EXPLANATORY MEMORANDUM TO

THE POLLUTION PREVENTION AND CONTROL (FEES) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2021

2021 No. 741

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 the Instrument is to increase the hourly rates used to determine the fees which are payable by the offshore oil and gas industry ("the offshore hydrocarbons industry") and the Oil & Gas Authority to BEIS's Offshore Petroleum Regulator for Environment and Decommissioning ("OPRED") for certain activities undertaken by OPRED in relation to the environmental management of the offshore hydrocarbons industry.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Instrument is subject to the affirmative resolution procedure. It contains enabling powers that are both negative and affirmative. The European Union (Withdrawal) Act 2018 makes provision for the affirmative procedure to take precedence over the negative procedure where there is a combination of instruments.

3.2 To enable OPRED's new hourly rates to be introduced from 1 July 2021, the Instrument will enter into force on the day after it is made which will be beyond the Common Commencement Date of 6 April 2021. The increases in eligible costs to be charged to the offshore hydrocarbons industry and the Oil & Gas Authority were identified following a review of the cost base for the current OPRED fee schemes. The increases, which will allow OPRED to recoup the costs for the provision of regulatory services, are not alterations to reflect changes in the value of money.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 The territorial extent and application of the Instrument - as outlined in paragraph 4 below - is such that the Instrument will not be subject to certification for English votes purposes.

4. Extent and Territorial Application

4.1 The territorial extent of the Instrument is the United Kingdom.

4.2 The Instrument amends the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended); the Offshore Petroleum Licensing (Offshore Safety

Directive) Regulations 2015 (as amended); the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (as amended); and the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020.

4.3 The amendments made by the Instrument have the same extent and application as the legislation they amend.

4.4 In particular**:**

(a) The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended) extend to the whole of the UK.

(b) The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (as amended) apply in Great Britain and outside Great Britain in relevant waters (for example, the territorial sea adjacent to Great Britain and any area designated by order under the Continental Shelf Act 1964). However, they only make material changes in relation to matters within the territorial sea and on the UK Continental Shelf.

(c) The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (as amended) extend to the whole of the UK. However, the relevant sets of legislation for which they provide the fee calculation vary in their extent and applicability as indicated in items (i) to (vi) below:

(i) The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 (as amended), and the Energy Savings Opportunity Scheme Regulations 2014 (as amended) extend to the whole of the UK.

(ii) Section 71 of the Marine and Coastal Access Act 2009 extends to the whole of the UK and applies to all areas except territorial waters adjacent to Scotland and the territorial sea adjacent to Wales.

(iii) Part 4A of the Energy Act 2008 (including sections 82A to 82Q) extends to the whole of the UK and applies to the UK Continental Shelf and territorial sea except the territorial sea adjacent to Scotland.

(iv) The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 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.

(v) The Fluorinated Greenhouse Gases Regulations 2015 (as amended) extend and apply to Great Britain - except the territorial sea adjacent to Wales - and to Northern Ireland but only in regard to certain import, export and trade provisions which are reserved matters.

(vi) The Conservation of Offshore Marine Habitats and Species Regulations 2017 which extend to all of the UK offshore marine area. This 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 UK 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 UK, the Channel Islands, and the Isle of Man).

4.5 The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 extend to the UK. Application is as follows:

(a) Where a project**:**

(i) comprises activities relating to unloading or storage of combustible gas, and

(ii) is not a project to which the Marine Works (Environmental Impact Assessment) Regulations 2007 apply, where the appropriate authority under those Regulations is a devolved authority or the Natural Resources Body for Wales, and

(iii) is not a project to which the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 apply,

the Instrument applies if the project is in the territorial sea adjacent to the UK (the territorial sea extends 12 nautical miles from baselines established under the Territorial Sea Act 1987) or in waters in the Gas Importation and Storage Zone (as designated under section 41(3) of the Marine and Coastal Access Act 2009 and including the area resulting from Orders in Council made under section 1(5)(b) of the Energy Act 2008).

(b) Where a project:

(i) comprises activities relating to the geological storage of carbon dioxide, the licensing authority for which is the Oil and Gas Authority, and

(ii) is not a project to which the Marine Works (Environmental Impact Assessment) Regulations 2007 apply, where the appropriate authority under those Regulations is a devolved authority or the Natural Resources Body for Wales, and

(iii) is not a project to which the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 apply,

the Instrument applies if the project is in the territorial sea adjacent to the UK or in waters in the Gas Importation and Storage Zone.

(c) For all other projects**:**

(i) which are not projects to which the Marine Works (Environmental Impact Assessment) Regulations 2007 apply, where the appropriate authority under those Regulations is a devolved authority or the Natural Resources Body for Wales, and

(ii) which are not projects to which the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 apply,

the territorial application of the Instrument is the UK's territorial waters (including tidal waters) and any designated area of the UK Continental Shelf.

5. European Convention on Human Rights

5.1 The RT Hon Anne-Marie Trevelyan, Minister of State for Business, Energy and Clean Growth at BEIS has made the following statement regarding Human Rights**:**

"In my view the provisions of the Offshore Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 OPRED carries out environmental regulatory functions for the offshore hydrocarbons industry and also for the Oil & Gas Authority (as indicated in paragraph 6.2 item (b)). For some of these functions, OPRED charges the industry fees using fee schemes. OPRED first introduced a fee scheme in 2001, provided for by the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001 (subsequently replaced by the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 (as amended)). In subsequent years, four further fees schemes were introduced under the Offshore Chemicals Regulations 2002 (as amended); the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as amended); the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (subsequently replaced by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (as amended)); and the Greenhouse Gas Emissions Trading Scheme Order 2020 (as amended).

6.2 For other statutory functions for which it is appropriate to charge a fee, OPRED's fees provisions are detailed in secondary legislation as explained in items (a) to (d) below**:**

(a) The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended). The fees charged to the offshore hydrocarbons industry cover functions such as**:**

- the evaluation of applications and issuing of consents for geological surveys; and
- carrying out appropriate assessments on the likely significant environmental effects of proposed projects.

(b) The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (as amended). The fees charged to the Oil & Gas Authority concern functions such as monitoring industry compliance with liabilities coverage.

(c) The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (as amended), which make provisions for charging fees to the offshore hydrocarbons industry**:**

(i) In connection with consents to locate under section 82A of the Energy Act 2008, and emergency safety notices issued under sections 82F and 82G(8) of the Energy Act 2008.

(ii) For applications for certain licences under section 71 of the Marine and Coastal Access Act 2009.

(iii) In respect of monitoring industry compliance with the requirements of the Energy Savings Opportunity Scheme Regulations 2014 (as amended).

(iv) Relating to certain activities under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 (as amended) (e.g. considering / approving and monitoring offshore operators' oil pollution emergency plans), the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (e.g. monitoring industry compliance with the

duties in the Safety Case Regulations relating to the environment); and the Fluorinated Greenhouse Gases Regulations 2015 (as amended) (e.g. monitoring industry compliance with the legislative requirements).

(v) Relating to certain licences under regulation 55 of the Conservation of Offshore Marine Habitats and Species Regulations 2017.

(d) The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020. The fees charged to the offshore hydrocarbons industry cover functions such as**:**

- considering and accepting or rejecting Environmental Statements; and
- giving directions as to whether or not particular developments require the preparation of an Environmental Statement.

6.3 The fees that OPRED charge are based on the application of hourly rates multiplied by the number of hours worked by environmental specialist and non-specialist staff.

6.4 The fee schemes which do not require a legislative change (detailed in paragraph 6.1) will be updated administratively in parallel with the introduction of the Instrument.

7. Policy background

What is being done and why?

7.1 OPRED charges the offshore hydrocarbons industry for activities undertaken in relation to environmental legislation. This ensures that, where possible, the costs for providing services to the offshore hydrocarbons industry are recovered from that industry rather than being passed on to the taxpayer.

7.2 The existing fees are determined by adding together (1) the recorded number of hours worked by environmental specialists on cost recoverable activities multiplied by £190 plus (2) the number of hours worked by non-specialists on cost recoverable activities multiplied by £101. Environmental specialists are technical staff who carry out the relevant functions of the Secretary of State and non-specialists are administrative staff.

7.3 The current hourly rates have been in place since April 2020. The cost base has been reviewed and it was determined that the existing hourly rates of £190 per hour for environmental specialists and £101 per hour for non-specialists needed to be increased to £197 and £108 per hour respectively to fully recover OPRED's costs (but not to make a profit) for providing services to the offshore hydrocarbons industry and the Oil & Gas Authority under the legislation referred to in paragraph 6.2.

7.4 The hourly rates are calculated in accordance with HM Treasury's 'Managing Public Money' guidance and include the full cost of all the resources utilised by OPRED in carrying out and supporting the cost recoverable activities. This includes the gross salaries of staff undertaking the work, relevant costs relating to their line managers and support staff, general administrative expenditure (such as accommodation, information technology, office services, etc.), and corporate services (such as human resources, senior management, finance and learning and development). The hourly rates have 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 potentially cost recoverable activity and removes the hours spent on leave, bank holidays, staff management, etc.

7.5 Subject to Parliamentary approval, the OPRED intention is that the new hourly rates will come into force from 1 July 2021.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 The Instrument does not specifically 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 the legislation in this area.

10. Consultation outcome

10.1 On 5 February 2021, OPRED informed the offshore hydrocarbons industry and the Oil & Gas Authority of plans to increase the hourly rates of the fees to be charged for the provision of regulatory services under the legislation referred to in paragraph 6.2 and no representations were received.

10.2 The offshore hydrocarbons industry and the Oil & Gas Authority are aware that OPRED reviews its hourly rates and the chargeable services provided annually and that the industry will be informed of any changes prior to their implementation.

11. Guidance

11.1 Once the Instrument enters into force, the existing 'Guidance Notes to Industry on OPRED's Cost Recovery for offshore functions' will be appropriately revised and an updated version placed on the GOV.UK website.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The amendments being introduced by the Instrument increase the fees paid by the offshore hydrocarbons industry and the Oil & Gas Authority by a small amount - but only to the extent required for OPRED to recover its eligible costs.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for the Instrument because no or no significant impact on the private, charitable / voluntary or public sectors is foreseen.

13. Regulating small business

13.1 The Instrument, and the legislation it is amending, applies to activities undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. Of the companies who are active in offshore oil and gas related operations, 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.

14. Monitoring & review

14.1 The effectiveness of the Instrument will be monitored on a regular basis, alongside the review of the hourly rates to be applied and the review of chargeable services as described in paragraph 10.2.

14.2 As a result of section 28(3)(a) of the Small Business Enterprise and Employment Act 2015, the Instrument - which contains only charging provisions - is not subject to the requirement to contain a review clause.

15. Contact

15.1 Irene Thomson at BEIS telephone**:** 01224 254077 or email**:** Irene.Thomson@beis.gov.uk can be contacted with any queries regarding the Instrument.

15.2 Wendy Kennedy, OPRED Chief Executive Officer at BEIS, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Right Honourable Anne-Marie Trevelyan, Minister of State for Business, Energy and Clean Growth at BEIS can confirm that this Explanatory Memorandum meets the required standard.