

**ARRANGEMENTS BETWEEN THE SCOTTISH MINISTERS, THE OIL AND GAS AUTHORITY AND THE SECRETARY OF STATE, REGARDING ISSUES RELATING TO ONSHORE LICENSING**

**Status of MOU**

This MOU is a statement of intent and should not be interpreted as a binding agreement. It is not intended to create legal relations or obligations between the Parties.

**Scope**

The Parties agree that they will work together on the areas described below.

**Introduction:**

Onshore oil and gas licensing is devolved to the Scottish Government under the Scotland Act 2016.

This document sets out agreed arrangements between the Oil & Gas Authority (the "OGA"), the Secretary of State ("SoS") and Scottish Ministers (the "Licensing Authority") in regard to the handling of matters that are reserved to the United Kingdom Government.

The list of reserved matters and the arrangements to be followed are set out below:

<b>1. Setting of licence rentals to be applied to licences issued by the Licensing Authority</b>
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**Background**

The square kilometre licence rentals to be applied to licences issued after a Licensing Round (including an Out of Round opportunity) offer need to be agreed with OGA and HM Treasury in advance of the Round being Launched and promulgated in the offer package. This is required by Section 3 (3) of the Petroleum Act 1998.

As the setting of licence rentals is reserved to the UK (Section D2 of Part 2 of Schedule 5 to the Scotland Act 1998), it will be for the OGA to agree with HM Treasury the rental rates to be applied to licences awarded by the Licensing Authority.

**Process**

The process will be as follows;

- A. At least 6 weeks before a Licensing Round is launched, the Licensing Authority will inform the OGA of their intention to hold a Round and, quoting the requirements of Section 3 (3) of the Petroleum Act 1998, request the OGA write to HM Treasury seeking approval of the Rates that they would like to apply to licence awards. The Licensing Authority should provide the OGA with the rationale for the structure of the licence rentals.
- B. The OGA will seek HM Treasury approval at least a month before a Licensing Round is launched and when a response is received will inform the Licensing Authority.
- C. Once approved, the Licensing Authority will include the applicable rental rates in their Guidance material as part of the Round.

## **2. Invoicing, collection and transfer of rentals for licences in Scotland**

### **Background**

This function is reserved to the UK. It will be for the OGA to invoice licence holders for the rentals applied to extant licences in Scotland at the time of the transfer of functions or the rental agreed for future licences awarded by the Licensing Authority in future Rounds.

### **Process**

- A. The OGA invoice licensees on an annual basis in advance of the anniversary date of the start of the licence (or at the latest within two weeks of the passing of the anniversary date). The sum invoiced will be for a full year's rental. As anniversary dates for all licences differ this invoicing is occurring evenly through the year.
- B. On a quarterly basis, the OGA will book an adjustment pertaining to money received in respect of Scottish Licences to the OGA's financial accounting system, and inform the Scottish Government of this amount.
- C. OGA will pay over the amount raised from Scottish rentals once per annum to the nominated bank account as agreed with the Scottish Government.
- D. A breakdown of the rentals which will be booked to the nominated bank account and the period to which they relate will be provided to the Scottish Government in advance of the booking.

## **3. The waiving of licence rentals for licences in Scotland**

### **Background**

The setting of licence rentals are agreed with HM Treasury (as set out in section 1 above). Any waiver of licence rentals must also be agreed by HM Treasury.

#### **Process**

- A. Should a licence holder in Scotland wish to request a waiving of their licence rental they will need to make this request to the Licensing Authority, providing representations to support their case.
- B. The Licensing Authority should put forward a recommendation to the OGA, who if it agrees to waive the licence rentals, will need to write to HM Treasury, seeking permission to make the rental waiver and providing representations to support the case.
- C. HM Treasury will consider the case and will notify the OGA of their decision.
- D. The OGA will notify the Licensing Authority and enact the decision.
- E. If the waiver is time limited the Licensing Authority will be responsible for contacting the licensee. If no further waiver extension is agreed the OGA will renew rental invoicing to the licensee.

### **4. The revocation of licences in Scotland**

#### **Background**

Petroleum Exploration and Development Licences (PEDLs) contain a number of conditions; including requirement to pay the licence rental scheduled to the licence. Failure to pay the rental (without agreement) is grounds for revocation of the licence as a separate condition of the licence.

The revocation power for non-rental payment is reserved to the Secretary of State for BEIS (Section 48 (7) Scotland Act 2016).

#### **Process**

- A. The OGA invoice licensees on an annual basis on the approach to the anniversary date of the start the licence (or at the latest within two weeks of the passing of the anniversary date) giving 28 days to pay.
- B. If unpaid, Reminder Letter 1- issued 28 days after invoice date;
- C. If unpaid, Reminder Letter 2 – issued 28 days after the date of Reminder letter 1
- D. If unpaid, Reminder Letter 3 – issued 14 days after the date of Reminder letter 2
- E. If still unpaid, the OGA will inform BEIS and the Licensing Authority about non-payment of consideration (rentals).

- F. The OGA will inform the licensee that the matter has been referred to BEIS, highlighting that BEIS has a statutory power to revoke licences for non-payment (although this does not necessarily lead to automatic revocation).
- G. BEIS will consult the Licensing Authority on whether the licence should be revoked, taking into account other factors including if the well has been plugged and abandoned, effect on the company and local economy, long term viability of the company involved etc.
- H. When considering the Licensing Authority's recommendation, BEIS may consult with others, for example the OGA and HM Treasury.
- I. BEIS would ask the licensee to make representations.
- J. If BEIS were not satisfied and choose to revoke the licence they will notify the licensee of its decision and the Licensing Authority and the OGA, who will implement the decision.

## **5. Reserved model clauses**

### **Background**

The Scotland Act 2016 and Onshore Petroleum (Consequential, Transitional and Saving Provisions and Model Clauses) Regulations 2018 prescribe the model clauses relating to reserved matters which are to be included in licences granted by the Licensing Authority

### **Process**

Any petroleum licence granted by the Licensing Authority will include, as a Schedule to that licence, these model clauses. This ensures that the powers of the Secretary of State for BEIS in relation to reserved matters are protected, including the power to revoke licences for non-payment of consideration.

**6. Signatories**

**The signatories below indicate their intention to enter into this agreement:**

On behalf of the **Secretary of State for Business Energy and Industrial Strategy**

Name: Emily Bourne

Position: Director, Energy Development and Resilience

Signed

Date 22/10/18

On behalf of the **Oil & Gas Authority**

Name: Nic Granger

Position: Director of Corporate and Chief Finance Officer

Signed

Date 22/10/18

On behalf of **Scottish Ministers** Name: Kersti Berge

Position: Director, Energy and Climate Change, Scottish Government

Signed

Date 08/11/18

