EXPLANATORY MEMORANDUM TO

THE OFFSHORE (OIL AND GAS) INSTALLATION AND PIPELINE ABANDONMENT FEES REGULATIONS 2012

2012 No. 949

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to enable the Secretary of State to determine a fee in order to recover his costs in relation to the consideration of an abandonment programme or a proposal to revise an abandonment programme. The fee is determined by the type of offshore installation or submarine pipeline, the daily rate multiplied by an estimate of the number of officers (acting on behalf of the Secretary of State) and an estimate of the number of days it would take to consider such a submission. The fee charging mechanism is subject to a monetary cap.

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

3.1 None

4. Legislative Context

4.1 Part IV of the Petroleum Act 1998 ("the Act") contains the current statutory regime applicable to the decommissioning of offshore oil and gas installations and submarine pipelines. Although the Act refers to the programme as an "abandonment programme", the accepted term nowadays is "decommissioning programme". The underlying principle of Part IV of the Act is to ensure that decommissioning is carried out in accordance with UK's international obligations (under the Convention on the Protection of the Marine Environment of the North East Atlantic – "the OSPAR Convention" and the London Convention of 1972) and with the approval of the Secretary of State.

4.2 Sections 29(5) and 34(4) of the Act provide that a person who submits a decommissioning programme or a proposal to revise a decommissioning programme respectively, shall at the same time pay a fee in respect of the Secretary of State's expenditure in the exercise of his functions under Part IV of the Act.

4.3 In order to give clarity on the fee to be determined, these Regulations provide:

(a) that before a person actually submits a decommissioning programme or a proposal to revise a decommissioning programme under sections 29(5) or 34(4) of the Act

respectively, he submits a draft of the same to the Secretary of State and requests the Secretary of State to determine a fee.

The fee is based on the type of offshore installation or submarine pipeline, the daily rate multiplied by an estimate of the number of officers (acting on behalf of the Secretary of State) and an estimate of the number of days required to consider an abandonment programme or a proposal to revise an abandonment programme.

Once the Secretary of State has made his determination on the fee, a person will be able to pay the fee at the same time as he submits a decommissioning programme or a proposal to revise a decommissioning programme in accordance with sections 29(5) or 34(4) of the 1998 Act respectively.

(b) A monetary cap according to the type of offshore installation or submarine pipeline.

4.4 The fee charging mechanism will not apply to carbon capture and storage pipelines and installations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 It is a fundamental principle in the decommissioning regime that a person who is responsible for developing or operating an offshore installation or submarine pipeline should also be responsible for decommissioning at the end of its useful life.

7.2 Owing to current economic conditions and the most recent Government Spending Review, it is necessary that DECC recovers costs wherever possible. The charging mechanism provides for the recovery of the Secretary of State's expenditure for the exercise of its functions under Part IV of the Act, rather than passing the costs onto the taxpayer which is in line with the 'polluter pays' principle of environmental law.

7.3 The costs of operating the Offshore Decommissioning Unit within DECC for the 2012/13 financial year are in the region of £900,000. However, this figure is likely to rise in future years given the anticipated increase in the number of decommissioning programmes which DECC expect to be submitted for consideration.

8. Consultation outcome

8.1 A twelve-week consultation on the proposals was carried out from 30 March to 22 June 2011. Stakeholders included all offshore oil and gas operators, companies with an interest in decommissioning offshore (oil and gas) installations and pipelines and other interested parties. Nine responses were received but no objections to the proposals. The trade association for offshore oil and gas operators (Oil and Gas UK) submitted the most detailed response, and who also agreed with the Department's proposed charging scheme option (based on 'type of facility'). The majority of responses (who indicated a preference) agreed with the Department's proposed charging scheme option. The Department did not receive any alternative option(s).

8.2 The Department's response to the consultation is available on the DECC's website.

9. Guidance

9.1 Guidance on the charging mechanism will be made available on the DECC website.

9.2 Further, the existing Guidance Notes to Industry (Decommissioning of Offshore Oil and Gas Installations and Pipelines under the Petroleum Act 1998) will also be revised in the light of the Regulations and an updated version placed on DECC's website.

10. Impact

10.1 The impact on charities or voluntary bodies is likely to be none. The decommissioning programmes and revision of decommissioning programmes will be carried out by commercial operators such as the oil and gas industry and other large industrial players. The impact on those operators will be proportionate and consistent with the fundamental principle of the decommissioning regime that an operator who is responsible for developing or operating an offshore installation or submarine pipeline should also be responsible for decommissioning at the end of its useful life.

10.2 The impact on the public sector is negligible as DECC will be the regulatory authority and will accommodate this new area of work within its current resource head room.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11 Regulating small business

11.1 The legislation applies to a very small number of small businesses.

11.2 Of the companies who are active in offshore activities in the UK, the vast majority are part of large multi-national companies - with only a very small number meeting the "small firms" definition (i.e. companies with less than 10 employees). These particular companies would only be one of several co-venturers on licensed fields. Where there are several such co-venturers, they make an agreement among themselves governing existing and future operations. Such an agreement is commonly called a Joint Operating Agreement (JOA). Creating or amending a JOA effectively entails the apportionment of operational costs and associated commercial benefits between the parties - usually based on the percentage of a licensed field held by each party and their available resources. However, none of them would generally be solely responsible for undertaking or meeting the full costs of activities related to oil and gas production. In view of this, the proposals would have no disproportionate impact on those companies that fall within the `small firms' definition.

12 Monitoring & review

12.1 Consideration has been given to the new sun setting and review guidance. The regulatory regime for decommissioning is provided for in the 1998 Act, not in these Regulations. These Regulations merely provide for the Secretary of State to determine a fee in order to cover his expenditure under Part IV of the 1998 Act in respect of decommissioning. The standard clauses for sun-setting and review are therefore removed. The operation of these Regulations will be monitored and reviewed on an ongoing basis.

13. Contact

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