EXPLANATORY MEMORANDUM TO

THE POLLUTION PREVENTION AND CONTROL (FEES) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2016

2016 No. 529

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.

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 enable fees to be charged in order to recover the Secretary of State for Energy and Climate Change's costs in relation to certain activities with regards to the environmental management of the offshore oil and gas industry through:

- increasing the hourly rates used to determine to reflect changes in the eligible cost base following a review of all underpinning cost elements;
- amending relevant Regulations to capture certain additional activities provided to industry, which has not previously been charged for but reflects existing regulatory activity.

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 so that it can recover its costs for providing services to industry, rather than passing the costs onto the taxpayer. This approach is consistent with the 'polluter pays' principle of environmental law. The Department will not be seeking to make a profit from these charges but merely recover its eligible costs in providing these services.

3.2 The increases in eligible costs were identified following a review of the cost base for the current fee schemes. It has become clear that there have been changes to the cost base which are not reflected in the current hourly rates being applied to the provision of relevant services to industry. As a result, the increases do not relate to the rate of inflation.

Other matters of interest to the House of Commons

3.3 As this instrument is subject to negative resolution 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 The Offshore Oil and Gas Environment and Decommissioning Unit (OGED) in the Department for Energy and Climate Change carries out environmental regulation functions for the offshore oil and gas industry.

4.2 OGED first introduced a fee scheme in 2001, provided for by the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001.[1] In subsequent years, three further fees schemes were introduced under the Offshore Chemicals Regulations 2002, the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 and the Greenhouse Gas Emissions Trading Scheme Regulations 2005.[2]

4.3 For other statutory functions involving the provision of services to the offshore oil and gas industry by OGED, for which it is appropriate to charge a fee, The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations were made in 2015.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 This instrument amends various instruments, the extent and application of which vary.

5.3 Regulation 2(2) provides for fees in relation to the preparation of certain documentation prepared under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 and regulation 2(5) increases the fees in relation to other functions under those 1998 Regulations. Those Regulations extend to the whole of the UK.

5.4 Regulation 2(3) provides for fees for certain advice in relation to the Department's functions in respect of fluorinated greenhouse gases and regulation 2(5) increases the fees in relation to existing functions relating to the Fluorinated Greenhouse Gases Regulations 2015 where the Secretary of State's functions set out (a) offshore installations or (b) Northern Ireland offshore installations, other than such offshore installations used in connection with the production of energy from water or wind. "Offshore installations" and "Northern Ireland offshore installations" are defined in regulation 4 of the Fluorinated Greenhouse Gases Regulations 2015. Those Regulations extend and apply in full to Great Britain but to Northern Ireland only in respect of certain import, export and trade provisions which are reserved matters.

5.5 Regulation 2(4) provides for fees relating to certain licences granted under the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007, and regulation 2(5) amends the way in which those fees will be calculated (by increasing the hourly rate). Those Regulations extend to the whole of the UK and apply to the United Kingdom's offshore marine area, which means any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (effectively the United Kingdom sector of the continental shelf) and any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man).

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[1] Now replaced by the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013.

[2] Now replaced by the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

5.6 Regulation 2(5) also: (a) increases fees relating to functions carried out by the Secretary of State under the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015. Those Regulations apply in Great Britain and outside Great Britain in external waters (the territorial sea and any area designated under the Continental Shelf Act 1964). They extend to England and Wales and Scotland; and (b) increases fees for certain marine licence applications where an application for a licence under section 71 of the Marine and Coastal Access Act 2009 relates to oil and gas activities (i.e. those for which the Secretary of State for Energy and Climate Change is responsible). Section 71 of that Act extends to the whole of the UK and applies to all areas except territorial waters adjacent to Scotland.

5.7 Regulations 3 and 4 amend the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 and the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 to include new powers to charge fees in relation to certain activities and to increase the hourly rates used to calculate the fees charged under those Regulations. Both those Regulations extend to the whole of the UK.

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 a review of the cost base for the current fee regime for the Department's environmental regulation of the offshore oil and gas industry, the Department has concluded that there have been changes to the cost base which are not reflected in the current hourly rates being applied to the provision of services to industry. DECC now operates a recording system to generate the relevant information of time spent by officials on statutory regulatory activity under each of the regulations, and it is the output of the recording system that identified both the requirement to increase the relevant hourly rates and the additional services provided to industry for which fees have not been charged, the costs of which will now be recovered through fees.

7.2 The Department is making these Regulations so that it can recover its costs for providing these services, rather than passing the costs onto the taxpayer. This approach is consistent with the 'polluter pays' principle of environmental law. The Department will not be seeking to make a profit from these charges but merely recover its costs in providing these services.

7.3 The additional services to the oil and gas industry for which the Department will recover its costs, as a result of these Regulations, are:

7.3.1 i. providing advice with respect to the preparation of an oil pollution emergency plan, an amended oil pollution emergency plan, or a description of amendments to be made to an oil pollution emergency plan;

7.3.2 ii. providing advice with respect to labelling requirements under Article 2 (labelling requirements), 3 (form of the label) or 4 (placing of the label) of Commission Regulation 1494/2007 (establishing, pursuant to Regulation EC No 842/2006 of the European Parliament and of the Council, for form of labels and additional labelling

requirements as regards products and equipment containing certain fluorinated greenhouse gases), or Article 12 (labelling, product and equipment information) of the 2014 Regulation (Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated gases), training and certification requirements established under Article 10 (training and certification) of the 2014 Regulation, or the reporting requirements established under Article 20 (collection of emissions data) of the 2014 Regulation;

7.3.3 iii. providing advice with respect to an application or potential application for, or the modification, transfer, surrender, revocation or refusal of a relevant licence under regulation 49 (power to grant licences) of the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007; and monitoring compliance with the conditions of such a licence.
The structure of regulation 5 of the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 did not lend itself to ready amendment and so the regulation has been substituted in its entirety with a new regulation which includes the ability to charge fees for those activities referred to in the previous regulation 5 of those 2015 Regulations.
Regulation 49(14) of the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007 provides for the ability to charge a fee for a licence and so such provision is not needed in the 2015 Regulations;

7.3.4 iv. providing advice with respect to whether an environmental statement is required under regulation 5 of the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 and the content of such an environmental statement; whether a direction might be made under regulation 6(1), 6(2) or 11(2) of those Regulations; whether a direction might be revoked under regulation 6(10) or 11(3) and information and evidence which may be required under regulation 10(1) of those Regulations; and

7.3.5 v. providing advice with respect to whether consent is required under regulation 4(1) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, the preparation of an application for such consent, or a proposal to modify, transfer, surrender or revoke such consent; and providing advice with respect to monitoring compliance with a consent under regulation 4(1) of those Regulations.

7.4 The fee is determined by adding together (1) the recorded number of hours worked by environmental specialists on cost recoverable activities multiplied by £168 plus (2) the number of hours worked by non-specialists on cost recoverable activities multiplied by £82. Environmental Specialists are technical staff who carry out the relevant functions of the Secretary of State and non-specialists are administrative staff.

7.5 DECC now operates a work recording system to generate the relevant information and it is the output of the recording system that identified the additional advice being given as part of the way in which DECC carries out its obligations and relevant functions, the costs of which will now be recovered through fees.

7.6 The hourly rates recovered are calculated in accordance with HM Treasury's Managing Public Money and include the full cost of all the resources used in carrying out and supporting the cost recoverable activities. This includes the gross salaries of staff carrying out the work, relevant costs relating to their line managers and support staff, general administrative expenditure (such as accommodation, IT, office services

etc.), and corporate services (such as HR, Senior Management, Finance and Learning and Development). The hourly rate has been calculated by taking these costs and dividing them by 1,243 hours. The figure of 1,243 represents the average number of hours per annum spent on cost recoverable activity and removes the hours spent on leave, bank holidays, staff management etc.

Consolidation

7.7 At this stage, the Department does not intend to consolidate (or provide informal consolidated text of) the instruments being amended by these Regulations.

8. Consultation outcome

8.1 There is no statutory requirement to consult on these Regulations before making them. The Department considered whether to carry out a consultation and concluded that as there was no other way in which it wished to ensure that companies directly benefiting from regulatory services meet the cost associated with their provision, it was not appropriate to consult.

8.2 The Offshore Oil and Gas industry was informed by letter that a new fee regime would be put in place in 2015 to regularise the fee schemes in line with the "polluter pays" principle of environmental regulation. Following the letter to industry, no representations were received. A further letter outlining these amendments to the current fees regime was issued to the industry in April 2016. Updating the hourly rates to be applied and a review of the chargeable services provided will be undertaken regularly, at least annually and the industry will be informed of any changes prior to their implementation.

9. Guidance

9.1 Guidance on the affected charging schemes will be made available on the GOV.UK Website in May 2016 before these Regulations come into force.

9.2 Further, the existing Guidance Notes to Industry on our environmental management regime will also be revised in light of the Regulations and an updated version placed on DECC's website in May 2016.

10. Impact

10.1 There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector is negligible as DECC will be the regulatory authority and will accommodate this work within its current resource head room.

10.3 A Regulatory Triage Assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is submitted with this Memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses, as the environmental regulations apply to all offshore operators and owners.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses. Of the companies who are active in exploration for and production of oil and gas, very

few of them are small firms and the proposed charges would not fall disproportionately on them. It is crucial that all businesses operating offshore, regardless of size, are subject to the same regulatory regime to ensure that they continue to provide a high level of protection for the marine environment. The offshore industry recognises the importance of maintaining a consistent approach to managing their impact on the environment offshore regardless of business size.

12. Monitoring & review

12.1 The effectiveness of the Regulations will be monitored in conjunction with industry on a regular basis, alongside the update of the hourly rates to be applied and the review of chargeable services.

12.2 As a result of s.28(3)(a) of the Small Business Enterprise and Employment Act 2015, instruments (like this instrument) which contain only provision imposing, abolishing or varying any tax, duty, levy or other charge are not subject to the requirement to contain a review clause.

13. Contact

13.1 Richard Brooks at the Department of Energy and Climate Change. Telephone: 01224 254131 or email: richard.brooks@decc.gsi.gov.uk can answer any queries regarding the instrument.