



Department for
Business, Energy
& Industrial Strategy

Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008

Government response to consultation

April 2022

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Introduction

Offshore oil and gas installations and pipelines have an important role in supplying the nation's current and future energy needs as we transition to deliver Net Zero. Exploitation of the offshore energy resource also brings with it international obligations to decommission installations and pipelines at the end of their life to ensure safety of navigation, whilst taking account of fishing and protection of the marine environment.

The offshore oil and gas industry operates under a statutory decommissioning regime, which is set out in Part 4 of the Petroleum Act 1998 (“the Act”). It is a fundamental principle of the UK's decommissioning regime that the person who benefits from the exploitation or production of hydrocarbons on the UK Continental Shelf should be responsible for decommissioning the infrastructure at the end of its useful life.

As well as the direct costs of carrying out decommissioning activities, there are also costs associated with ensuring the statutory regime is implemented and enforced. To avoid passing these costs onto the taxpayer, under the Act the Secretary of State has the power to make regulations to charge for the Department's work in relation to regulating decommissioning. Using those powers, in 2012 the Government made the Offshore (Oil and Gas) Installation and Pipeline Abandonment Fees Regulations 2012¹, which put in place the existing fee charging regime.

The current charging regime was introduced almost a decade ago when decommissioning was relatively immature. Since then, the industry and the services we provide with respect to decommissioning have evolved, introducing a need to amend our existing fee charging regime to ensure the Department is able to recover its costs incurred for its regulatory functions.

Our intention is to amend the current charging powers to ensure that fees or charges may be charged in respect of all the Secretary of State's (i.e., the Department's) statutory functions included in Part 4 of the Act. The Department will not be seeking to make a profit from such a charge but merely recover its costs in carrying out those functions. Once these new powers are in place the Department will bring forward regulations to put in place a new charging scheme.

¹ S.I. 2012/949.

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Consultation

Background to consultation

The consultation ran from 24 May 2021 to 16 August 2021 and aimed to formally seek views from stakeholders such as offshore oil and gas operators and other companies with an interest in decommissioning offshore oil and gas installations and pipelines and other interested parties on the proposal to update the charging regime for activity related to the regulatory functions for the decommissioning of offshore oil and gas installations.

The following questions were posed:

Consultation questions	
1.	Do you have any comments on the Department's proposals to charge a fee for all its statutory functions carried out under part 4 of Petroleum Act 1998?
2.	Do you have any comments on the Department's intention to expand its statutory functions under the Act to allow it to charge for post decommissioning approval activities?
3.	Do you have any comments on the Department's proposals to change the fee regime from charging at Decommissioning Programme approval and revision to charging at regular defined points?
4.	Do you have a preferred charging scheme method from the list of options as discussed in this document?
5.	Do you have an alternative option(s) that you wish the Department to consider?

This document is a summary of the evidence submitted and the actions and next steps the Department intends to take.

Overview of the responses and government's response

We received a total of 4 responses.

This document does not contain a list of the respondents or contain any personal or organisational details. Respondents' views are summarised in the following sections of this report but are not attributed to any individual respondent or specific organisation. The Department does not plan to publish any individual consultation responses it received; however, organisations may wish to publish their own responses independently.

Several respondents submitted feedback that did not respond directly to the 5 questions asked in the consultation document. These comments and observations have been taken on board and we thank all respondents for taking the time to highlight these. The Department is committed to working with the oil and gas sector on wider decommissioning policy considerations now and in the future.

Consultation question 1

Do you have any comments on the Department's proposals to charge a fee for all its statutory functions carried out under part 4 of Petroleum Act 1998?

Of the 4 responses received 2 responded directly to this question.

Industry would value clarification from the Department regarding the cost, time, and resource on standard activities to demonstrate the value for this proposed change and would appreciate clarification on whether or not there are any opportunities to cap costs for some activities, thus ensuring focus on efficiency.

Industry would also value some further information from the Department on how consistency across projects will be maintained.

Government response to consultation question 1

The Department is committed to ensuring efficiency and deliverability of all projects. The changes outlined in our proposals will allow us to fully recover our costs and ensure sufficient resource is in place to work flexibly with industry.

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Once the proposed new charging powers have been inserted into the Act, the new charging regime will be set out in Regulations. We will also publish detailed guidance to assist stakeholders in understanding the new fees or charges.

The Department would like to re-iterate that all decommissioning projects are of varying scales and complexities and are assessed on a case-by-case basis. This means that applying a cost cap to any activities could result in the Department not recovering costs for all of the work it carries out to fulfil its statutory functions under Part 4 of the Act, in contradiction with the polluter pays principle and detrimental impact on the taxpayer.

Consultation question 2

Do you have any comments on the Department's intention to expand its statutory functions under the Act to allow it to charge for post decommissioning approval activities?

Of the 4 responses received none responded directly to this question. It is therefore our intention to amend the Act to expand our statutory functions to allow charging for post decommissioning approval activities and implement this through new Regulations.

Consultation question 3

Do you have any comments on the Department's proposals to change the fee regime from charging at Decommissioning Programme approval and revision to charging at regular defined points?

Of the 4 responses received 2 responded directly to this question.

Industry feel charging at intervals is reasonable in most instances but difficult in decommissioning compared to other operational work areas. For example, post decommissioning application for expenditure will be closed, which means recovering costs from previous co-venturers will be challenging. Industry recognises that periodic billing works in most instances and aligns with the mechanisms in other parts of the Department and within other UK regulators.

Questions were also raised around which companies would be party to an invoice in the recovery process and a request to engage further with industry on the application of the new charging regime such as frequency of billing.

Government response to consultation question 3

The Department's intention is to provide a breakdown of the time spent on cost-recoverable activities under each statutory function covered by this consultation prior to the issue of invoices for cost-recoverable activities. The process will be transparent and any queries

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regarding cost recoverable activity will be dealt with on its own merit. It is our view that invoices will be provided to the operator of the field as is the current process elsewhere within the Department.

The Department will continue to engage and involve industry as the process continues.

Consultation question 4

Do you have a preferred charging scheme method from the list of options as discussed in this document?

Of the 4 responses received 2 responded directly to this question.

Both respondents indicated a preference for Option 3. As outlined in the consultation document Option 3 introduces amendments to our charging regime as described for Option 2, but charging on completion of statutory function or activity, rather than regularly as described in Option 2.

Government response to consultation question 4

The Department has considered this proposal but believe that although Option 3 would allow the department to fully recover the costs of carrying out its statutory functions it is likely to be administratively burdensome to the department and industry and therefore negate the benefit of moving to a new charging regime. Irregular charging under Option 3 would not solve the current financial accounting issues with being unable to accurately forecast and accrue the costs. Therefore, Option 3 would not provide the Government and duty holders the full benefits of changing the fee charging regime.

Consultation question 5

Do you have an alternative option(s) that you wish the Department to consider?

Of the 4 responses received 2 responded directly to this question.

A mechanism to finalise and close out costs was suggested. The Department should consider a regular interval instalment with a final payment. This would provide a mechanism for efficiency during the regulatory process and make it easier for operators to close out activities with co-venturers.

Another proposal was to set fixed costs for non-derogation installation candidates and fixed costs for pipelines based on diameter and length of pipeline(s) and extent of exposures. Post decommissioning related effort and costs would be related to the burial status of pipelines and could be calculated as a percentage of the fixed costs meaning the fee-payment should be able to estimate the fees and account for these in the project budget cycle.

Government response to consultation question 5

Each decommissioning programme varies and both post decommissioning and close out requirements are reflective of the complexity of the project, what infrastructure may remain in situ, as well as its proximity to environmentally sensitive areas. Therefore, a final payment would not be appropriate in most cases.

Any infrastructure left in situ and subject to future monitoring requirements remains the responsibility of the parties to the programme in perpetuity. The requirement for future monitoring will be assessed on a case-by-case basis and fees or charges following acceptance of a close out report are likely to be infrequent.

As outlined in the consultation document, the Department's intention is to align the proposed charging regime with the already established regime in place for environmental operations. This will be based on the fee being determined by the time spent on a chargeable activity, applying the agreed hourly rate to the time spent by staff. This allows for a common approach in the way we charge across all operators. In addition, the current regime sets indicative fees based on the type of infrastructure being decommissioned. The indicative fee does not sufficiently cover the full life cycle of the work involved in delivering the service to industry, nor does it reflect the case by case nature of our considerations. Therefore, the indicative fees would no longer be applicable under the proposed charging regime.

Additional comments received

Other comments that might aid the consultation process

A number of requests were made to be involved in the development of any guidance to accompany the new fee regime.

A number of respondents asked for the Department to provide clarity on transitional arrangements between current and future models.

Government response to additional comments

The Department is working on the transitional arrangements and whilst the exact details are still being considered we realise that even when the new regime is implemented it is likely there will be a period where both regimes are administered. We welcome industry engagement and are keen to work closely with industry on the details of the transition and as we develop the regime and associated guidance. The Department will continue to liaise with industry, industry representative bodies and other stakeholders as the process continues.

Stakeholder engagement

Representatives from the Department attended and presented proposals at an OEUK (formally OGUK) forum to explain changes prior to consultation.

In developing this response, we have carefully considered the evidence submitted to the consultation and have continued our close engagement with stakeholders in the oil and gas sector. We will continue to involve and engage industry, industry representative bodies and other stakeholders to seek views at all stages in the process.

Conclusions and next steps

The Department would like to thank all respondents for taking the time to provide their feedback. Having considered all the responses and particularly the preferred options and alternative proposals Option 2 outlined as the preferred option in the consultation document continues to be the preferred policy option, meaning the UK Government will be able to fully recover from industry the costs of providing its services in executing its statutory functions. This is in line with the 'polluter pays' principle of environmental law.

By amending powers in the Act, Option 2 will allow amendments to be made to our charging regime to align with the statutory functions of the Secretary of State which provide a service to industry under Part 4 of the Act. This option ensures that those companies directly benefiting from the regulatory services meet the cost associated with its provision, and industry would be charged at regular points. This would align with the environmental fee recovery regime in place and therefore would not place additional administrative burden on companies. Industry therefore covers the costs incurred, rather than the taxpayer. The new regime would also enable better forecasting of costs and accruals in the accounts.

Option 2 would be implemented via a change in primary legislation to charge for all statutory functions carried out under Part 4 of the Act, including activities carried out after approval of a decommissioning programme. The Department would be responsible for the implementation, ongoing operation, and enforcement of the new arrangements. Secondary legislation will be implemented to cover the application of an hourly rate system.

The Department is committed to future engagement with industry in relation to the following:

- Feedback on consultation responses to be provided to an Industry Forum group
- Producing guidance to accompany the proposed charging regime
- Discussion and further detail on transitional arrangements

The Department is continuing to work towards inclusion of these changes when Parliamentary time allows and will keep industry informed as these progresses.

The Department will also continue engagement with HM Treasury to obtain agreement on the proposals as required under section 39 of the Act.

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