**EXPLANATORY MEMORANDUM TO**

**THE SCOTLAND ACT 2016 (ONSHORE PETROLEUM) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2017**

**2017 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 the 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 statutory instrument is to make consequential amendments consequential on the transfer of functions for onshore petroleum licensing currently exercised by the Oil and Gas Authority ("the OGA") or the Secretary of State to Scottish Ministers, as provided for by in s.71 of the Scotland Act 2016. These amendments relate to the licensing and taxation of oil and gas. This statutory instrument is to be made concurrently with commencement regulations for sections 47-49 of the Scotland Act 2016 by the Secretary of State.

## 3. Matters of special interest to Parliament

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

3.1 In order to commence the devolution of onshore petroleum licensing to Scottish Ministers, two separate instruments are required. This SI is the first instrument: a set of affirmative regulations under section 71 of the Scotland Act 2016 amending Acts of Parliament to make provisions consequent on the devolution of responsibility for onshore petroleum licensing to Scottish Ministers. The second instrument is a set of negative regulations under section 71 of the Scotland Act 2016 amending existing Statutory Instruments, to make provision for Scottish Ministers to be responsible for onshore petroleum licensing in Scotland.

3.2 The regulations are split into two parts owing to the interaction between the Scotland Act 2016, the Energy Act 2016, and the Wales Act 2017. The Energy Act 2016 transferred responsibility for oil and gas licensing to the Oil and Gas Authority. The Wales Act 2017 makes similar provision to that in the Scotland Act 2016, but instead devolves onshore petroleum licensing powers and legislative competence to Welsh Ministers and the National Assembly for Wales. The regulations therefore make provision for the period until the Wales Act 2017 comes into force, and later provision taking into account provisions in the Wales Act 2017.

3.3 While both instruments are being laid at separate times, it is our intent to commence both instruments at once, along with the Commencement Order which is under the responsibility of Scotland Office.

***Other matters of interest to the House of Commons***

3.4 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

## 4. Legislative Context

4.1 This instrument is being made to amend certain taxation provisions that are depended on legislation for oil and gas licensing. The relevant provisions are set out in the Oil Taxation Act 1975, the Taxation of Chargeable Gains Act 1992, Finance Act 1993, the Capital Allowances Act 2001, and Part 8 of the Corporation Tax Act 2010.

4.2 This instrument is to be made concurrently with commencement regulations for sections 47 to 49 of the Scotland Act 2016, by the Secretary of State for Scotland.

4.3 The intention is that a further instrument will be brought forward by negative Parliamentary procedure that will transfer further functions by making consequential amendments to secondary legislation concerning petroleum licensing.

## 5. Extent and Territorial Application

5.1 The extent of this instrument is to 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 for Industry and Energy, Jesse Norman, has made the following statement regarding Human Rights:

"In my view the provisions of the Scotland Act 2016 (Onshore Petroleum) (Consequential Amendments) Regulations 2017 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 While the Scottish Government already holds responsibility for the planning and environmental aspects of the onshore oil and gas regime, the intent is to provide it with greater control over the development of such resources in onshore Scotland by devolving the UK's regime in current form to Scottish Ministers. This will provide Scottish Ministers with the powers to administer the existing onshore oil and gas licensing regime in Scotland, and create a bespoke licensing regime if they wish.

7.3 The only functions related to onshore oil and gas licensing in Scotland that will remain reserved to the UK are those relating to consideration in the form of taxation type payments imposed on operators under petroleum licences. While this is remaining reserved, some consequential amendments to taxation are required to reflect the new role that Scottish Ministers will have and to allow the petroleum licensing regime to operate as intended in relation to onshore Scotland.

7.4 Similar to the Energy Act 2016, (where there was a transfer of function from the Secretary of State to the Oil and Gas Authority, and a subsequent SI for the consequential tax amendments in the Petroleum (Transfer of Functions) Regulations 2016 (2016/898)),the Scotland Act 2016 will require some consequential amendments to taxation legislation to allow Scottish Ministers to be named as the 'national authority', in order to allow the tax legislation to work as intended in relation to onshore areas in Scotland.

7.5 Once the Scotland Act 2016 provisions concerning onshore oil and gas are fully in force, onshore oil and gas licensing in Scotland will be the responsibility of Scottish Ministers and they will be responsible for granting relevant licences.

***Consolidation***

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

## 8. Consultation outcome

8.1 There has been no specific consultation on the technical measures in this instrument.

8.2 The provisions in the Scotland Act 2016 were set out in the Command Paper; Scotland in the United Kingdom: An enduring settlement. This followed the agreement contained in the Smith Commission Report on devolving further powers to Scotland. The Command Paper put forward draft legislative proposals, shared with the Scottish Government prior to publication, to help inform the legislative basis of the Smith Commission Agreement and subsequently the basis of the Scotland Bill. In preparing the report, engagement with Scottish organisations and communities resulted in receiving over 18,000 submissions from the public and more than 400 from civic groups. The UK Government also set up a stakeholder group of representative bodies from across Scotland to help inform their drafting and to clarify the divisions of powers between Holyrood and Westminster.

## 9. Guidance

9.1 These are technical amendments and as such no specific guidance is planned on this particular instrument. However, Government has clearly communicated to all relevant stakeholders ahead of commencement of these provisions.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal as there is no material change to taxation legislation.

10.2 The impact on the public sector is also 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. The power to transfer these particular functions was covered in the Impact Assessment accompanying the Energy Bill . This outlined that it is reasonable to assume that transferring these existing functions will result in zero of negligible cost to business relative to existing arrangements. It also noted that the cost to the public sector would be limited to those involved in preparing the relevant legislation. Since the same transfer of functions is now occurring to Scottish Ministers made using powers under the Energy Act, there

would be no new impact that has not already been assessed as part of the Energy Bill Impact Assessment.

## 11. Regulating small business

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

11.2 This policy is beneficial to business so its effect on small firms has not been minimised because that would put them at a competitive disadvantage.

## 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 Lauren Babuik at DBEIS Telephone: 0300 068 5168 or email: lauren.babuik@beis.gsi.gov.uk can answer any queries regarding the instrument.