

Explanatory Memorandum to The Petroleum Licensing (Charges) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Petroleum Licensing (Charges) (Wales) Regulations 2018.

Lesley Griffiths

CABINET SECRETARY FOR ENERGY, PLANNING AND RURAL AFFAIRS

7 September 2018

PART 1

1. Description

On 1st October 2018 petroleum licensing functions under the Petroleum Act 1998 will be transferred from the Oil and Gas Authority (OGA) to Welsh Ministers in relation to the Welsh onshore area.

Part 1 of the Petroleum Act 1998 defines petroleum (oil and gas hydrocarbons) and vests all rights to it in the Crown. A petroleum licence confers on the licence holder the exclusive right to search and bore for and get petroleum within the licensed area. It also gives the developer the right to own the product extracted from the ground so as to be able to sell it to third parties.

From 1 October 2018 the Welsh Ministers will acquire responsibility for all existing Welsh onshore licences and for any regulatory consents licence holders are required to obtain under the terms of those licences. There are 14 existing licences within the Welsh onshore area and licence holders have ongoing licence rights to exploit petroleum within a given geographic area for a period of up to 30 years.

The terms of all petroleum licences require licence holders to obtain the Welsh Ministers' prior consent before carrying out listed activities such as work programming, drilling and decommissioning. To enable the Welsh Ministers to recover the costs of discharging those licensing functions it is necessary to make regulations to enable the Welsh Ministers to charge fees to licence holders.

The regulations prescribe fixed fees for the majority of activities listed. However, in relation to an application for one consent, a development and production programme, the regulations provide Welsh Ministers must apply a formula to each individual application to determine the fee on a case by case basis. The rationale for this approach is this type of application varies greatly from one case to another. If a standard fee was applied it would result in more straightforward applications subsidising the cost of more complex applications which take longer to determine.

The regulations provide if a fee due under the Regulations remains unpaid it is recoverable by the Welsh Ministers as a civil debt. The effect of this provision is to enable the Welsh Ministers to apply to the court for an order requiring payment from the licence holder. Without this provision, the Welsh Ministers would first have to litigate to prove the debt and obtain a court judgement before it could then seek to enforce the judgment and recover the sums due. This would involve unnecessary expense to the public purse.

The current UK charges regulations reference the OGA as the licensing authority and will therefore only apply to English licenses post 1 October 2018. Regulations have been prepared to make provision for the Welsh Ministers to charge fees in respect of an application to them for a petroleum licence under the Petroleum Act 1998 and for consents required under those licences for various listed activities and matters.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

Sections 23 to 25 of the Wales Act 2017 transfers petroleum licensing functions under Part 1 of the Petroleum Act 1998 to the Welsh Ministers in relation to the Welsh onshore area. These provisions will commence on 1st October 2018 by virtue of the Wales Act 2017 (Commencement Number 4) Order 2017 (S.I. 2017/1179).

In order that the Welsh Ministers may charge for the functions they will be required to exercise in respect of the transferred licences, regulations setting charges must be made under section 4 of the Petroleum Act 1998 and sections 188 and 192 of the Energy Act 2004. These Regulations must be brought into force on 1 October 2018.

In accordance with subsections (11) and (13) of section 188 sums received under these regulations must be paid into the Welsh Consolidated Fund. In accordance with section 124 of the Government of Wales Act 2006 any payment out of the fund will need to be authorised by a Budget resolution of the Assembly.

The Regulations are subject to the National Assembly's negative resolution procedure.

4. Purpose and intended effect of the legislation

This instrument applies to Wales. The objective of the Regulations is to provide the Welsh Ministers with the power to recover the costs of discharging their duties as licence authority through fees.

Welsh Ministers will be responsible for the granting, administration and regulation of three distinct types of petroleum licence:

- **Petroleum Exploration and Development Licences (PEDL)** which grant exclusive rights to search and bore for, and get, petroleum within a specified area (a PEDL block).
- **Landward Petroleum Exploration Licences (XL)** for companies wanting to explore but do not need exclusive rights to drill or produce petroleum.
- **Methane Drainage Licences (MDL)** required if the operator or owner of a coalmine must capture natural gas to make the mine safe.

The terms and conditions of every licence are prescribed in a series of “Model Clauses“ which are set out in secondary legislation made under the Petroleum Act 1998.

From October 1st 2018 the terms of every licence will require the licensees to obtain the Welsh Ministers’ consent to certain activities listed. These consents can be categorised broadly as:

- Approval of work programmes and plans.
- Consent to drill, suspend or abandon a well.
- Consent to produce petroleum or flare or vent waste gas.
- Approval of the competency of the well installation operator.
- Approval of the sale of existing licences or change of beneficiaries.
- Approval of time extensions to the initial, second or production term of a PEDL.

For Welsh Ministers to appropriately discharge their new responsibilities it is necessary to make regulations to enable them to charge fees for these functions. The fees replicate those currently charged by the OGA in England and Wales.

Failure to commence the regulations on 1 October would prevent Welsh Ministers from being able to appropriately discharge their new responsibilities as licensees would not be able to apply for the consents required to utilise existing licences, including suspension and abandonment activities.

5. Consultation

The Petroleum Licensing (Charges) (Wales) Regulations 2018 are wholly consistent with the OGA’s current charging structure already in place for Welsh Licence holders, in terms of what activities require consent, how fees are determined, and the amount of the fee.

The only impact upon licence holders is fees now be payable to the Welsh Ministers rather than the OGA. On this basis it was felt a public consultation exercise would not be beneficial. Officials have however liaised with licence holders, who will receive communication confirming the transfer of functions and the application of the new Regulations.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. There is no impact on business since there has been no change to the range of applications for which fees are charged and the way those fees are determined. The amount of each fee has not increased. These Regulations merely ensure Welsh Ministers can charge fees under the new power as a result of the relevant functions having been transferred from the Oil and Gas Authority to the Welsh Ministers. There is no impact on charities or voluntary bodies. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

The provisions within this instrument have been the subject of previous impact assessments which are available from DBEIS at the above address. An impact assessment was prepared for the Energy Bill 2015-16, to which this instrument relates. A copy of the impact assessment is available from DBEIS, 3 Whitehall Place, London, SW1A 2AW and is available at www.legislation.gov.uk.