EXPLANATORY MEMORANDUM TO

THE OIL AND GAS AUTHORITY (LEVY AND FEES) REGULATIONS 2025

2025 No. 239

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Minister Shanks, Minister for Energy at the Department for Energy Security and Net Zero, confirms that this Explanatory Memorandum meets the required standard.

2.2 Michael Brannan, Deputy Director for Offshore Energy Transition and Coal Legacy at the Department for Energy Security and Net Zero, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Robert Radford at the Department for Energy Security and Net Zero - telephone: 07742765780 or email: ogepcorrespondence@energysecurity.gov.uk - can be contacted with any queries regarding the Regulations.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of Part 2 of the Regulations is to impose a levy on offshore petroleum licence holders to fund certain functions carried out by the Oil and Gas Authority[1] ("OGA"), during the period from 1 April 2025 to 31 March 2026. The purpose of Part 3 of the Regulations is to introduce fees further to new powers for the OGA in relation to changes in control of licensees holding carbon storage or petroleum licences.

Where does the legislation extend to, and apply?

4.2 The extent of the Regulations is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of Part 2 of the Regulations (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).

4.4 The territorial application of Part 3 of the Regulations (the OGA fee 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).

[1] The business name of the Oil and Gas Authority is the North Sea Transition Authority.

5. Policy Context

What is being done and why?

5.1 The Energy Act 2016 empowers the Secretary of State to make regulations enabling the OGA to recover its costs from certain categories of undertakings who hold petroleum and carbon dioxide appraisal and storage licences.

5.2 Some of the OGA's costs are recovered through fees for the delivery of specific services to individual undertakings. However, the majority of the OGA's costs (including costs for its energy transition work) are recovered through a levy charged on holders of offshore petroleum licences. As a result, the levy is currently imposed on licensees who hold offshore petroleum licences only.

5.3 The Regulations will enable the OGA to impose a levy for the period beginning on 1 April 2025 and ending on 31 March 2026, and introduce new fees further to new ex-ante (before the event) powers for the OGA in relation to changes in control of licensees.

5.4 All legislation is in scope of the statutory duty contained in the Environmental Act 2021 for Ministers of the Crown to have due regard to the Environmental Principles Policy Statement when making policy. The Regulations enable the imposition of fees and a levy, and we have considered each of these aspects in that context. In relation to fees, an assessment has been made and it has been concluded that the new fees will have no environmental effects. In relation to the levy, our assessment is that a levy comprises taxation. As set out in the Environment Act 2021, the requirement to have due regard to the Environmental Principles Policy Statement does not apply to policy so far as relating to taxation, and the imposition of the levy by these Regulations is, therefore, out of scope of the statutory duty.

Part 2 of the Regulations

5.5 Section 13(1)(a-b) of the Energy Act 2016 enables the Secretary of State to make regulations to provide for a levy to be imposed on petroleum licence holders. This is done annually, with the levy providing the OGA's main source of income.

5.6 These Regulations make provision for calculating and imposing a levy on offshore petroleum licensees in respect of the period beginning on 1 April 2025 and ending on 31 March 2026. 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).

5.7 As with the Oil and Gas Authority (Levy and Fees) Regulations 2024 (S.I. 2024/241) ("the 2024 Regulations"), the methodology provides four different rates for offshore petroleum licence holders: a rate for a production levy, a rate for a non-production levy, and two discounted rates for a non-production levy in certain cases. A licensee's eligibility for a discounted rate is determined by the OGA on the basis of the definition of "micro-enterprise" in regulation 4(6).

5.8 The OGA will determine the status of an offshore petroleum licence as at 12.01a.m. on 1 April 2025 and the levy rate to be applied for that charging period. A licensee holding a development and production consent on that date will be issued an invoice for the production levy. A licensee not holding such a consent will be issued with an invoice for the non-production levy or the appropriate discounted rate, if appropriate.

5.9 The OGA will make a determination of a licensee's status by analysing revenue and staff data and then calculate the levy amounts and issue invoices based on that determination. Invoices will be required to be settled within 30 days.

Part 3 of the Regulations

5.10 Part 3 of these Regulations contains provisions for charging 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 fee Regulations are the Oil and Gas Authority (Fees) Regulations 2016 (S.I. 2016/904) (the "2016 Fees SI"), as last amended by the 2024 Regulations. The 2016 Fees SI was made 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.

5.11 Following an OGA consultation between July and September 2022[2] and the subsequent introduction of relevant provisions by the Energy Act 2023, the Department is introducing new fees further to new powers for the OGA in relation to changes in control of holders of carbon storage and petroleum licences. These powers are to ensure that the governance, technical and financial capability of a licensee is not undermined by a change in control. They require the OGA to undertake checks on those taking control of the licensee, thus incurring staff time and resources that benefit the parties to the transaction. As such, there is a strong case under Managing Public Money for the costs of the checks, and review and processing of applications for consent to a change in control to be covered by a fee charged to the applicant. Depending on the complexity of the transaction, the time and resource needed for individual applications is likely to vary a great deal and the new fee will initially be timesheet based.

What was the previous policy, how is this different?

5.12 Part 2 of the Regulations will allow the OGA to charge its levy for the period beginning on 1 April 2025 and ending on 31 March 2026. Part 3 will introduce new fees for applications made under the new powers introduced by the Energy Act 2023.

6. Legislative and Legal Context

How has the law changed?

6.1 Part 2 of the Regulations 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 2024 Regulations.

6.2 Regulation 5 of the Regulations sets out the total amount to be levied in respect of the charging period beginning on 1 April 2025 and ending on 31 March 2026. 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

[2] https://www.nstauthority.co.uk/news-publications/consultation-on-proposals-on-nsta-fees-and-data-confidentiality-periods/

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, as set out in the 2016 Fees SI, as amended.

6.5 Part 3 of the Regulations introduces new fees in relation to the change in control of licensees in possession of carbon storage and petroleum licences, as detailed in section 5 above.

Why was this approach taken to change the law?

6.6 As set out above, section 12 of the Energy Act 2016 gives the OGA power to charge such fees as determined and payable in accordance with regulations made by the Secretary of State. Section 13 of the Energy Act 2016 enables the Secretary of State to make regulations to provide for a levy to be imposed on petroleum licence holders.

7. Consultation

Summary of consultation outcome and methodology

7.1 As set out in paragraph 5.11, above, the OGA consulted on a fee for applications for consents for changes in control between 19 July and 9 September 2022.

7.2 The consultation response was published on 28 February 2023.[3] The consultation response noted there was broad support from respondents for a fee for applications for consent to changes in control. The OGA stated its intent to introduce a fee once the proposed change in control measure was enacted in legislation. The underlying legislation came into effect in January 2024. The devolved administrations were not consulted, as the fees do not apply to activities relating to onshore petroleum licences in Scotland and Wales, and do not apply to carbon storage activities within the competence of devolved administrations.

7.3 The OGA have been consulted on the Regulations and agree with the changes that they make.

8. Applicable Guidance

8.1 Once the Regulations come into force, the OGA will issue invoices to licensees containing relevant instructions on payment. The OGA will also inform the relevant trade associations. The current version of the fees guidance will be updated to reflect the new fee when the instrument is laid in March 2025[4].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because a small number of businesses will be affected and the impacts on affected businesses will be limited. More specifically, the impact of Part 2 on business is restricted to licensees holding offshore petroleum licences (as of 1 April 2025), and the impact of Part 3 is

[3] https://www.nstauthority.co.uk/news-publications/consultation-response-on-proposals-on-nsta-fees-and-data-confidentiality-periods/

[4] https://www.nstauthority.co.uk/regulatory-information/regulatory-framework/legislative-context/charging-regime-and-fees/

restricted to companies making applications identified in section 12 of the Energy Act 2016. The new fees reflect the costs of the OGA providing the relevant services and do not contain any profit element or cross-subsidisation. In the response to the consultation on the proposed new fees, industry representative bodies indicated that they were appropriate and proportionate provided there is cost efficient implementation by the OGA.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because any impact is restricted to licensees holding petroleum and carbon storage licences, and this does not include charities or voluntary bodies. Any impact on business is set out in paragraph 9.1, above.

9.3 The legislation does impact small or micro businesses.

9.4 No specific action is proposed to minimise regulatory burdens on small businesses, other than micro-enterprises. To minimise the impact of the requirements on micro-enterprises the approach taken is that in Part 2 the levy includes a discount for micro-enterprises that hold certain types of offshore petroleum licence. The fees in Part 3 will be paid by companies making applications identified in section 12 of the Energy Act 2016. The charges will not fall disproportionately on small businesses.

9.5 The basis for the final decision on what action to take to assist small businesses is based on the approach used in previous years. The discount to the levy for micro-enterprises holding certain types of offshore petroleum licence was introduced in April 2017 following a consultation in 2016. With variations in the calculation methodology, micro-enterprises have been eligible for a discount since then.

9.6 There is no, or no significant, impact on the public sector because any impact is restricted to licensees holding petroleum and carbon storage licences, and this does not include public sector organisations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is as follows, for Part 2, the regulations for the levy must be renewed every year, as the levy is set for only one financial year. For Part 3, the OGA reviews its fees on a regular basis, with fee rates being updated approximately every two years.

10.2 The Regulations do not include a statutory review clause.

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 The Regulations are 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.