EXPLANATORY MEMORANDUM TO

THE POLLUTION PREVENTION AND CONTROL (FEES) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 No. XXXX

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 the Instrument is to revise the hourly rates used to determine the fees which are payable by the UK offshore oil and gas industry ("the offshore hydrocarbons industry") and the North Sea Transition Authority to BEIS's Offshore Petroleum Regulator for Environment and Decommissioning ("OPRED") for certain regulatory activities that are undertaken by OPRED in relation to the environmental management of the offshore hydrocarbons industry.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Instrument amends four earlier instruments, which contain provision for, or in connection with, the charging of fees or other charges that were made under s2(2) of the European Communities Act 1972 and / or s56 of the Finance Act 1973. The changes to fees are not being made to reflect changes in the value of money. Under paragraph 12(1) of Schedule 7 and paragraph 38 of Schedule 7 to the European Union (Withdrawal) Act 2018, this Instrument therefore may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

4. Extent and Territorial Application

4.1 The extent of the Instrument is the United Kingdom.

4.2 The Instrument amends four earlier instruments, and the amendments made by the Instrument have the same extent and territorial application as the legislation they amend. All four of the amended instruments extend to the whole of the United Kingdom. The territorial application of the four instruments amended by this Instrument varies. In general, they apply to some or all of the territorial sea adjacent to the United Kingdom, to the UK sector of the Continental Shelf (i.e. the area designated for the time being by order under section 1(7) of the Continental Shelf Act 1964, section 41(3) of the Marine and Coastal Access Act 2009 or section 1(5)(b) of the Energy Act 2008), and in some cases to some or all onshore areas of the United Kingdom. In each case, the instruments only apply to certain types of activity or project and the amendments only affect the fees for offshore regulatory functions conducted by OPRED as explained in paragraph 4.4 and outlined in paragraph 6.2.

4.3 In summary, the extent and territorial application of the amended instruments is as follows**:**

(a) The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended) - this instrument extends to the United Kingdom and its territorial application is the UK territorial sea and the UK sector of the Continental Shelf, including the seabed and subsoil under those waters.

(b) The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (as amended) - this instrument extends to the United Kingdom and its territorial application is the UK territorial sea and the UK sector of the Continental Shelf.

(c) The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 (as amended) - this instrument extends to the United Kingdom and its territorial application is the UK territorial sea and the UK sector of the Continental Shelf.

(d) The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (as amended) - this instrument extends to the United Kingdom. It provides for the charging of fees in respect of functions carried out under a number of other instruments, which again vary in their extent and territorial application**:**

(i) The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 (as amended) - this instrument extends to the United Kingdom and its territorial application is the United Kingdom, the UK territorial sea and the UK sector of the Continental Shelf.

(ii) The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (as amended) - this instrument extends to England and Wales and Scotland, and its territorial application is Great Britain, the territorial sea adjacent to Great Britain, and the UK sector of the Continental Shelf.

(iii) The Fluorinated Greenhouse Gases Regulations 2015 (as amended) - this instrument extends to England and Wales and Scotland, and to Northern Ireland but only in regard to certain import, export and trade provisions. Its territorial application is the United Kingdom, the UK territorial sea and the UK sector of the Continental Shelf.

(iv) The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) - this instrument extends to the United Kingdom, and the territorial application of the relevant part of the instrument is the UK sector of the Continental Shelf, including the seabed and subsoil of the sea within those areas.

(v) Part 4A of the Energy Act 2008 - this Part extends to the United Kingdom and its territorial application is the UK territorial sea (excluding the territorial sea adjacent to Scotland), the UK sector of the Continental Shelf, including the bed and subsoil of the sea within those areas, the shore adjoining, and any land adjoining or adjacent to that shore (but excluding any land in Scotland).

(vi) The Energy Savings Opportunity Scheme Regulations 2014 (as amended) - this instrument extends to the United Kingdom and its

territorial application is the United Kingdom, the UK territorial sea and the UK sector of the Continental Shelf.

(vii) Part 4 of the Marine and Coastal Access Act 2009 - this Part extends to the United Kingdom and its territorial application is the United Kingdom, the UK territorial sea (excluding the territorial sea adjacent to Scotland) and the UK sector of the Continental Shelf.

4.4 The functions carried out by OPRED under each of those instruments, and for which fees are charged, only relate to the offshore area, i.e. the UK territorial sea and / or UK sector of the Continental Shelf. The amendments made by this Instrument therefore only apply to parts of the offshore area to which the underlying instruments apply.

5. European Convention on Human Rights

5.1 The Rt Hon Greg Hands, Minister of State for Energy, Clean Growth and Climate Change at BEIS has made the following statement regarding Human Rights**:**

"In my view the provisions of the Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 OPRED carries out environmental regulatory functions for the offshore hydrocarbons industry and for the North Sea Transition Authority (as indicated in paragraph 6.2 item (b)). For some of these functions, OPRED charges the offshore hydrocarbons industry fees using fees schemes. A fees scheme was first introduced in 2001, provided for by the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 (replaced by the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 (as amended)). In subsequent years, four further fees schemes were introduced under the Offshore Chemicals Regulations 2002 (as amended); the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as amended); the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (replaced by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (as amended)); and the Greenhouse Gas Emissions Trading Scheme Order 2020 (as amended).

6.2 For other statutory functions for which it is appropriate to charge a fee, OPRED's fees provisions are detailed in secondary legislation as explained in items (a) to (d) below**:**

(a) The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended). The fees charged to the offshore hydrocarbons industry cover functions such as**:**

- the evaluation of applications and issuing of consents for geological surveys; and
- carrying out appropriate assessments on the likely significant environmental effects of proposed projects.

(b) The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (as amended). The fees charged to the North Sea Transition Authority concern functions such as monitoring industry compliance with liabilities coverage.

(c) The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (as amended), which make provisions for charging fees to the offshore hydrocarbons industry in relation to carrying out functions under a number of other instruments**:**

(i) The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 (as amended) (e.g. considering / approving and monitoring offshore operators' oil pollution emergency plans).

(ii) The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (e.g. monitoring industry compliance with the duties in the Safety Case Regulations relating to the environment).

(iii) The Fluorinated Greenhouse Gases Regulations 2015 (as amended) (e.g. monitoring industry compliance with the legislative requirements).

(iv) The Conservation of Offshore Marine Habitats and Species Regulations 2017 (functions in relation to licences under regulation 55).

(v) Part 4A of the Energy Act 2008 (in connection with the issuing of consents to locate and emergency safety notices).

(vi) The Energy Savings Opportunity Scheme Regulations 2014 (e.g. monitoring industry compliance with the requirements of the Regulations).

(vii) Part 4 of the Marine and Coastal Access Act 2009 (e.g. granting certain marine licences, monitoring compliance with licences and requirements of the Act).

(d) The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 (as amended). The fees charged to the offshore hydrocarbons industry cover functions such as considering and accepting or rejecting Environmental Statements and giving directions as to whether particular developments require the preparation of an Environmental Statement.

6.3 The fees that OPRED charge are based on the application of hourly rates multiplied by the number of hours worked by environmental specialist and non-specialist staff.

7. Policy background

What is being done and why?

7.1 OPRED charges the offshore hydrocarbons industry for regulatory activities undertaken in relation to environmental legislation. This ensures that, where possible, the costs for providing services to the offshore hydrocarbons industry are recovered from that industry rather than being passed on to the taxpayer.

7.2 The existing fees are determined by adding together (1) the recorded number of hours worked by environmental specialists on cost recoverable activities multiplied by £197 plus (2) the number of hours worked by non-specialists on cost recoverable activities multiplied by £108. Environmental specialists are technical staff who carry out the relevant functions of the Secretary of State and non-specialists are administrative staff.

7.3 The current hourly rates have been in place since 23 June 2021. The cost base has been reviewed and it was determined that the existing hourly rates of £197 for environmental specialists and £108 for non-specialists needed to be increased to £201 (environmental specialists) and decreased to £104 (non-specialists) per hour to appropriately recover OPRED's costs (but not to make a profit) for providing regulatory services to the offshore hydrocarbons industry and the North Sea Transition Authority under the legislation referred to in paragraph 6.2. The revisions to the hourly rates reflect changes to the relevant costs detailed in paragraph 7.4 plus changes to OPRED staffing levels. Although the hourly rate has decreased for non-specialists, when the number of chargeable hours for environmental specialists at the increased rate referred to above are taken into account, it is expected that the total amount to be recovered by OPRED in FY 2022 / 2023 will be broadly similar to the average received in previous years (i.e. £6.2 million).

7.4 The hourly rates are calculated in accordance with HM Treasury's 'Managing Public Money' guidance and include the full cost of all the resources utilised by OPRED in carrying out and supporting the cost recoverable activities. This includes the gross salaries of staff undertaking 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 rates have 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 activities and removes the hours spent on leave, bank holidays, staff management, etc.

7.5 Subject to Parliamentary approval, the intention is that the new hourly rates will come into force in July 2022 (or potentially sooner i.e. towards the end of June 2022).

Explanations

What did any law do before the changes to be made by this Instrument?

7.6 The four instruments being amended by this Instrument enable OPRED to charge fees to seek to recover its costs for the provision of regulatory services to the offshore hydrocarbons industry and the North Sea Transition Authority under the legislation referred to in paragraph 6.2. From 23 June 2021, the previous Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2021, which were also made using enabling powers under, amongst other Acts, the European Union (Withdrawal) Act 2018, amended the hourly rates used to set those fees to £197 for environmental specialists and £108 for non-specialists (as explained in paragraph 7.3).

Why is it being changed?

7.7 As described in paragraph 7.3, following a review of OPRED's cost base it was determined that the existing rate of £197 per hour for environmental specialists needed to be increased to £201 per hour and that the existing rate of £108 per hour for non-specialists needed to be decreased to £104 per hour to allow OPRED to appropriately recover its costs.

What will it now do?

7.8 Once the Instrument enters into force, the new hourly rates - as referred to in paragraphs 7.3 and 7.7 - will be used to calculate the fees to be charged to the offshore

hydrocarbons industry and the North Sea Transition Authority for the provision by OPRED of regulatory services under the legislation referred to in paragraph 6.2. The fees schemes (detailed in paragraph 6.1) will be updated administratively to reflect the new hourly rates introduced by the Instrument.

8. European Union Withdrawal and Future Relationship

8.1 This Instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under paragraph 7 of Schedule 4 to the European Union (Withdrawal) Act 2018. The Minister has made the explanations statement as set out in paragraphs 7.6 to 7.8 above and in Part 2 annexed to this Explanatory Memorandum.

8.2 Alongside the EU (Withdrawal) Act 2018 powers, the Instrument is also being made under section 110A(1) and (2) and 316(1) of the Marine and Coastal Access Act 2009, section 82OA(1) and (2) of the Energy Act 2008 and section 302(1) of the Merchant Shipping Act 1995. Those powers allow the Secretary of State to amend the fees charged in respect of functions carried out under various pieces of legislation that are not retained EU law.

9. Consolidation

9.1 There are currently no plans to consolidate the legislation in this area.

10. Consultation outcome

10.1 In April 2022, OPRED informed the offshore hydrocarbons industry and the North Sea Transition Authority of plans to revise the hourly rates of the fees to be charged for the provision of regulatory services under the fees schemes and legislation referred to in paragraphs 6.1 and 6.2 respectively and no representations were received.

10.2 The offshore hydrocarbons industry and the North Sea Transition Authority are aware that OPRED reviews its hourly rates and the chargeable services provided annually and that the industry will be informed of any changes prior to their implementation.

11. Guidance

11.1 Once the Instrument enters into force, the existing 'Guidance Notes to Industry on OPRED's Cost Recovery for offshore functions' will be appropriately revised and an updated version placed on the GOV.UK website.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The amendments being introduced by the Instrument revise the fees that are payable by the offshore hydrocarbons industry and the North Sea Transition Authority by a small amount to ensure OPRED is recovering its eligible costs.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for the Instrument because no, or no significant, impact on the private, charitable / voluntary or public sectors is foreseen.

13. Regulating small business

13.1 The Instrument, and the legislation it is amending (as described in paragraph 6.2), applies to activities undertaken by small businesses. The same scenario also applies to the fees schemes referred to in paragraph 6.1.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. Of the companies who are active in offshore oil and gas related operations, very few of them are small firms and the proposed charges would not fall disproportionately on them. It is crucial that all businesses operating offshore, regardless of size, are subject to the same regulatory regime to ensure that they continue to provide a high level of protection for the marine environment.

14. Monitoring & review

14.1 The effectiveness of the Instrument will be monitored on a regular basis, alongside the review of the hourly rates to be applied and the review of chargeable services as described in paragraph 10.2.

14.2 As a result of section 28(3)(a) of the Small Business Enterprise and Employment Act 2015, the Instrument - which contains only charging provisions - is not subject to the requirement to contain a review clause.

15. Contact

15.1 Irene Thomson at BEIS (telephone**:** 01224 254077 or email**:** Irene.Thomson@beis.gov.uk) can be contacted with any queries regarding the Instrument.

15.2 Wendy Kennedy, OPRED Executive Director at BEIS, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Right Honourable Greg Hands, Minister of State for Energy, Clean Growth and Climate Change at BEIS can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

These Statements have been made for the Explanatory Memorandum to The Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2022

Explanations

What did any law do before the changes to be made by this instrument?

The four instruments being amended by this Instrument enable OPRED to charge fees to recover its costs for the provision of regulatory services to the offshore hydrocarbons industry and the North Sea Transition Authority under the legislation referred to in paragraph 6.2 of the Explanatory Memorandum. From 23 June 2021, the previous Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2021, which were also made using enabling powers under, amongst other Acts, the European Union (Withdrawal) Act 2018, amended the hourly rates used to set those fees to £197 for environmental specialists and £108 for non-specialists (as explained in paragraph 7.3 of the Explanatory Memorandum).

Why is it being changed?

As described in paragraph 7.3 of the Explanatory Memorandum, following a review of OPRED's cost base it was determined that the existing rate of £197 per hour for environmental specialists needed to be increased to £201 per hour and that the existing rate of £108 per hour for non-specialists needed to be decreased to £104 per hour to allow OPRED to appropriately recover its costs.

What will it now do?

Once the Instrument enters into force, the new hourly rates - as referred to in paragraphs 7.3 and 7.7 of the Explanatory Memorandum - will be used to calculate the fees to be charged to the offshore hydrocarbons industry and the North Sea Transition Authority for the provision by OPRED of regulatory services under the legislation referred to in paragraph 6.2 of the Explanatory Memorandum. The fees schemes (detailed in paragraph 6.1 of the Explanatory Memorandum) will be updated administratively to reflect the new hourly rates introduced by the Instrument.