EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 2016 AND WALES ACT 2017 (ONSHORE PETROLEUM) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2018

2018 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 this instrument is to transfer a power currently exercised by the Oil and Gas Authority (OGA) to Scottish and Welsh Ministers (respectively) in consequence of the devolution of responsibility for onshore petroleum licensing. The power, as set out in Section 45A of the Petroleum Act 1998 (c.17), allows the OGA to request information from a person, who has drilled or is drilling a well, regarding their financial affairs, in order to enable an assessment of their financial capability to plug and abandon the well. This can be followed by a notice requiring action, which may take the form of financial security.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Two other instruments have been made to implement the devolution of onshore petroleum licensing to Scottish Ministers. The Scotland Act 2016 (Onshore Petroleum) (Consequential Amendments) Regulations 2018 (S.I. 2018/79) made consequential amendments to taxation legislation. The Scotland Act 2016 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018 (S.I. 2018/56) made provisions for Scottish Ministers to be responsible for onshore petroleum licensing in Scotland. The majority of the provisions came into force on 9 February 2018 (the remainder take effect on commencement of related provisions in the Wales Act 2017 (c.4)).

3.2 In order to commence the devolution of onshore petroleum licensing to Welsh Ministers, a negative statutory instrument is also required. Negative regulations will make provisions for Welsh Ministers to be responsible for onshore petroleum licensing in Wales. It is our intent to transfer onshore petroleum licensing in Wales to Welsh Ministers on 1 October 2018.

3.3 If approved by Parliament, this instrument will commence in relation to Scotland 21 days after it is made. It will commence in relation to Wales on the later of 21 days after making or concurrently with the commencement of section 23 of the Wales Act 2017, which is currently agreed for 1 October 2018.

Other matters of interest to the House of Commons

3.4 None.

4. Legislative Context

4.1 This instrument is being made to amend section 45A of the Petroleum Act 1998 consequential on the devolution of onshore petroleum licensing functions to Scottish and Welsh Ministers under section 47 of the Scotland Act 2016 (c.11) and paragraph 97 of Schedule 1 to the Wales Act 2017, respectively.

4.2 The Scotland Act 2016 devolved onshore petroleum licensing to Scottish Ministers in respect of the Scottish onshore area (the area of Scotland that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (c.49) and The Wales Act 2017 devolved onshore petroleum licensing to Welsh Ministers in respect of the Welsh onshore area (the area of Wales that is within such baselines).

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, The Rt Hon Claire Perry MP has made the following statement regarding Human Rights:

"In my view the provisions of the Scotland Act 2016 and Wales Act 2017 (Onshore Petroleum) (Consequential Amendments) Regulations 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Scotland Act 2016 implements the Smith Commission Agreement by devolving a range of powers to the Scottish Parliament and Scottish Government. As recommended by the Smith Commission, it was agreed that powers related to onshore oil and gas licensing, except for consideration payable, would be devolved to Scotland. This was set out sections 47, 48 and 49 of the Scotland Act 2016.

7.2 The Wales Act 2017 implements the Silk Commission Agreement by devolving a range of powers to the Welsh Assembly and Welsh Government. As recommended by the Silk Commission, it was agreed that powers related to onshore oil and gas licensing, except for consideration payable, would be devolved to Wales. This was set out in sections 23, 24 and 25 of the Wales Act 2017 and paragraph 97 of Schedule 1 and Part 2 of Schedule 6 to that Act.

7.3 We have identified a power, section 45A Petroleum Act 1998, which we consider applies in relation to oil and gas wells drilled onshore. We therefore intend to transfer this power to Scottish and Welsh Ministers, respectively.

7.4 Section 45A of the Petroleum Act 1998 allows the OGA to give a notice to a person who has drilled or commenced drilling a well ("relevant person") requesting financial

information to enable it to carry out a financial assessment of the relevant person's ability to carry out plugging and abandoning of the well.

7.5 If the OGA is not satisfied that the relevant person can carry out plugging and abandoning or they have not received the information within the specified period set out in the notice, section 45A allows the OGA to give further notice requiring action, which could take the form of financial security.

7.6 The OGA must consult with the Treasury and provide the relevant person with the opportunity to make written representations before a further notice is given. It is an offence for a relevant person not to comply with a notice, and, if found guilty of an offence, they could be liable for a fine or imprisonment.

7.7 In the onshore oil and gas regime, the obligations for plugging and abandoning wells are included in the licence conditions. Plugging and abandoning a well occurs following cessation of production (or if no production is going to take place). It ensures the well is sealed permanently such that it will not pose an environmental or health and safety risk. Section 45A providing the means of assurance to the OGA that the relevant person will be able to plug and abandon a well or otherwise provides the necessary funds for it to be done. As such, section 45A is a key part of the licencing regime, and needs to be devolved to enable the Scottish and Welsh Ministers to ensure that licence obligations can be met and wells plugged and abandoned as appropriate.

Consolidation

7.8 There are no plans to consolidate this legislation at this time.

8. Consultation outcome

8.1 There has been no specific consultation on these technical amendments since they are necessary to the effective operation of the provisions set out in the Scotland Act 2016 and the Wales Act 2017, following recommendation from the Smith and Silk commissions respectively, which were consulted on separately.

8.2 Transferring powers from the UK administration to a devolved administration does not count as a regulatory provision so we are not required to do a regulatory impact assessment.

9. Guidance

9.1 These are technical amendments and as such no specific guidance is planned on this particular instrument.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is expected to be minimal and limited to time taken preparing these Regulations.

10.3 An Impact Assessment has not been prepared for this instrument, as there is expected to be no direct cost to business from these Regulations. A similar transfer was considered in the Impact Assessment which accompanied the Energy Bill 2015. This outlined that it is reasonable to assume that transferring these existing functions will result in zero negligible cost to business relative to existing arrangements. A copy of that impact assessment is available from BEIS, 1 Victoria Street, London, SW1H 0ET or is available at www.legislation.gov.uk.

11. Regulating small business

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

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 If only functions in relation to large businesses were transferred, it would not give effect to the new devolution settlement.

12. Monitoring & review

12.1 A review provision, as required by section 28 of the Small Business, Enterprise and Employment Act 2015, is not appropriate in these Regulations because the regulatory provisions that are being amended are contained in primary legislation, and are outside the scope of the policy objectives as set out in the statutory guidance, which relates to the inclusion of review provisions in secondary legislation.

13. Contact

13.1 James Loryman at the Department for Business, Energy and Industrial Strategy Telephone: 02072152015 or email: james.loryman@beis.gov.uk can answer any queries regarding the instrument.