EXPLANATORY MEMORANDUM TO

THE OIL AND GAS AUTHORITY (LEVY AND FEES) REGULATIONS 2021

2021 No. 206

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 Part 1 of this instrument is to make introductory provision. Part 2 is to impose a levy on licensees who hold offshore petroleum licences in order to fund the carrying out of certain functions by the Oil and Gas Authority ("OGA") in respect of the period running from 1 April 2021 to 31 March 2022. Part 3 revises existing fees and introduces new fees to be charged by the OGA.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department is making these Regulations to impose a levy on holders of offshore petroleum licences to provide funding for the OGA for the period 1 April 2021 to 31 March 2022 (Part 2) and amend and introduce new fees for the delivery of specific services by the OGA (Part 3).

3.2 The increase in eligible costs in Part 3 were identified following an internal review carried out by the OGA and a public consultation[1]. As a result of the review and consultation, these Regulations will amend some of its existing fees and introduce new fees. The intention of these proposed changes is to more accurately reflect the actual costs of the services it provides. As a result, the changes do not relate to the rate of inflation.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of Part 2 of this instrument (the OGA levy provisions) is Great Britain and outside Great Britain in relevant waters (that is, the territorial sea

[1] The OGA consultation - https://www.ogauthority.co.uk/news-publications/consultations/2019/consultation-on-proposals-to-introduce-new-and-amended-oga-fees/

adjacent to the United Kingdom and any area designated by order under the Continental Shelf Act 1964).

4.3 Part 3: The territorial application of Part 3 of this instrument (the OGA fee update provisions) is Great Britain (excluding the Scottish onshore area and the Welsh onshore area as defined in section 8A of the Petroleum Act 1998) and outside Great Britain in relevant waters (that is, the territorial sea adjacent to the United Kingdom and any area designated by order under the Continental Shelf Act 1964).

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Part 2 of the instrument is the latest in a line of regulations made under section 13 of the Energy Act 2016 pursuant to which the OGA imposes an annual levy on licensees who hold certain kinds of offshore petroleum licence. The most recent of those regulations is the Oil and Gas Authority (Levy and Fees) and Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2020 ("2020 Regulations") which imposed a levy in respect of the charging period beginning on 1 April 2020 and ending on 31 March 2021.

6.2 Regulation 5 of this instrument sets outs the total amount to be levied in respect of the charging period beginning on 1 April 2021 and ending on 31 March 2022. Regulation 5 also sets out the methodology in accordance with which the OGA will calculate the proportion of that sum which is payable by licensees who hold particular kinds of offshore petroleum licence (pursuant to section 13(4)(b) of the Energy Act 2016).

6.3 Regulation 9 provides that where the total amount levied in respect of the charging period exceeds the costs in respect of which the levy has been raised, the OGA will return the underspend to licensees (consistent with section 13(2) of the Energy Act 2016).

6.4 Consistent with section 13(2)(b)(i) of the Energy Act 2016, the costs in respect of which the levy has been raised exclude costs incurred in relation to matters in respect of which the OGA may charge fees (which are set out in the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016/904) (as amended by the Oil and Gas Authority (Fees and Petroleum Licensing (Amendment) Regulations 2017 (S.I. 2017/426), the 2020 Regulations and The Scotland Act 2016, Wales Act 2017 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018 (S.I. 2018/980)).

6.5 Part 3 of the instrument also revises the fee rates and/or method of calculation of those fees for additional activities or matters arising under petroleum licences, including: applications for consent to development and production programmes; applications for consents to pipeline deposit proposals and for pipeline works authorisations; other consents including, flaring and venting from oil and gas terminals, and; applications for petroleum licences.

7. Policy background

What is being done and why?

Part 2 of the Regulations

7.1 The Energy Act 2016 formally established the OGA as an independent regulator. That Act empowers the Secretary of State to make regulations enabling the OGA to recover its costs from certain categories of persons who hold petroleum licences.

7.2 Some of the OGA's costs are recovered through fees for the delivery of specific services to individual companies. However, the majority of the remainder of the OGA's costs are recovered through a levy. Consistent with the principal objective for the OGA as set out in Part 1A of the Petroleum Act 1998 of maximising economic recovery of petroleum beneath UK waters, the OGA's focus is primarily on the offshore sector. As a result, the levy is currently imposed on licensees who hold offshore petroleum licences only.

7.3 These Regulations make provision for calculating and imposing a levy on licensees in respect of the period beginning on 1 April 2021 and ending on 31 March 2022 ("the relevant charging period"). The costs to be recovered under the levy are the costs of the OGA in carrying out its functions during that period (and, in addition, the cost associated with the provision of tribunals to consider appeals against decisions of the OGA by the Lord Chancellor).

7.4 This approach follows the approach used in the 2020 Regulations. It enables the OGA to apportion the levy between offshore petroleum licence holders using the licence information for the relevant charging period and allows for full cost recovery. This will mean that the OGA remains properly resourced and able to carry out its statutory function to deliver the objective of maximising the economic recovery of offshore UK petroleum (MER UK).

7.5 As with the 2020 Regulations the methodology provides for four different rates for offshore petroleum licence holders.

7.6 Non-producing innovates licences in phase B of their initial term held by a micro-enterprise (the definition of which is independent from but consistent with the previously used EU definition of micro-enterprise) will be subject to the non-production levy with an 80% discount.

7.7 Non-producing promotes licences in their 'promote period' and innovate licences in phase A of their initial term that are held by a micro-enterprise will be subject to the non-production levy with a 90% discount.

7.8 On 1 April 2021, the OGA will need to determine the status of an offshore petroleum licence and that status will determine which levy rate will be applied for that charging period.

7.9 If on that date a holder of an offshore petroleum licence is found to have been granted a development and production consent, then they will be issued an invoice for a production licence. If this is not the case, then they will be issued with an invoice for a non-production licence.

7.10 The OGA will ask businesses if they are eligible for the discounted non-production leviable amounts by assessing the company's revenue and staff against the definition of "micro-enterprise" contained in these Regulations. If the licence is held by more

than one company, all of the companies holding the licence must qualify as “micro-enterprises” for the discount to apply.

7.11 Following that determination, the OGA will calculate the levy amounts and issue invoices based on the licence determination. Invoices will be issued and will be required to be settled within 30 days.

Part 3 of the Regulations

7.12 The Department is making these Regulations to recover costs by means of direct fees for specific activities in line with the established principle across regulation and service delivery of 'user pays', where the regulator recovers its costs from those benefitting directly from its services. The current fees and charges regulations are the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016/904) (the “2016 Fees SI”). These 2016 Fees SI were laid under Section 12 of the Energy Act 2016, which gives the OGA power to charge such fees as determined and payable in accordance with regulations made by the Secretary of State.

7.13 The OGA carried out a review of its fees in 2019 and a public consultation was undertaken from October to November 2019. These Regulations intend to introduce new fees and amend existing fees charged by the OGA as set out below.

7.14 The new fees will comprise: extending fees for flaring and venting consents to terminals; and, introducing fees for discontinued applications for development and production consent, and interim fees for certain of those applications.

7.15 The OGA issues consents for flaring and venting from wells and onshore terminals. While the applications for consent for flaring and venting from wells are subject to a fee, applications for flaring and venting from terminals do not currently attract one. These Regulations will remedy that.

7.16 The fees for applications for discontinued applications for development and production consent are based on the time spent considering the application, rather than a fixed fee. A significant part of that time involves the consideration, assessment and discussion of the Field Development Plan addendums and revisions, which set out in detail the subject project. At present, if a licensee applies for development and production consent, under regulation 4(5) of the 2016 Fees SI, a fee can only be issued once the OGA has determined the application. If the application is withdrawn before it is determined by the OGA, no fee can be issued for the work done. Additionally, interim fees cannot currently be issued, regardless of time taken to determine the application.

7.17 This instrument removes these anomalies. If the determination of an application for consent to a development and production programme by the OGA takes longer than 6 calendar months, the OGA may charge the fee for such application in 6 monthly instalments with effect from 6 months after receipt by the OGA of such application until its determination. This should give greater certainty to licensees and the OGA, as it will allow them to anticipate fees (which may be significant as they are based on the time spent by the OGA to consider the application) and budget accordingly.

7.18 This instrument amends existing fees for applications for Pipeline Works Authorisation (PWA), deposit consent and all associated variations, changing from a timesheet approach to a fixed fee; includes Offshore Safety Directive fees in seaward area production licence fees; and on fees for applications for consent to drill stem tests and extended well tests by explicitly stating the fee rates.

7.19 Applications fees for PWAs, deposit consents and variations to PWAs are currently timesheet-based rather than on a fixed fee basis. Timesheet-based fees can make budgeting difficult for applicants, as well as increase administrative costs for both the OGA and industry. This needs to be balanced by the need to avoid cross-subsidisation; a key reason for using timesheets is to clearly demarcate how staff spend their time, to help ensure income collected to cover one area of the OGA's remit is not used to cover another area of work intended to be funded by a separate source of income.

7.20 PWA and deposit consent applications and all associated variations are currently submitted and approved (or refused) by email, but the OGA intends to replace this with a new online portal in the next twelve months. The introduction of the new portal, gives an opportunity to introduce fixed fees, allowing licensees to make the fixed fee payment through the portal when they make the applications.

7.21 Complex applications remain subject to a timesheet-based fee. A "complex PWA application" is an application that the OGA considers will require more than 4 days of officers' work to determine.

7.22 If the OGA agrees to determine an application on an expedited basis the corresponding fee will be doubled.

7.23 A fee is payable to the OGA for petroleum licence applications (regulation 7 of the 2016 Fees SI). As part of the process in awarding Seaward Area Production Licences, the OGA must consult with the Offshore Safety Directive Regulator (OSDR), comprising the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) and the Health and Safety Executive (HSE), before granting a licence. Each licence application is subject to such consultation.

7.24 Under the Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2017, a fee is payable to the OSDR for this consultation, which is currently paid by the OGA and is therefore borne, indirectly, by licensees who pay the OGA levy. In line with the 'user pays' principle, the OGA proposes to increase the amount of the licence application fee to include the OSDR consultation fee.

7.25 The 2016 Fees SI allows the OGA to charge a fee of £990 for determining an application for consent to get petroleum from a licensed area. Included in the services provided for by this fee is determining whether to consent to drill stem tests and extended well tests, whereby petroleum is extracted as part of the process to test oil and gas wells once they are drilled (an extended well test involves greater volumes than a drill stem test).

7.26 Since 2016, applications for consent for drill stem tests and extended well tests have been processed separately through the OGA's online Well Operations and Notification System (WONS). The WONS system charges a fee of £990 for extended well tests and £400 for drill stem tests (less than the £990 that could be charged for consent to get petroleum from a licensed area).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are currently no plans to consolidate this legislation.

10. Consultation outcome

10.1 The OGA conducted a public consultation between 28 October and 22 November 2019 on the introduction of new and amended fees (please refer to footnote 1). The OGA has also published a response to the consultation[2].

10.2 The OGA informed the offshore oil and gas industry of the changes to the OGA fees in 2020 and will inform them of changes to the OGA levy in early 2021.

11. Guidance

11.1 Once the instrument comes into force, the OGA will issue notifications to licensees containing relevant instructions on payment.

11.2 The OGA has informed industry of the proposed new fees and rates in the response to the consultation document.

12. Impact

12.1 The impact of Part 2 on business is restricted to licensees holding offshore petroleum licences (as of 1 April 2021).

12.2 The impact of Part 3 is restricted to companies making applications identified in section 2 of the Energy Act 2016. The new and amended fees reflect the costs of the OGA providing the relevant services.

12.3 There is no, or no significant, impact on charities or voluntary bodies.

12.4 There is no, or no significant, impact on the public sector.

12.5 An Impact Assessment has not been prepared for this instrument because no or no significant impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

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

13.2 In Part 2, the levy includes a discount for micro-enterprises that hold certain types of offshore petroleum licence.

13.3 In Part 3 new and amended fees will be paid by companies carrying out activities identified in section 2 of the Energy Act 2016. The proposed charges would not fall disproportionately on small businesses.

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that as a result of section 28(3)(a) of the Small Business Enterprise and Employment Act 2015, instruments (like this instrument) which contain only provisions relating to a levy or other charge are not subject to the requirement to contain a review clause.

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[2] The OGA consultation response - https://www.ogauthority.co.uk/news-publications/consultations/2020/oga-response-to-the-consultation-on-proposals-to-introduce-new-and-amended-oga-fees/

15. Contact

15.1 Izabela Pawlic-Seymour at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 0735 or email: Izabela.Pawlic@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Helena Charlton, Deputy Director for Oil and Gas Exploration and Production, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Anne-Marie Trevelyan MP, Minister of State for Business, Energy and Clean Growth at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.