

## **UKCS Environmental Regulations: Retrospective Fee Scheme Legislation**

**Department of Energy and Climate Change**

**RPC rating: Fit for purpose**

### **Description of proposal**

The Department is proposing to introduce retrospective legislation to remove the risk of claims being brought against the Department by companies who were charged fees for which there was no statutory authority (ultra-vires).

### **Impacts of proposal**

The Department estimates that the total nominal value of the fees raised ultra-vires was £6.3 million (£7.1 million in 2015 prices), for the provision of environmental regulation functions to offshore oil and gas licence holder companies operating in the UK Continental Shelf. The fees charged cover the resource cost of activities it carries out under various statutory regimes.

This estimate is based on the Department's own financial records over the period 2008 to 2014. However, the issue of lack of statutory authority extends back to 2001, for which period there are no readily available data. The Department assumes that the value of fees raised in each of the years between 2001 and 2007 was the same as the value raised in 2008. This assumption is thought to be conservative, as in 2008 four fees were charged, compared with the previous years when only three were raised.

There is considerable uncertainty over the level of claims industry might have brought in the absence of this proposal. The Department's central estimate of the total value of the fees raised ultra-vires that would have been successfully claimed would have been £7.1 million in current prices. The Department's estimate, adjusted to 2009 prices and the 2010 base year, equates to a net cost to business of £5.3 million.

The Department's high-end estimate includes the likelihood that courts might have attached interest to any successful claims. Using a 10% real interest rate, the total liability increases to £12.3 million (2015 prices). Any successful claims would have represented a transfer from the tax payer to private business. The estimate does not include legal costs. The Department explains that the analysis does not attempt to monetise the potential litigation costs that would have been incurred by businesses and government as a result of claims made. The number and nature of claims that may have transpired is highly uncertain as is the value of litigation costs per case which are also likely to have been variable. As a consequence, the estimate may represent an overestimation of the value of the net cost to business, although proportionate considering the level of uncertainty.

## Quality of submission

The Department identifies and quantifies the costs to business. The assumptions used appear reasonable. The Department uses a single year appraisal period when calculating the equivalent annual net cost to business (EANCB). Given that the proposal is active indefinitely, presenting the (out of scope) EANCB over ten years rather than one would provide a representation of the impact on business which is more comparable with other recent cases in this area. This reduces the Department's central estimate from £5.3 million to £0.62 million each year. This change should be reflected in the Impact Assessment before publishing.

The Department correctly identifies the proposal as being out of scope of the business impact target (formerly One-in, Two-out) under the fees and charges exemption. The proposal does not expand the scope of regulation.

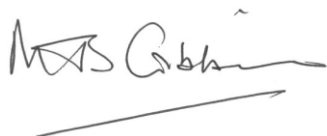
The SaMBA is sufficient. The Department outlines why it does not expect costs to small and micro-businesses to be disproportionate. While smaller businesses can operate in the oil and gas sector affected by these fees, they would only ever do so as part of a co-venture. Small businesses choosing to participate on this basis would expect to face costs proportional to their size. Therefore, the Department argues that there is no reason to exempt them.

## Initial departmental assessment

Classification	Out of scope (fees and charges)
Equivalent annual net cost to business (EANCB)	£5.3 million
Business net present value	-£7.1 million
Societal net present value	£0 million

## RPC assessment

Classification	Out of scope (fees and charges)
EANCB – RPC validated	£0.62 million
Small and micro business assessment	Sufficient



**Michael Gibbons CBE**, Chairman