EXPLANATORY MEMORANDUM TO

THE OIL AND GAS AUTHORITY (LEVY) REGULATIONS 2016

2016 No. 318

1. Introduction

1.1 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 impose a levy on holders of offshore petroleum licences to fund the carrying out of certain functions by the Oil and Gas Authority (the "OGA"). The OGA is currently an executive agency of the Department and is expected to become a government company during Summer 2016. This is subject to the Energy Bill 2015-16 being approved by Parliament.

2.2 This instrument makes provision for the charging of the levy for the period 1 April 2016 to 31 March 2017.

3. Matters of special interest to Parliament

3.1 None.

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 42 of and Schedule 7 to the Infrastructure Act 2015 provide a power for the Secretary of State to raise a levy to fund the activities of the OGA.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is the United Kingdom Territorial Sea and the United Kingdom Continental Shelf.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Following the 2014 Wood Review**1** into maximising the economic recovery of oil and gas from the United Kingdom Continental Shelf, the OGA was established as an Executive Agency on 1 April 2015.

7.2 The OGA needs to be significantly better resourced to carry out its objectives, including ultimately delivering the objective of maximising the economic recovery of offshore oil and gas. In line with established practice across regulation and service delivery, it is appropriate for the OGA to recover its costs from companies benefitting from the services of the regulator.

7.3 Some of the OGA's costs are recovered through fees for the delivery of specific services to individual companies. However, an additional cost recovery mechanism is required to fund the remainder of the costs, and a levy provides the fairest and simplest method of achieving this aim. In line with the early focus of the OGA, the Government has determined that, initially, the levy will be targeted only at offshore petroleum licence holders. Holders of licences relating to the unloading and storage of carbon dioxide will, in the short term, be exempt from paying the levy, as we do not envisage that the OGA will incur costs for those categories of licence that cannot be recovered through direct charges.

7.4 Managing Public Money sets out that it may be appropriate to charge different levies to different kinds of licences, depending on what is being provided. The 2016/17 levy rate has been calculated using the same methodology as for the six month period in 2015/16. The costs are apportioned between licences that are producing oil and gas or the relevant consent or approval has been granted such that there is nothing preventing a licensee from producing petroleum in respect of a licence (around 89%) and those that are not producing oil and gas (around 11%). This is based on an assessment of the costs that the OGA incurs in relation to each group.

7.5 The levy rate for 2016/17 is based on the OGA's estimated budget for 2016/17 included in its Corporate Plan. Producing licence holders will be subject to a levy rate of £64,951.96 for the period 1 April 2016 to 31 March 2017 in respect of each licence. Non-producing licence holders will be subject to a levy rate of £6,808.65 for the same period in respect of each licence.

7.6 The trigger for determining that the higher levy rate is payable will be either a consent for the licensee to get petroleum or carry out relevant works (an approval to a Field Development Plan) for more recent licences, or the approval of a works programme for older licences. This is because once the relevant approvals are in place there is nothing stopping the licensee from producing petroleum.

7.7 The lower levy rate will be paid in relation to each licence where a relevant consent has not yet been given or a works programme has not yet been approved. The lower levy rate will also be paid by holders of offshore exploration licences since those licences do not give a right to produce petroleum.

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1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471452/UKCS_Maximising_Recovery_Review_FINAL_72pp_locked.pdf

7.8 For this instrument, the rate will be determined based on the type of offshore licence and whether a consent or approval has been given, where relevant, as at 1 April 2016.

7.9 These regulations also require the amount of levy paid by licensees under the Oil and Gas Authority (Levy) Regulations 2015 (S.I. 2015/1661) (the "2015 Regulations") to be adjusted if the total amount of the levy to be recovered under the 2015 Regulations exceeds the costs incurred by the OGA in carrying out certain functions during the charging period to which the 2015 Regulations relate.

8. Consultation outcome

8.1 The OGA published a draft version of its Corporate Plan, which included a breakdown of its budget and levy requirements for 2016/17, for consultation on 6 November 2015. The consultation lasted for 6 weeks, closing on 18 December 2015. The consultation received 35 responses from a broad range of individuals and organisations. During the consultation process, the OGA also held two workshops in Aberdeen and London with a broad representation from industry to discuss the Plan and receive feedback.

8.2 The key points raised by industry are detailed in the Government Response document, which the OGA published alongside the Corporate Plan.

9. Guidance

9.1 The OGA will communicate directly with licence holders around the time that the levy regulations are laid before Parliament to inform them that the levy will be coming into force on 1 April 2016 and to give them an indication of the rates they will be required to pay. Once the levy comes into force, the OGA will issue invoices to licence holders with relevant instructions on payment.

10. Impact

10.1 The impact on business is restricted to existing offshore petroleum licence holders (as at 1 April 2016). Those parties were largely responsible for paying a levy to fund the OGA in respect of the previous charging period under the 2015 Regulations so will continue to pay a levy to fund the OGA.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment**2** was submitted to accompany the 2015 Regulations. The Better Regulation Executive at the Department for Business Innovation and Skills has advised subsequent Impact Assessments are not required for annual iterations of these levy regulations unless there has been a change to the methodology or an extension to the regulatory powers. There has been no such change or extension.

11. Regulating small business

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

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

11.3 The basis for the decision on what action to take to assist small business was based on a consultation with a wide range of stakeholders to ensure that their views were taken into account in the development of the OGA's corporate plan and levy. The OGA

2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/459460/image2015-09-09-112154.pdf

intends to keep the levy methodology under review to ensure that it remains fair and proportionate.

12. Monitoring & review

12.1 A review provision is not appropriate. The exemption in section 28(3)(a) of the Small Business Enterprise and Employment Act 2015 applies due to the nature of the levy being imposed.

13. Contact

13.1 James Montagu at the Department of Energy and Climate Change Telephone: 0300 068 5136 or email: james.montagu@decc.gsi.gov.uk can answer any queries regarding the instrument.