EXPLANATORY MEMORANDUM TO

THE PETROLEUM LICENSING (AMENDMENT) REGULATIONS 2009

2009 No. 3283

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument (a) updates the standard application fees for Petroleum Production Licences in accordance with Treasury Guidance on Fees and Charges, and (b) corrects some drafting errors in previous instruments.

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

3.1 Although the instrument does correct some errors contained in previous instruments, it also makes other substantive changes which are of equal or greater importance. In view of the fact that the corrections have been combined with those other provisions, it is considered that the free issue procedure should not be applied.

4. Legislative Context

4.1 A person who wishes to explore for, or produce, petroleum vested in the Crown under the Petroleum Act 1998 or the Continental Shelf Act 1964 may apply to the Secretary of State for a licence under section 3 of the Petroleum Act 1998. For those purposes, petroleum is defined to include oil and gas (and some other hydrocarbon resources); and licences may be granted in respect of any area within Great Britain, the UK territorial sea or the UK Continental Shelf. Under section 4 of the Petroleum Act 1998, the Secretary of State has the power to make regulations prescribing, in particular, application fees and model clauses for licences.

4.2 Once prescribed for a category of licence, such model clauses are to be incorporated into licences of that category (although a clause can be excluded or modified in the case of any particular licence). There are currently three categories of petroleum licence for which model clauses are prescribed: Landward Production Licences (relating to “landward areas” – also called “petroleum exploration and development licences”), Seaward Production licences (relating to “seaward areas”), and Exploration Licences (relating to the entire offshore area below the low water mark). For those purposes, the boundaries between “landward” and “seaward” areas were laid down by SI 1995/1436 and SI 1988/1213. However, in relation to the model clauses subsequently prescribed by SI 2004/352, the boundary was inadvertently changed so that it now coincided simply with the baselines of the UK territorial sea. As a result, a licence granted in respect of certain areas on the landward side of those baselines (for example, in parts of the Moray Firth) would have incorporated the

wrong set of model clauses (namely those prescribed for Landward rather than Seaward Production Licences). This error had no practical consequences, as no licences were in fact granted in respect of such areas. The present instrument corrects the error by reverting to the original definitions of “landward area” and “seaward area.”

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom, but relates solely to licences in respect of areas within Great Britain (including its adjacent internal waters), the UK territorial sea, and the UK 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 The first purpose of the instrument is to adjust the fees charged for licence applications. Those fees are set to cover the Department’s costs in accordance with Treasury Fees and Charges Guidance. A recent review of costs showed that the cost for a Landward Production Licence was slightly too low to cover the Department’s costs, whereas that for a Seaward Production Licence was slightly too high. This instrument adjusts the two fees accordingly. Where the fee is increased, that increase does not exceed the rate of inflation since the fee was previously prescribed in 1995.

7.2 The second purpose of the instrument is to correct some errors in previous instruments prescribing model clauses for licences. The instrument corrects the error already mentioned, relating to the definitions of “landward” and “seaward” areas, and makes a number of further minor corrections or clarifications. The terms under which oil and gas are exploited are important because they define the commercial and legal framework in which the oil and gas industry operates in the UK. While the errors that have been identified have had no effects to date, if they were not put right it is possible that they could have an effect in future; for example, by creating uncertainty about the status of a licence. It is therefore worthwhile to correct them.

- ***Consolidation***

7.2 The Department of Energy and Climate Change does not propose to consolidate existing instruments.

8. Consultation outcome

8.1 Because this Instrument respectively (a) accords with Treasury Guidance on Fees and Charges, and (b) corrects or clarifies regulatory provisions rather than substantively changing them, the Department of Energy and Climate Change has not conducted a consultation.

9. Guidance

9.1 The Department of Energy and Climate Change will provide guidance on its website to the effect and intention of the instrument. Where the instrument has a perceptible effect on any company – i.e. where it changes an application fee – the Department's guidance to the application process will prominently draw attention to the change.

10. Impact

10.1 The impact on business, charities or voluntary bodies is insignificant.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to businesses of all sizes.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the Department will make clear the change in application fees at the time that it invites applications; because the Hydrocarbons Licensing Directive (Directive 94/22/EC) requires the Department to allow 90 days for companies to submit applications, this gives ample time for companies to consider the change before making an application.

11.3 The basis for the final decision on what action to take to assist small business is the Department's regular contacts with companies of all sizes.

12. Monitoring & review

12.1 The model clauses used in Production Licences are subject to continuous review, and the Department of Energy and Climate Change is in regular discussions with the oil and gas industry at several levels, during which they are open to discussion. The fees will be kept under regular review.

13. Contact

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