OGA publishes information that industry would otherwise purchase from a company; however this is expected to be minimal due to the nature of the information, the timeframes involved, and the alignment with international practices. Where there are such impacts they may be offset by avoided cost to companies assessing potential prospects.

10.2 The impact on the public sector includes the time taken to prepare these regulations and associated guidance. OGA will administer the disclosure of information and samples as permitted by these regulations. This activity is included in its corporate plan. The majority of the OGA's running costs are met through an annual levy on holders of offshore petroleum licences.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation would apply to small businesses in so far as they are the subsequent holders of protected material to which the regulations apply. The regulations are permissive, however, and do not require anyone to publish information. Furthermore, the protected information to be disclosed may have originated from a small business, and there could be distributional impacts as outlined in the section above.

11.2 No specific action has been taken to minimise the impact of the requirements on small businesses (employing up to 50 people), as these are not expected to be significant.

[3] https://www.ogauthority.co.uk/news-publications/consultations/2018/oga-response-to-consultation-on-proposed-regulations-for-the-retention-and-disclosure-of-information-and-samples/

12. Monitoring & review

12.1 No review provision is included, as the regulations govern the actions of the OGA rather than industry. The overall effectiveness of the OGA in achieving its objectives is subject to regular review under the provisions set out in section 16 of the Energy Act 2016.

13. Contact

13.1 Kathryn Aggarwal at the Department for Business, Energy and Industrial Strategy Telephone: 0300 068 6969 or email: kathryn.aggarwal@beis.gov.uk can answer any queries regarding the instrument.