EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT) REGULATIONS 2014

2014 No.

1. This explanatory memorandum has been prepared by The Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (S.I. 2012/2920) ("the 2012 Regulations").

2.2 The amendments qualify the way in which fees are calculated for applications or deemed applications for operations connected with drilling for oil or natural gas by excluding from the calculation of fees any part of the site area required solely for underground operations.

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

3.1 None

4. Legislative Context

4.1 The 2012 Regulations were made under section 303 of the Town and Country Planning Act 1990 (c. 8), which was substituted by section 199 of the Planning Act 2008 (c. 29).

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

Nick Boles, Parliamentary under Secretary of State at the Department for Communities and Local Government, has made the following statement regarding Human Rights:

In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 The Government is committed to an effective and efficient planning system. Over the last twelve months it has taken forward a series of measures to simplify and streamline the arrangements for making and determining planning applications in England. At the same time, the Government has re-iterated its commitment to a diverse, efficient and low-carbon energy supply, but recognises that gas, alongside low-carbon technologies, will continue to play an important role in our energy mix in the coming decades as the country moves to a low carbon economy. Within that context the Government is keen to maximise indigenous production where it can, whilst ensuring that there remains a robust, comprehensive and safe regulatory regime in place.

7.2 Timely decisions on planning applications give applicants the confidence to submit planning applications for development, give businesses the confidence to invest, and give greater certainty for communities. This includes proposals for forms of energy development, including oil and gas. Planning fees are important because they help ensure that users and potential beneficiaries of the planning system, rather than taxpayers in general, meet the costs incurred by local planning authorities in deciding planning applications. The Secretary of State has power under Section 303 of the Town and Country Planning Act 1990 to make and amend regulations setting the fees that applicants for planning permission must pay to the local planning authority considering the application.

7.3 The level of fees payable is the area of land to which the application relates. Guidance on calculating fees is set out in Circular 4/2008. It states that, for the winning and working of minerals, the site area should include all the land under which any of the workings are to be taken place. However, development of oil and gas reserves is regarded as above ground working in this context. Whilst this is the clear intention, the Government is aware of individual instances where such interpretation has not been followed. These Regulations seeks to amend the 2012 Regulations to clarify that fees should be calculated on the basis of the area of the above ground works only.

8. Consultation outcome

8.1 The Government published a paper setting out its proposals for revised requirements relating to planning applications for onshore oil or natural gas in September 2013. The paper invited comments, amongst other things, on the proposal to clarify that fees for planning applications for onshore oil and gas developments should be calculated by reference to the site area of the above ground works.

8.2 Overall, 285 responses were received from a range of local authorities and public agencies; Non Government Organisations; business,

developers and private sector organisations; and the remainder being representations from individuals. Of this total, over 40% only provided general comments about shale gas.

8.3 Of the 105 responses who responded on the proposals to clarify fee arrangements, those in favour of the changes were largely from industry and other private sector organisations. These respondents in favour of the clarificatory measures considered that planning issues were mainly to deal with the surface impact given that other regulatory regimes largely dealt with the impact of extraction at the likely depths below the surface. The UK Oil and Gas Association did, however, offer an increase in fees by 10% for all phases of onshore oil and gas development in recognition of the increased public scrutiny of applications.

8.4 Those who disagreed with the proposals included local authorities, individuals and Non Government Organisations. They considered that the level of fees were insufficient to cover the cost of dealing with complex and contentious issues, including underground elements they considered relevant to planning. They considered that limiting the fees to the surface area represented a subsidy to the oil and gas industry, and that fees should be set against the issues that need to be assessed. Some respondents called for a separate category of fees for exploration and production of unconventional oil and gas, given the different impacts associated with conventional gas.

8.5 The purpose of the Government's proposed changes is to provide clarity over a longstanding policy intent. They are consistent with the Government's view that planning authorities should concentrate mainly on the surface impacts of onshore oil and gas development, and rely more on other regulatory regimes to manage sub-surface issues as appropriate.

8.6 Other respondents felt that the level of fees charged did not reflect the long-term responsibilities for cleaning up sites after the industry had vacated the sites. Government is clear that responsibility for cleaning up sites after extraction has taken place rests with the applicant. The operator should submit proposals for restoration as part of the planning application, which should then be imposed by the local planning authority through imposition of suitable planning conditions and, where necessary, through planning obligations.

8.7 In conclusion, the Government considers that the calculation of fees associated with onshore oil and gas development should be clarified and therefore proposes implementing the proposed changes. The Government also proposes accepting the industry's offer of an increase in application fees. When dealing with complex applications, the Government is keen for the applicant to work with the planning authority to ensure as much preparation as possible at an early stage. Mineral planning authorities may be able to charge for such advice under section 93 of the Local Government Act 2003. Mineral planning authorities may enter into Planning Performance Agreements with applicants to ensure that a clear and efficient process is in place for dealing with an application. As part of any Agreement the planning authority may negotiate additional resources. Furthermore, it is the Government's view is

that there is no current justification to have distinct categories between conventional and unconventional oil and gas (particularly at exploratory stage), since many of the techniques used are the same. The Government will keep the question of fees under review.

8.8 A detailed analysis of the consultation responses may be found at: https://www.gov.uk/government/consultations/revised-requirements-relating-to-planning-applications-for-onshore-oil-and-gas.

9. Guidance

9.1 The Government intends to amend the existing fees Circular (4/2008) to prepare some concise revised supporting planning practice guidance for inclusion on the Department for Communities and Local Government's planning practice guidance web-based resource. This is in advance of a review of the Circular scheduled for April 2014.

10. Impact

10.1 The changes to the fee regime will have a very small impact on business. The assessment of the proposals has been included in the validated Impact Assessment to accompany the Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment No. 2) Order 2013 (S.I. 2013/3194), and for which a copy has been placed in the House Library. It may also be found at: https://www.gov.uk/government/consultations/revised-requirements-relating-to-planning-applications-for-onshore-oil-and-gas. However, it should be noted that in line with the Better Regulation Framework Manual, the uprating of any fees is outside the scope of One-in, Two-out, and the costs to business incurred by this increase should not be counted under One-in, Two-out.

10.2 The proposals will have a very small positive impact on local authorities.

11. Regulating small business

11.1 The proposals apply to, but will have a very small negative impact on any small businesses which make oil and gas applications.

11.2 The proposals are out of scope of the moratorium on regulations for microbusiness and start ups.

12. Monitoring & review

12.1 The Department will review the implementation of the Regulations on a regular basis, including through obtaining regular feedback from mineral planning authorities and the onshore oil and gas industry.

13. Contact

Mark Plummer at the Department for Communities and Local Government, tel 0303 444 1708 or email: mark.plummer@communities.gsi.gov.uk can answer any queries regarding the instrument.