EXPLANATORY MEMORANDUM TO

THE OIL AND GAS AUTHORITY (LEVY AND FEES) REGULATIONS 2022

2022 No. 204

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 this instrument 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 2022 to 31 March 2023. Part 3 revises existing fee rates.

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 2022 to 31 March 2023 (Part 2) and amend existing fees for the delivery of specific services by the OGA (Part 3).

3.2 The changes to the fee rates set out in the instrument are not based on inflation but on a review of the actual time and resources (including online portal costs) required by OGA staff to process or deal with the applications associated with the fees. The OGA handles approximately 2,400 applications subject to fees each year. In line with the principles of paragraph 6.2 of HM Treasury's Managing Public Money, these fees are solely to cover the full costs of providing the service, and do not contain any profit element.

3.3 The revised fee rates (increases as well as decreases) are due to changes in the amount of staff time and/or overheads per staff member required to provide the relevant service (including the costs of providing the online portals used for the submission and processing of applications), together with, in some cases, changes in the staff grades necessary to provide the services. No new fees are proposed. The reasons for revisions to existing fee rates made by these Regulations are set out as follows:

a) Carbon dioxide appraisal and storage licence application fee – this fee was previously based on the fee rate for petroleum licence applications. With ongoing development of the carbon storage licensing regime, and an increase in applications, the fee review has shown it to be a more complex process than the petroleum licence equivalent. This includes detailed work on novel initial term work programmes. Additionally, at present, carbon storage licence applications are processed manually, rather than using an automated system and therefore take longer to process than petroleum licences.

b) Petroleum licence and gas storage licence application fees – the increase is due to the additional staff time required on preparing for licensing rounds and generation of licence documentation.

c) Licence extensions/amendments – the new rate reflects that the staff time required to consider an average application has increased due to a general increase in the complexity of the applications.

d) Pipeline Works Authorisations and variations - the increases are due to the additional work required for provision of information to BEIS for Environmental Impact Assessments under the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020.

e) Change of licensee consents - due to a requirement for increased time for review by specialised staff of the financial capability of potential new licence holders before giving consent, particularly due to increasing complexity of financial arrangements and increasing age of UKCS assets.

f) Well and drilling permits - reflects that the staff time required to consider an average application has changed (increased in most cases but decreased in the case of drill stem tests).

g) Flaring and venting consents - due to the additional work required for provision of information to BEIS for Environmental Impact Assessments under the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020.

h) Metering and flow calibration inspections - the decrease in fee amount reflects reduced time required for inspections (primarily due to an increase in number of remote inspections resulting in a reduction in travel costs).

i) Consent to the appointment of an operator under a petroleum licence – the decrease reflects the fact that more licence operator consents are now classified as routine, therefore less staff time is required for review of applications.

j) Other changes - The remaining changes to fee rates (increases as well as decreases) are due to changes in the amount of staff time and/or overheads per staff member required to provide the relevant service.

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

4.3 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) Regulations 2021 ("2021 Regulations") which imposed a levy in respect of the charging period beginning on 1 April 2021 and ending on 31 March 2022

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 2022 and ending on 31 March 2023. 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 Scotland Act 2016, Wales Act 2017 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018 (S.I. 2018/980)), The Oil and Gas Authority (Levy and Fees) and Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2020, and The Oil and Gas Authority (Levy and Fees) Regulations 2021).

6.5 Part 3 of the instrument revises the amounts of those fees.

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 (including costs for its energy transition work) 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 2022 and ending on 31 March 2023 ("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 2021 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 act in accordance with the OGA Strategy, which has the central obligation of securing that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters; and, in doing so, taking appropriate steps to assist the Secretary of State in meeting the net zero target.

7.5 As with the 2021 Regulations the methodology provides for four different rates for offshore petroleum licence holders.

7.6 Non-producing innovate licences in phase B of their initial term held by a micro-enterprise will be subject to the non-production levy with an 80% discount.

7.7 Non-producing promote 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 The OGA will determine the status of an offshore petroleum licence as at 12.01am on 1 April 2022 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 has been granted a development and production consent (and is therefore entitled to get petroleum in the way described in regulation 3(2)), then they will be issued an invoice for the production levy. If this is not the case, then they will be issued with an invoice for the non-production levy.

7.10 The OGA will ask undertakings 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 required to be settled within 30 days.

Part 3 of the Regulations

7.12 The Department is making Part 3 of 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 It is the policy of the OGA to regularly review the rates of the fees it charges for its services, typically every two years. Revised rates were last introduced in April 2020; these fees have now been reviewed by the OGA, with the latest revised rates included in this statutory instrument. Given that some of the proposed increases to fee rates are above inflation, details of the fees changes are set out in section three.

7.14 Part 3 also includes two amendments to definitions used to identify where certain fees are charged, to improve the drafting and ensure clarity.

8. European Union Withdrawal and Future Relationship

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 have been consulted and agree with the changes made by the Regulations. As the amounts of the levy and fees relate to actual costs of delivering services, no wider public consultation has been carried out. UK oil and gas industry representatives will be informed before the new fee rates come into effect. Additionally, the new fee rates will only be charged where provision of the services in question starts on or after 1 April 2022, with applicants informed of the new rates.

11. Guidance

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

12. Impact

12.1 The impact of Part 2 on business is restricted to licensees holding offshore petroleum licences (as of 1 April 2022).

12.2 The impact of Part 3 is restricted to companies making applications identified in section 2 of the Energy Act 2016. The 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 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 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 charges are not subject to the requirement to contain a review clause.

15. Contact

15.1 James Inkpen at the Department for Business, Energy, and Industrial Strategy Telephone: 0300 068 6911 or email: james.inkpen@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Curran, 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 Greg Hands MP, Minister of State for Energy, Clean Growth and Climate Change at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.