

OFFSHORE PETROLEUM LICENSING BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Offshore Petroleum Licensing Bill as introduced in the House of Commons on 8 November 2023 (Bill 9).

- These Explanatory Notes have been prepared by the Department for Energy Security and Net Zero in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 This Bill places the Oil and Gas Authority (OGA) (operating as the North Sea Transition Authority) under a new duty to run an annual process inviting applications for new offshore production licences.

Policy background

- 2 The UK's offshore waters, which are made up of the UK's territorial sea and the UK sector of the Continental Shelf (UKCS), are described as a "mature" or "declining" basin in relation to oil and gas production. Since the start of offshore petroleum licensing in 1964, licences have been awarded in licensing rounds. The UK's offshore areas are divided into geographical "blocks" for licensing purposes. A licence is granted in respect of one or more blocks or part-blocks.
- 3 Since its creation in 2016, the OGA has been responsible for the licensing process. In March 2022 the OGA changed its trading name to the North Sea Transition Authority (NSTA), to reflect its evolving role in the energy transition. These notes therefore refer to the NSTA.
- 4 Currently there is no requirement that licensing rounds should be run on a regular basis. This Bill places the NSTA under a new duty to run an annual process inviting applications for new offshore production licences. The purpose of this duty is to provide greater certainty to the industry and potential investors that licensing of the UK's offshore petroleum resources will continue.
- 5 The NSTA remains responsible for the running of the licensing process and associated decisions in accordance with the existing legislative regime, in particular the Petroleum Licensing (Applications) Regulations 2015. This includes deciding which geographical blocks to offer and whether, and to whom, such licences should be granted.
- 6 The annual obligation to invite applications for new licences would only be triggered where two tests are met. These tests are:
 - **Carbon intensity test:** that the average carbon intensity of domestic (UK) gas is lower than the average carbon intensity of imported liquefied natural gas (LNG).
 - **Net importer test:** that the UK remains a net importer of both oil and gas.
- 7 Further information concerning each of these tests is set out at the relevant clause number and the existing licensing round process is set out below.

Legal background

- 8 Rights to petroleum in the UK territorial sea are vested in His Majesty by section 2 of the Petroleum Act 1998. Similarly, rights to petroleum in the UKCS are vested in His Majesty by section 1(1) of the Continental Shelf Act 1964.
- 9 Until 1 October 2016, under section 3(1) of the Petroleum Act 1998 (and its predecessors), the Secretary of State, on behalf of His Majesty, had the power to grant licences. From 1 October 2016, that function transferred to the NSTA.
- 10 All companies exploring for or producing oil and gas in the UK's offshore areas are required to hold a licence that grants them exclusivity over a specific patch/patches of sea (blocks). The NSTA has the power, under section 3 of the Petroleum Act 1998, to grant licences to "search and bore for and get petroleum." In practice, a number of different types of licence have been granted historically – the only type relevant to this bill are "seaward area production licences."

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- 11 The UK has both “onshore” (or “landward”) and “offshore” (or “seaward”) reserves of oil and gas. At present, the NSTA offers two types of offshore petroleum licence:
 - a. Seaward petroleum exploration licences – these only provide the licensee with a right to search for petroleum in relevant areas (any seaward area or landward area below the low water line). In practice, licences are non-exclusive and cover the whole of the UK territorial sea and UKCS, allowing licensees to explore for petroleum resources (for example, using seismic data). They are awarded to anyone who wishes to apply, without competition.
 - b. Seaward area production licences – these provide the licensee with a right to search and bore for and get petroleum in a seaward area. They are granted on an exclusive basis, covering a specified block / part-block / blocks. As discussed further above, these licences are generally awarded via licensing rounds.
- 12 The new obligation to invite applications for licences annually applies only to seaward area production licences.

Licensing Round Process

- 13 The current process for running a licensing round is as follows. It is not intended that anything in this Bill will impact on the current licensing process save for the requirement that this be conducted annually and subject to two tests.
 - a. The NSTA “launches” a round by publishing an application notice. That notice must:
 - i. be published in the Belfast, Edinburgh and London Gazettes and on a public web site (see definition of “application notice” in Regulation 2 of The Petroleum Licensing (Applications) Regulations 2015 (SI 2015/766));
 - ii. indicate that the NSTA is prepared to accept applications for seaward area production licences in respect of blocks (or part-blocks), and specify the web site on which details of the blocks (or part-blocks) are published (as above, see definition of “application notice”);
 - iii. set out the criteria for determining applications and, if the model clauses are not to be used, that the different terms and conditions will be made available on request (see Regulation 5 of The Hydrocarbons Licensing Directive Regulations 1995 (SI 1995/1434)); and
 - iv. specify a period of at least 90 days from publication of the notice for applications to be made, and a date by or period within which it is proposed licences will be granted to successful applicants (see Regulations 5(3) and (4) of The Petroleum Licensing (Applications) Regulations 2015 (SI 2015/766)).
 - b. Applications must be made within the specified period, and comply with the requirements set out in Regulation 4 (and relevant Schedules) of The Petroleum Licensing (Applications) Regulations 2015 SI (2015/766).
 - c. The NSTA then has to determine the applications in accordance with Regulation 3 of The Hydrocarbons Licensing Directive Regulations 1995 (SI 1995/1434) and Regulation 3 of The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (SI 2015/385).
 - d. Before granting any licence the NSTA requires the agreement of the Secretary of State under Regulation 5 of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (SI 2001/1754).
 - e. The NSTA then offers licences to successful applicants. If offers are accepted, licences are granted.

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- f. In undertaking this process (and other relevant functions), the NSTA has to act in accordance with its other statutory obligations, including the principal objective of maximising the economic recovery of UK petroleum and its statutory strategy (under section 9A of the Petroleum Act 1998), and having regard to the matters set out in section 8 of the Energy Act 2016.

Territorial extent and application

- 14 All matters in the Bill are reserved and all provisions extend and apply to England and Wales, Scotland and Northern Ireland.
- 15 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Duty to invite applications for offshore licences

- 17 This clause amends the Petroleum Act 1998 to place a new duty on the NSTA to invite applications for seaward area production licences on an annual basis if certain tests are met.
- 18 Under this new duty, in each annual period (which runs from October to September each year), the NSTA has to carry out two tests. If both tests are met the NSTA will have to publish an application notice, inviting applications for new licences. As a minimum, the NSTA must invite applications for at least one licence covering at least one block (or “part-block”, which would meet the existing statutory definition of “block”).
- 19 Having published such an application notice, the NSTA will follow the usual procedures to determine any applications received and to offer and grant licences. It will remain a matter for the NSTA to decide how many and which blocks or part-blocks to offer for applications, to determine and apply appropriate criteria for determining applications, and to decide whether to offer and grant any licence(s) at the conclusion of that process. The NSTA will remain free to grant licences outside this new annual duty in the usual way, whether or not the new statutory tests are met. The offering and granting of licences also remain subject to existing environmental regulatory requirements, which are unaffected by the new duty.
- 20 The tests that must be met for the new duty to apply in each annual period are set out below. The Secretary of State will also have new delegated powers to make provision by regulation to expand the scope of the gas carbon intensity test to take into account emissions other than carbon dioxide and to amend the definitions of certain terms used in the Petroleum Licensing (Applications) Regulations 2015 (SI 2015/766) to ensure consistency should these regulations be amended in future.

Carbon intensity test

- 21 This test compares the average carbon intensity of domestic gas with the average carbon intensity of imported LNG. The emissions intensity of imported gas would be calculated as an average of LNG from all sources.
- 22 The test is met if, during the assessment period, the average carbon intensity of domestic gas is lower than that of imported LNG.

Net importer test

- 23 This test evaluates the scale of both current and future production from the UK relative to the UK’s demand for oil and gas over a 15-year period.
- 24 The test will be run separately for oil and gas. The test is met if, during the assessment period, the UK is projected to remain a net importer for both oil and gas.

Clause 2: Extent, Commencement and Short title

- 25 This clause sets out the extent of the Bill. Annex A provides further information.
- 26 This clause also sets out when provisions in the Bill come into force. All provisions come into force at the end of a period of two months beginning with the day on which the Act is passed.
- 27 This clause also confirms the short title by which the Bill, once enacted, may be cited.

Commencement

28 Clause 2 makes provision about when the provisions of this Bill will come into force.

Financial implications of the Bill

29 There are no direct financial implications arising from the Bill.

Parliamentary approval for financial costs or for charges imposed

30 The Bill does not require a money resolution or ways and means resolution since it does not create new heads of expenditure or impose new charges on the people.

Compatibility with the European Convention on Human Rights

31 The Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, the Rt Hon Claire Coutinho, Secretary of State for Energy Security and Net Zero, has signed a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect. The ECHR rights which are considered to be relevant to the Bill are Article 2 (right to life); Article 8 (right to respect for private and family life); and Article 14 (prohibition of discrimination).

Environment Act 2021 Section 20 Statement

32 The Rt Hon Claire Coutinho, Secretary of State for Energy Security and Net Zero, is of the view that the Bill as introduced into the House of Commons contains provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, a statement under that section has been made.

Related documents

33 The following documents are relevant to the Bill and can be read at the stated locations:

- The OGA Strategy is available here: <https://www.nstauthority.co.uk/regulatory-framework/the-oga-strategy/>

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1 - 2	Yes	Yes	No	Yes	No	Yes	No

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