EXPLANATORY MEMORANDUM TO

THE ENERGY (OIL AND GAS) PROFITS LEVY (ENERGY SECURITY INVESTMENT MECHANISM) REGULATIONS 2024

2024 No. 1175

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before the House of Commons by Command of His Majesty.

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 James Konya, Deputy Director for Corporation Tax Structure at HMRC, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Nicola Garrod at HMRC Telephone: 03000 589251 or email: oilandgaspolicy@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Statutory Instrument sets out how the average price of oil and the average price of gas will be calculated for the purposes of the Energy Profits Levy (EPL) Energy Security Investment Mechanism (ESIM), as set out in section 17A and 17B of the Energy (Oil and Gas) Profits Levy Act 2022 (EPLA 2022). It defines the data sources the Government will use to monitor the ESIM. If the conditions of the ESIM are met, the Government will introduce separate legislation to ensure the EPL permanently ceases to have effect from the final day of the relevant reference period.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The EPL was introduced in 2022 as an additional, temporary charge on oil and gas companies' profits from upstream production.

5.2 In June 2023, the ESIM was announced to ensure that if oil and gas prices are at or below the threshold level for a sustained period, then the EPL will permanently cease to apply.

5.3 The technical details of the ESIM were first set out in a Technical Note[1] published at Autumn Statement 2023 and were legislated in sections 17A and 17B of the EPLA 2022, as inserted by section 19 of the Finance (No. 2) Act 2024.

5.4 The legislation set out that the EPL will cease to apply if the average prices of both oil and gas over a reference period of six months are at or below the ESIM threshold prices.

5.5 The ESIM threshold prices were calculated using a 20-year historic average to the end of 2022 and were set at $71.40 per barrel of oil and £0.54 per therm of gas. These threshold levels are adjusted each financial year in line with inflation. The ESIM threshold prices for the 2024 financial year are $74.21 per barrel for oil and £0.57 per therm for gas.

5.6 As provided for in section 17B(3) EPLA 2022 (and in line with the Technical Note) these regulations set out how the average price of oil and the average price of gas are to be calculated.

5.7 In line with the Technical Note, the Government will use the monthly Brent Crude prices produced by the World Bank to calculate the average price of oil and the daily day-ahead prices produced by the Independent Commodity Intelligence Services (ICIS) to calculate the average price of gas. The World Bank data is publicly available. Whilst the ICIS data is widely used by the industry, and its use as a data source for gas prices for the purposes of ESIM was supported by those who responded to the Government's discussion paper, the daily gas prices published by ICIS are only available to fee-paying subscribers to the ICIS data service. As the Government recognises the need to ensure proper access to the legislation for all users, the daily ICIS gas price data and the World Bank oil price data used in each monthly calculation will be made available for inspection, upon written request, at HMRC's offices at 100 Parliament Street, London, following the end of each month.

5.8 If the conditions for ESIM are met separate regulations will be laid to ensure the EPL ceases to have effect in law.

What was the previous policy, how is this different?

5.9 There has not been a change in policy. The main legislation for the ESIM was included in the Finance (No.2) Act 2024. This legislation provides that the detail of the calculation of the average oil and gas prices is to be set out in regulations.

5.10 The regulations specify the data sources and formulae used to calculate the average price of oil and gas over a reference period. This detail was set out in a Technical Note published at Autumn Statement 2023[1]. These regulations put this detail on a legislative footing and give industry certainty that the ESIM will operate as described in the technical note.

[1] Technical Note published at Autumn Statement 2023: https://www.gov.uk/government/publications/technical-note-energy-profits-levy-energy-security-investment-mechanism/energy-profits-levy-energy-security-investment-mechanism-technical-note

6. Legislative and Legal Context

How has the law changed?

6.1 Section 19 of Finance (No. 2) Act 2024 introduced new section 17A and 17B to the EPLA 2022. Section 17B(3) provides HM Treasury with a power to set out how the average price of oil and gas is to be calculated for the purposes of the ESIM.

6.2 These regulations specify the methodology for calculating the average price of oil and gas over a reference period. More specifically, they define the data source, parameters, and approach to calculating whether ESIM has been triggered.

Why was this approach taken to change the law?

6.3 The Government decided to legislate for the principles of the ESIM in Finance (No.2) Act 2024 and legislate for the technical detail through secondary legislation as per convention.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation was published on 18 July 2023, seeking views on the technical detail and practical application of the ESIM. A summary of responses was published at Autumn Statement 2023 and can be found on the GOV.UK website[2].

8. Applicable Guidance

8.1 Guidance will be published in the Oil Taxation Manual on the GOV.UK website[3].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment for the ESIM was published alongside the parent Act and can be found on the GOV.UK website[4].

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these Regulations do not require these organisations to take any new action.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this legislation only applies to oil and gas companies operating in the UK and on the UK Continental Shelf.

[2] Summary of Responses: https://www.gov.uk/government/consultations/energy-profits-levy-and-the-energy-security-investment-mechanism-discussion-note/outcome/energy-profits-levy-and-the-energy-security-investment-mechanism-discussion-note-summary-of-responses
[3] Oil Taxation Manual: https://www.gov.uk/hmrc-internal-manuals/oil-taxation-manual/ot21700
[4] ESIM Impact Assessment: https://www.gov.uk/government/publications/energy-profits-levy-energy-security-investment-mechanism-legislation/energy-profits-levy-energy-security-investment-mechanism

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through regular monitoring of oil and gas prices and application of the ESIM.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").