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This guide is for general information only and does not constitute legal advice. If you would like further information on any issue raised in this guide, please contact our oil & gas team at energy@clydeco.com or get in touch with your usual Clyde & Co contact.

Regulation correct as at 31 December 2016.
Background

The UK’s oil and gas industry makes a substantial contribution to the country’s energy security and economy. However, the UK Continental Shelf (UKCS), a mature oil and gas producing area, has been negatively affected by the drop in oil and gas prices in 2014, 2015 and early 2016.

According to reports by the Department for Business, Energy and Industrial Strategy (BEIS) (formerly the Department of Energy and Climate Change (DECC)), 3.668 billion tonnes of crude oil and natural gas liquids (NGL) had been produced by the end of 2015, with 0.566 billion tonnes of proven and probable reserves remaining. By February 2016, there were 204 offshore oil fields in production, and more than 43 billion barrels of oil equivalent (boe) had been recovered since first production from the UKCS in 1967. Exploration on the UKCS continues, and recently an additional 150 million boe were discovered, largely in the northern North Sea and the West Shetlands. There are also a significant number of onshore fields in the UK, though onshore oil and gas production accounted for only 2% of the UK total production in 2014.

UKCS oil production has been falling since 1999 at an average rate of 8% per year. However, in contrast with this longer-term trend, 2015 saw a significant increase of 13.4% in crude oil and NGL production. Despite this increase, revenues from oil production in the UK fell significantly in 2015, due to reduced oil prices worldwide. BEIS estimates that 43% of UKCS oil fields operated at a loss in 2016.

BEIS reports that 2,524 billion cubic meters (bcm) of gas have been produced, with 333 bcm of proven and probable reserves remaining as at the end of 2014. Between 2000 and 2013, domestic natural gas production fell by an average of 8% per annum, with production currently around 33% of peak production. However, in 2014 natural gas production increased by 0.2% compared to 2013, and in 2015, domestic production increased significantly by 7.6% compared to 2014. This growth is partly due to the start-up of new fields (Jasmine and Kew) and the limited maintenance activity in 2014 and 2015.

26 exploration and appraisal wells were started offshore in 2015, compared to 32 in 2014 and 129 offshore development wells were drilled in 2015, compared to 126 in 2014. 1 exploration and appraisal well was started onshore in 2015, compared to 8 in 2014 and 7 development wells were drilled onshore in 2015, compared to 11 in 2014.
Shale gas exploration is ongoing and the UK Government awarded exploration licences for 159 onshore gas blocks covering around 6,000 square miles in England in 2015. About 75% of these licences relate to shale gas.

According to BEIS statistics, exports of crude oil and NGLs increased by 6.6% in 2015, consistent with higher production, while imports of crude oil and NGLs decreased by 7.6% in 2015. The UK has been a net importer of crude oil since 2005, with net imports of primary oils (crude, NGLs and process oils) making up 27.6% of UK supply in 2015, down from 37.7% in 2014.

In 2015, exports of natural gas were 36% higher than in 2014 with imports rising only slightly by 5.2% with the result that net imports of natural gas were down by 5.1% compared with 2014. The UK is a net importer of natural gas, with net imports of gas in 2015 accounting for just over 40% of domestic supply.

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1 All statistics taken from Digest of United Kingdom Energy Statistics (DUKES), Department for Business, Energy & Industrial Strategy, 2016
The Petroleum Act 1998 (the Petroleum Act) establishes the regulatory regime applying to oil and gas exploration and production in the UK. The Petroleum Act vests all rights to petroleum in the Crown but permits the Oil & Gas Authority (the OGA) to grant licences to ‘search and bore for and get’ petroleum. The Petroleum Act is supplemented by the Energy Act 2016 (the Energy Act), the Infrastructure Act 2015 and various environmental and health and safety legislative provisions.

**Wood Report**

In 2013 an independent review into UKCS oil and gas recovery led by Sir Ian Wood commenced, the findings of the review were published on 24 February 2014 (the Wood Report) with the following key needs identified:

- operators to focus on maximising economic recovery for the UK as well as pursuing their individual commercial objectives;
- fiscal stability consistent with the challenges of maturity;
- a greater resourced and more pro-active regulator;
- significantly improved asset stewardship;
- greater constructive collaboration between operators; and
- better implementation of industry strategies.

Accordingly, the Wood Report set out the following key recommendations:

- UK Government and industry to develop and commit to a new strategy for maximising economic recovery from the UKCS (the MER UK Strategy);
- the creation of a new independent regulatory body with responsibility for the effective stewardship and regulation of UKCS hydrocarbon recovery and maximising collaboration across the industry;
- additional powers to be granted to the new regulator to facilitate the implementation of the MER UK Strategy; and
- the new regulator should work with industry to develop and implement six sector strategies relating to exploration, asset stewardship, regional development, infrastructure, technology and decommissioning.

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The UK Government accepted all of the recommendations made in the Wood Report.³

From 1 April 2015, the OGA replaced DECC as the entity responsible for petroleum licensing and regulation of the upstream oil and gas sector, including: oil and gas licensing, oil and gas exploration and production, oil and gas fields and wells, oil and gas infrastructure; and carbon storage licensing.

From 1 October 2016, the OGA was formally established as a fully-independent regulator and a government-owned company, with the Secretary of State for Business, Energy and Industrial Strategy (the Secretary of State) as the sole shareholder.

**MER UK Strategy**

The Petroleum Act, as amended by Part 6, section 41 of the Infrastructure Act 2015, sets out the framework for establishing the MER UK Strategy. On 18 November 2015, the UK Government published a draft MER UK Strategy for consultation, a revised MER UK Strategy was laid before Parliament on 28 January 2016 and was brought into force on 18 March 2016⁴.

The MER UK Strategy is binding on holders and operators of petroleum licences, persons planning and carrying out the commissioning of upstream petroleum infrastructure, owners of relevant offshore installations and owners of upstream petroleum infrastructure (Relevant Persons) and the OGA.

It sets out the high-level obligations and required actions and behaviours that are binding and provides a framework for the OGA as it carries out its role as UKCS regulator.

The central obligation of the MER UK Strategy is that Relevant Persons must take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath UK waters. Economically recoverable is defined, in relation to petroleum, as those resources which would be recovered at an expected (pre-tax) market value greater than the expected (pre-tax) resource cost of their extraction, where costs include both capital and operating costs but exclude sunk costs and costs (such as interest charges) which do not reflect current use of resources. The OGA has emphasised that the MER UK Strategy is a requirement for Relevant Persons to take action, simply talking about or considering action will not be sufficient.

The MER UK Strategy also sets out supporting obligations including:

- licensees of offshore licences must plan, fund and undertake exploration activities, including seismic and drilling activity, of a type and in a manner which is optimal for maximising the value of economically recoverable petroleum that can be recovered under the licence;


• Relevant Persons must plan, commission and construct infrastructure in a way that meets the optimum configuration for maximising the value of economically recoverable petroleum that can be recovered from the region in which the infrastructure is to be located;

• owners and operators of infrastructure must ensure that it is:
  – maintained in such a condition and operated in such a manner that it will achieve optimum levels of performance, including production efficiency and cost efficiency, for the expected duration of production, taking into consideration the stage of field and asset development, technology and geological constraints; and
  – operated in a way that facilitates the recovery of the maximum value of economically recoverable petroleum from (as applicable):
    – the region in which it is situated; and
    – where the infrastructure is used by or for the benefit of others, the regions in which those others are situated;

• Relevant Persons must ensure that technologies are deployed to their optimum effect in maximising the value of economically recoverable petroleum that can be recovered from relevant UK waters, including in relation to decommissioning;

• before commencing the planning of decommissioning of any infrastructure in relevant UK waters, owners of such infrastructure must ensure that all viable options for their continued use have been suitably explored, including those which are not directly relevant to the recovery of petroleum such as the transport and storage of carbon dioxide; and

• Relevant Persons must decommission infrastructure located in relevant UK waters in the most cost-effective way that does not prejudice the maximising of the recovery of economically recoverable petroleum from a region.

The Commercial Code of Practice (the CCOP) was first published in 2002 to promote co-operative value generation by means of best practice commitment and senior management commitment. It was revised in 2016 to bring it in line with the obligations of the MER UK Strategy. The CCOP remains a voluntary agreement and non-enforceable, but non-compliance may indicate to the OGA a failure to comply with the MER UK Strategy, with the potential risks of sanctions being imposed. The CCOP applies to licensees, infrastructure owners, potential licensees, potential infrastructure owners and advisors to these parties. It requires companies to declare that, in relation to commercial activity relating to the UKCS, it will comply with the MER UK Strategy, be efficient and positive in negotiations and conduct reviews to understand how the CCOP was complied with and where there are opportunities to improve compliance.
**Energy Act 2016**

The Energy Act came into force in May 2016 and contains a number of provisions which underpin the key recommendations of the Wood Report. The Energy Act formally establishes the OGA as an independent regulator, with a transfer of property, rights, staff and certain functions of the Secretary of State to the OGA.

The Energy Act sets out the following matters to which the OGA is required to have regard when exercising its functions:

- the need to minimise public expenditure;
- the need for the UK to have a secure supply of energy;
- the development and use of facilities for the storage of carbon dioxide;
- the need for the OGA to work collaboratively with the UK government and persons who carry on activities for which the OGA has responsibility;
- the need to encourage innovation in technology and working practices; and
- the need to maintain a stable and predictable system of regulation which encourages investment.

**Dispute Resolution**

Part 2 Chapter 2 of the Energy Act, sections 19 to 26, grants various powers to the OGA to assist it in carrying out its regulatory functions, including the right to consider relevant disputes, either on its own initiative or where the dispute has been referred to it, and to make non-binding recommendations for the resolution of the dispute.

In addition to the provisions of the Energy Act, the OGA has published guidance\(^5\), which sets out the form and manner in which the dispute referrals should be made, the information to be provided (listed in Annex 1) and the approach the OGA is likely to take in considering such disputes (the Guidance). The Guidance notes that the OGA will normally not accept a dispute reference without evidence of the failure of meaningful commercial negotiations. The OGA should only be asked to consider a dispute when all avenues of commercial negotiation have failed. The Guidance will be kept under review and shall be amended as appropriate in light of experience and developing law and practice.

Where the OGA receives a dispute reference, it must determine whether to reject the dispute reference, adjourn its consideration of the dispute to enable further negotiations between the parties or accept the dispute reference and subsequently consider it. If there are no grounds to reject or adjourn a reference, the OGA will accept the reference and consider the dispute. The OGA can also act on its own initiative to consider a dispute.

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\(^5\) Dispute Resolution Guidance: OGA’s guidance for the handling of disputes under Chapter 2, Energy Act 2016, Oil & Gas Authority, 2016
In accordance with section 21 of the Energy Act, the grounds on which the OGA may reject a dispute reference are:

- sufficient information has not been provided, this includes a requirement to demonstrate that all reasonable efforts have been made to resolve the dispute by the parties;
- the dispute is not a qualifying dispute i.e. it does not relate to the fulfilment of the principal objective to maximise economic recovery of UK petroleum or activities under an offshore licence or is already being considered in relation to third party access (see below for further details) or at least one of the parties is not a Relevant Person;
- other dispute resolution is available, for example, a formal or informal dispute resolution process is already in progress; or
- the dispute is not sufficiently material to the fulfilment of the principal objective to warrant consideration.

The grounds on which the OGA may adjourn a dispute reference are:

- the parties have not already attempted some form of mediation;
- work is still in progress that could have a significant effect on the OGA’s recommendation; or
- the parties have not yet had sufficient time to reach agreement.

It is envisaged that a written notice stating the OGA’s decision whether to reject, adjourn or accept a dispute reference and the reasons for that decision will be issued around 20 working days after the dispute reference has been submitted to the OGA.

If the OGA accepts a dispute reference or decides to consider a dispute on its own initiative, it is required to consider the dispute and make a non-binding recommendation for resolving it in a way which best contributes to the fulfilment of the principal objective whilst having regard to the need to achieve an economically viable position for the parties to the dispute.

The key elements of the anticipated dispute resolution procedure include the drawing up and issuing of a timetable by the OGA for considering the dispute. By this stage, the parties will have provided the OGA with the information listed in Appendix 1 of the Guidance, failing which they shall be requested to do so. The parties can make individual representations to provide further information and views. It is envisaged that, thereafter, a joint meeting with all parties will then take place around 10-25 working days from the point that the OGA decides to consider the dispute (the OGA has the power to require attendance at such a meeting). The purpose of the meeting is to review the matters in dispute and to explore potential solutions to enable an informed recommendation to be made. The discussions may result in the OGA requesting and considering additional information.
A draft of the proposed recommendation will be issued to all parties around 45 days after the decision to consider the dispute, to give them the opportunity to comment within 10 working days on the OGA's provisional views and reasoning. It should be noted that the OGA does not regard the written submissions on legal and regulatory policy to be confidential and such submissions will normally be disclosed publicly. A non-binding recommendation will then be issued to the relevant parties with the recommendation being subsequently published by the OGA. Any party may appeal to the first-tier tribunal against the actions of the OGA when considering disputes.

After the OGA has issued a recommendation, the parties must decide whether to act on it or set it aside. There is no fixed timescale, but the Guidance notes that the OGA will continue to clearly monitor the status of the dispute. It must also be remembered that the OGA’s dispute resolution powers are quite separate to its powers, for example, to impose sanctions (see below). If the OGA considers that there has been inadequate progress in finding a solution to the dispute, it may well consider having recourse to its other powers to resolve the issue.

**Information and Samples**

Part 2, Chapter 3 of the Energy Act gives the OGA various powers in relation to the retention of information and samples and reporting of them to the OGA.

The OGA has the right to require the provision of information and samples by written notice. In addition, the Secretary of State can make regulations which require specified Relevant Persons to retain information and specified offshore licensees to retain samples for specified periods. Sections 30-33, 34(1)(b) and 35 of the Energy Act are not yet in force. However, the powers under section 34 (except for section 34(1)(b)) to request information and samples and under section 36 (the right to appeal against the OGA request) came into effect on 19 December 2016. The OGA may by notice in writing for the purpose of carrying out any functions of the OGA which are relevant for fulfilling the principal objective require a Relevant Person to provide petroleum-related information or samples. The notice must specify the form and manner in which the information or sample is to be provided and the timescale. Items covered by legal privilege are excluded. Failure to comply with the OGA’s request is sanctionable in accordance with Chapter 5 of the Energy Act. The grounds of an appeal to the first-tier tribunal under section 36 are very limited.

**Meetings**

Under Chapter 4 of the Energy Act, the OGA is granted extensive new rights in respect of meetings which relate to activities carried out under offshore licences or which are relevant to the fulfilment of the MER UK Strategy. Relevant Persons are required to
inform the OGA that such meetings are taking place and to provide any details necessary for a person authorised by the OGA to participate in the meeting. Such an authorised person is entitled to participate (but not vote) in any such meeting and, where the right to participate is not exercised, the Relevant Persons must provide the OGA with a written summary of the meeting and any decisions reached.

A statutory notice (the Notice) published by the OGA, in relation to the extensive new meeting powers, states that the OGA wishes to use the powers it has been given in a manner that is appropriate to its needs and does not place undue burdens upon industry. The Notice sets out limitations that the OGA intends to place on the scope of its new powers.

The Notice states that meetings are not within the scope of Chapter 4 of the Energy Act unless they are one of the following:

- operator committee meetings or technical committee meetings where the joint operating agreement relates to one of the following:
  - field developments: Lancaster, Penguin, Rosebank, Jackdaw, Perth, Dolphin, Lowlander, Columbus and Arran, Bentley, Bressay;
  - producing fields: Bruce, Rhum, Buzzard Phase 2;
- infrastructure: Forties Pipeline System, Sullum Voe Terminal, Shetland Gas Plant, Theddlethorpe Gas terminal; or
- decommissioning: Brae Field, Dunlin Field;
- exploration and appraisal well pre-investment meetings, where there is technical peer review on prospects and undeveloped discoveries, with the intent that this will lead to an investment decision; or
- major project review meetings, being decision-gate meetings between co-venturers in relation to major investment projects i.e. of GBP 300 million or more.

If a meeting is not within the scope of Chapter 4 of the Energy Act, on the basis of these specifications, Relevant Persons are not required to inform the OGA of the meeting, secure the right to OGA participation, provide the OGA with information about the meeting or provide it with a written summary of the meeting.

Sanctions

Under the Energy Act, the OGA also has the right to give sanction notices if it considers that a person has failed to comply with a petroleum-related requirement, being either a duty to act in accordance with the MER UK Strategy, a term or condition of an offshore licence or a requirement imposed by specified provisions in the Energy Act. These sanction powers are considered in more detail below.

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7 Meetings: statutory notice made under Part 2, Chapter 4 (Meetings) of the Energy Act 2016, Oil & Gas Authority, October 2016
Relevant Authorities

The Secretary of State has overall responsibility for the business of BEIS and its policies. These include: overall strategy on energy, consumer and climate change policy, international climate change negotiations, energy bills and the Competition and Markets Authority investigation and key decisions on major programmes and new policy in BEIS. The Secretary of State is also responsible for the overall policy framework within which the OGA operates.

BEIS (formerly DECC) is responsible for: energy security, action on climate change, renewable energy, delivering secure, low-carbon energy at affordable prices, ensuring the costs and benefits of energy policies are distributed fairly, supporting jobs, growth and investment, including by making the most of existing oil and gas reserves and managing the UK’s energy legacy safely, securely and cost effectively.

BEIS’s stated objectives are:

- ensuring the UK has a secure and resilient energy system;
- keeping energy bills as low as possible for households and businesses;
- securing ambitious international action on climate change and reducing domestic carbon emissions cost-effectively;
- managing the UK’s energy legacy safely and responsibly; and
- regulating compliance with offshore environmental legislation.

As explained above, from 1 April 2015, the OGA replaced DECC as the entity responsible for petroleum licensing and regulation of the upstream oil and gas sector, including: oil and gas licensing, oil and gas exploration and production, oil and gas fields and wells, oil and gas infrastructure; and carbon storage licensing.

From 1 October 2016, the OGA was formally established as a fully-independent regulator and a government-owned company, with the Secretary of State as the sole shareholder. The purposes and duties of the OGA are:

- to give effect to the guiding principle that, in relation to the offshore oil and gas industry’s activities, the OGA will use its powers and influence to maximise the economic recovery of offshore oil and gas in the UK;
- to be responsible for issuing licences and supervising the activities of licensees;
- to fulfil certain functions in relation to offshore oil and gas licensing, licensing strategy and policy, exploration, decommissioning, field and area strategies, infrastructure, resilience, consents and metering;
- to adhere to, and implement, Government policy set by the Secretary of State;
- to provide advice and expertise to industry and the Government;
- to be responsible for issuing licences for the capture and sub-surface storage of gas, its unloading and supervising the activities of licensees; and
• in due course, it is expected that the OGA will provide expert advice to BEIS in relation to gas storage and carbon capture policy.

The Environment Agency is the environmental regulator for all onshore oil and gas operations, including shale gas, coal bed methane and underground coal gasification in England. In April 2013, Natural Resources Wales, a new body formed by the Welsh Government, took over the functions previously carried out by the Environment Agency in Wales.

The Health and Safety Executive (HSE) is responsible for enforcing health and safety legislation. In particular, the HSE’s Energy Division regulates the risks to health and safety arising from work activity in the offshore oil and gas industry on the UKCS. The HSE also has an important role to play in regulating safety in other segments of the oil and gas industry (for example, oil and gas pipelines).

The Offshore Safety Directive Regulator (OSDR) is the Competent Authority set up to meet the requirements of the EU Directive 2013/30/EU on the safety of offshore oil and gas operations (OSD 2013), implemented by the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (SCR Regulations) and the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (OSD Licensing Regulations) which came into force on 19 July 2015. OSDR is a partnership between BEIS’s Offshore Oil and Gas Environment and Decommissioning Team (OGED) and HSE’s Energy Division (ED) – see below for further details of the roles and responsibilities of the Competent Authority. OGA is the Licensing Authority (the OGA’s LA) required to be appointed by the OSD 2013, as implemented by the OSD Licensing Regulations.

The Office of Gas and Electricity Markets (Ofgem) is a non-ministerial government department and is responsible for regulating the downstream gas market, and in particular the monopoly gas transmission and distribution networks. Ofgem also plays a role in enforcing the third party access regime that applies to downstream gas infrastructure.
Rights to Oil and Gas
Under the Petroleum Act, exploration for, and production of, petroleum in the UK and on the UKCS can only be undertaken under the terms of licences issued by the OGA. A separate regime applies to onshore oil and gas in Northern Ireland, established under the powers devolved to the Northern Ireland Assembly. The Department of Economic Development of the Isle of Man issues licences for its own onshore area and territorial waters.

DECC previously issued licences through competitive licensing rounds that generally took place every year. This power has now been transferred to the OGA. A company wishing to participate in the UK upstream oil and gas sector must bid for a licence or acquire an interest in existing assets, with any such acquisition being subject to regulatory consents.

There are three main types of licences:

- **Offshore Production Licences**: granted in relation to offshore fields. They cover the full life of a field, from exploration to production. The 29th Offshore Licensing Round, launched in July 2016, saw the launch of the new “Innovate Licence” concept. This is designed to offer a more flexible and pragmatic approach to licensing and was developed by an industry task group set up by the MER UK Exploration Board. The new approach will allow licensees to work with the OGA to design their work programme around their particular circumstances. This is intended to enable more appropriate phasing of activity, rental fees and competency tests and implements a stage-gate process for monitoring of progress. Innovate Licences have three terms, with an initial term of varying length up to a maximum of nine years, a second term of four years and a third term of 18 years. The initial term can be subdivided into up to three phases, with

- **Phase A** (optional) a period for carrying out geotechnical studies and geophysical data reprocessing. Phase B (optional) is a period for undertaking seismic surveys and acquiring other geophysical data and Phase C is a period for drilling. From the 29th Licensing Round, all new offshore production licences will become Innovate Licences.

Previously-issued offshore licence types include:

- **Traditional Licence**: the most common offshore licence. Licences were granted with traditional licence term lengths of four years for the initial term, four years for the second term and 18 years for the third term (other than in relation to the 27th and 28th rounds where greater flexibility was introduced for certain licences).

- **Promote Licence**: aimed at small and start-up companies. Applicants did not need to prove technical/environmental competence or financial capability.
before the award of the licence, but they were required to do so within two years of the start date of the licence.

- **Frontier Licence**: had an exploration phase of six years to allow companies to evaluate larger areas and look for a wider range of prospects.

- **West of Shetland Frontier Licence**: a variation of the Frontier Licence, specifically targeted at blocks located west of Shetland, with a longer exploration period of nine years.

- **Petroleum Exploration and Development Licences (PEDLs)**: granted in relation to onshore fields. These also cover the full life of a field, with five-year initial and second terms, associated with exploration work and appraisal and development respectively, and a third term, intended for production, of 20 years.

- **Offshore Exploration Licences**: covers offshore exploration activities only and does not include exclusive rights to drill or produce. This type of licence is particularly aimed at seismic contractors who wish to gather data to sell rather than exploit geological resources themselves. The cost of the licence is a flat rate of GBP 2,000 per year and covers non-intrusive exploration. The rights granted under an Exploration Licence are non-exclusive.

The detailed 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. The Model Clauses applicable to a particular licence are those that are in force at the time the licence was granted. Model Clauses are not affected by subsequent sets of Model Clauses, except through specifically retrospective measures. From the 20th licensing round onwards, the Model Clauses applicable to a particular licence have been set out in full in the licence to ensure clarity.

**Licensees**

Before awarding licences (or approving the transfer of a licence), the OGA must be satisfied that the applicant meets certain criteria. DECC previously issued guidance on these requirements with each licensing round, focusing on financial capacity and technical expertise. Any party wishing to become a licensee must satisfy certain criteria concerning finance, residence and organisational structure. The OGA will not allow any party onto a licence if it has doubts about its ongoing financial viability or if its lack of financial capacity would prevent or impede the exploitation of the exclusive rights granted by the licence.

The OGA will also exercise a presumption against approving any arrangement that it or HMRC considers presents an inherent tax risk, this includes having a partnership on the licence and some cases of the assignment of a beneficial interest in a licence to someone other than the licensee. The OGA does, however, note that any case will be considered on its merits and it is willing to discuss proposals to address potential tax issues.

In order to ensure a tax base, the OGA imposes residence criteria for parties wishing to be licensees. The OGA must be satisfied that prospective licensees have a place of
business in the UK, this means at least: having a staffed presence in the UK, being registered at Companies House as a UK company or having a UK branch of a foreign company registered at Companies House. To join a licence and take an interest in a producing field, a company must either be registered at Companies House as a UK company or carry on business through a fixed place of business in the UK.

The OSD Licensing Regulations include provisions relating to the capability of prospective licensees and the capacity of operators to undertake offshore oil and gas activities.

Prospective licensees are required to provide the OGA’s LA with a number of submissions in support of their applications, including submissions to enable the Competent Authority to assess their safety and environmental capability. It should be noted that the requirements are not restricted to formal licensing rounds, and the OGA’s LA will normally require submissions from companies applying for out-of-round licences and, where appropriate, to support applications requesting consent for licence assignments or applications seeking comfort for changes of control. All prospective licensees must provide the safety and environmental submissions described below.

Prospective licensees should note that the OSD Licensing Regulations include provisions for the OGA’s LA and the Competent Authority to request additional documentation, both in support of a licence application and following licence award. In particular, applicants and licensees may be required to provide additional information in relation to the liability arrangements resulting from new licence assignments or changes of control, or the development of a firm work programme.

All prospective licensees must provide a high level document containing the following:

- A section summarising the company’s safety and environmental policies, or a commitment to have such policies in place prior to appointing an operator to undertake any offshore oil and gas activities.
- A section confirming that the company possesses an understanding of the relevant statutory safety and environmental provisions, and understands the roles and responsibilities of licensees in relation to safety and environmental management.
- A section describing the company’s management structure, including details of functional responsibility for the management of safety and environmental matters.
- A section confirming that the company has relevant safety and environmental management systems, or a commitment to have such systems in place prior to appointing an operator to undertake any offshore oil and gas activities.
- A section confirming that, where a third party is appointed to manage the offshore oil and gas activities, or to manage the liabilities relating to those
activities, the company will select a third party that has the capacity to adequately undertake the duties relating to the appointment, and that reasonable steps such as monitoring, audit and review will be put in place to ensure that the third party meets, and continues to meet, the relevant requirements.

All prospective licensees must provide details of the company’s safety and environmental performance record in relation to both onshore and offshore oil and gas activities, including information in relation to any major accidents. Applicants should specifically include information relating to the following:

- Details of any major accidents during the last five years (either in the UK or in other countries).
- Details of any failure to comply with any relevant safety or environmental legislative standards or requirements that resulted in enforcement action by the regulator during the last five years (either in the UK or in other countries).
- Details of any criminal or civil action taken against the company, or pending against the company, with respect to safety or environmental issues during the last five years (either in the UK or in other countries).
- Details of any conviction for breaching any safety or environmental legislation during the last five years (either in the UK or in other countries).

All applications for new licences must be supported by a brief environmental sensitivity assessment (10-20 pages including any relevant maps or diagrams), detailing any relevant sensitive marine and coastal environments, and identifying the risks, hazards and other factors relevant to the potential degradation of the area that is the subject of the application and, where available, the potential cost of that degradation.

**Operators**

Prior to undertaking relevant exploration, development or decommissioning activities, the licensees must appoint OSD 2013 operators to undertake any well operations and any production installation operations under the licence.

Proposed OSD 2013 well and installation operators can be a licensee, or within a licensee’s company group; the licence operator approved by the OGA; or a separate third party selected to provide the service. Details of proposed appointments must be submitted to the OGA’s LA. Proposed appointments must also be accompanied by evidence of the proposed OSD 2013 operator’s capacity to manage the offshore activities, duties and responsibilities relevant to the appointment. Where the proposed OSD 2013 operator is a licensee, it is likely that they will be covered by the safety and environmental submissions submitted in support of the licence application.

The OSD Licensing Regulations require that the licensees must ensure that the appointed OSD 2013 operators have the capacity to meet the OSD 2013 requirements in relation to the particular offshore operations, duties and responsibilities relevant to the appointments, and must take all reasonable steps to ensure that the appointed operators satisfy those requirements. The OSD Licensing Regulations
also include provision for the OGA’s LA and the Competent Authority to request information at any time in relation to compliance with those requirements, to supplement any observations made at the time of the appointment or during the Competent Authority’s offshore inspections or interventions.

Where, following appointment, the Competent Authority determines that an OSD 2013 operator no longer has the capacity to manage the relevant duties and responsibilities for which they were appointed, the Competent Authority will notify the OGA’s LA, and the OGA’s LA must terminate the appointment of the operator.

Licence term

Offshore Production Licences and PEDLs are valid for a sequence of terms, designed to cover the typical life cycle of a field of exploration, appraisal and production. Each licence expires automatically at the end of each term, unless the licensee has sufficiently progressed to warrant a chance to move into the next term.

The OGA acknowledges that it is not desirable for production to cease simply because the term of the licence has expired, and therefore has a policy of extending licences where the relevant criteria are met. Typically, the OGA extends the term of a licence where a field is well-managed and there is continuing production, however in some circumstances the OGA may also extend the term where production has not yet begun, but a discovery is very close to becoming a producing field when the licence expires.

License fees

A small annual charge, called a rental, is payable under each licence. Rentals are charged at an escalating rate on each square kilometre the licence covers at that date. This method of calculating the rental provides an incentive to licensees to surrender acreage they do not want to exploit and to focus on their retained acreage.

In addition, the OGA charges for consents issued under petroleum licences, offshore methane gas and carbon dioxide storage licences and for Pipeline Works Authorisations.

The OGA levy

A new levy on oil and gas exploration and production licensees has been created to provide funding for the OGA. The levy is payable by licence-holders for each licence they hold (the licensees are jointly and severally liable for the amount of the levy). It is anticipated that the amount will be paid in full by the operator of the licence, and split between the various licensees in proportion to their participating interest in the licence. The amount of the levy for the period from 1 April 2016 to 31 March 2017 is:

- Offshore production licence (pre-production): GBP 6,808.65
- Offshore production licence (in production): GBP 64,951.96
- Offshore exploration licence: GBP 6,808.65

Liability
Licences can be held by a single company or multiple companies but, legally, there is only ever a single licensee regardless of how many companies it may comprise. All companies on a licence are jointly and severally liable for operations conducted under the licence. The Model Clauses are intentionally broad to ensure the widest possible interpretation and recourse for the OGA to all of the licensee companies.

The OSD 2013 provides that licensees are financially liable for the prevention and remediation of any environmental damage that is, or may be, caused by the offshore oil and gas activities carried out by the licensees, or by persons acting on their behalf. Prospective licensees must therefore demonstrate that they have made, or will make, adequate provision to cover liabilities potentially deriving from the proposed offshore activities, including liability for activities carried out on their behalf by appointed operators or contractors, and liability for potential economic damages.

Prospective licensees must provide evidence that they have, or will make, adequate provision to access sufficient financial resources for the immediate launch and uninterrupted continuation of all measures necessary for effective emergency response and subsequent remediation of any damage, including evidence of appropriate insurance or indemnity provision.

Where it is proposed that a licence will be held by more than one company, the obligations and liabilities that arise under the OSD 2013 will be held jointly and severally by all of the licensees.

**Award of licences**

The OGA is now responsible for issuing licences through competitive licensing rounds that generally take place every year. The OGA’s policy objective in a licensing round is to maximise successful and expeditious exploitation of the UK’s oil and gas reserves.

Separate rounds are held for seaward (offshore) licences and landward (onshore) licences. In exceptional circumstances, where there are compelling reasons, the OGA may issue a licence outside of a licensing round. The OGA can only accept licence applications in response to a formal invitation to apply for a licence, so a company seeking an out-of-round licence must make a case to the OGA that out-of-round applications are justified.

The OGA must follow a set procedure when issuing petroleum licences, including the publication of an invitation for applications in the *European Journal* at least 90 days in advance (Directive 94/22/EC on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (Hydrocarbons Licensing Directive), as implemented in the UK by the Hydrocarbons Licensing Directive Regulations 1995).

The 28th Offshore Licensing Round was completed in July 2015 with the award of 41 new licences in addition to the 134 licences awarded in late 2014. The 29th Offshore Licensing Round was launched in July 2016 with 1261 blocks on offer. In December 2015, 159 onshore blocks, incorporated into 93 onshore licences were offered as part of the 14th Onshore Licensing Round.
There has been a moratorium on unconventional oil and gas in Scotland since 28 January 2015. New onshore licensing powers in relation to petroleum exploration will be devolved to the Scottish Government through the Scotland Act 2016.

**Transfer of rights**

**Assignment**

Licences cannot be sold, transferred, assigned or otherwise dealt in without the consent of the OGA. The OGA will consider any assignment made without prior consent, a very serious breach of the Model Clauses and grounds for immediate revocation of the licence or to reverse the assignment. There are a number of issues that the OGA considers when deciding whether to give approval, including the technical and financial capacity and the financial viability of the assignee.

**Change of Control**

A change in control of a licensee is a ground for revocation of that licensee’s licences (unless such further change of control as the OGA may direct, takes place within a certain time). However, there is no express provision in the Model Clauses or the legislation for the granting of consent by the OGA before the change in control. The OGA acknowledges that the existence of the OGA’s revocation power may lead to a request for comfort that the OGA is not minded to exercise this power. The OGA is generally willing to consider these requests but will not give a formal confirmation. The OGA’s policy is that a licensee must be able to demonstrate that a change of control will not prejudice its ability to meet its licence commitments, liabilities and obligations. The OGA may require a parent company guarantee from the new corporate parent to replace any existing parent company guarantee which may have been issued prior to the change in control.

**Creation of a Charge**

The creation of a charge on a licence also requires the consent of the OGA. To facilitate transaction financing and to dispense with the need to obtain prior consent, an “Open Permission”, which is a form of automatic consent, applies to any fixed or floating charge or debenture. This Open Permission does not apply where the licensee’s interest in the licence is assigned on entering into the facility, whether under the terms of the security or by operation of law. It is a condition of the Open Permission that the licensee must give notice to the OGA within ten days of creation of the charge, providing information about the:

- size of the loan secured;
- licences affected; and
- identity of the chargee.
Third Party Access to Upstream Infrastructure
Access for developers of offshore oil and gas fields to upstream infrastructure for the purpose of transporting and processing hydrocarbons is a key element in maximising the exploitation of the UK’s oil and gas resources. The third party access regime has a voluntary, industry-led component, but this is underpinned by a statutory regime largely set out in the Energy Act 2011, which gives the OGA dispute resolution powers to make binding determinations that access to infrastructure be provided and on what terms.

The Code of Practice on Access to Upstream Oil & Gas Infrastructure on the UKCS (ICoP), developed by Oil & Gas UK in consultation with DECC, was launched in 2004, and revised and updated in 2012. Its purpose is to facilitate the utilisation of infrastructure for the development of remaining UKCS reserves through timely agreements for access on fair and reasonable terms, where risks taken are reflected by rewards. It provides a framework for oil and gas infrastructure owners and users of the process that must be followed in seeking, offering and negotiating access to oil and gas infrastructure on the UKCS. The ICoP applies to the processing and conveyance of all UK oil and gas throughout the hydrocarbon production and supply chain from wellhead through to receiving terminals and initial onshore processing facilities, including:

- onshore oil and gas terminals and pipelines that handle oil up to the point at which it has been stabilised; and
- gas prior to the point at which it enters into the National Transmission System (NTS).

The ICoP does not apply to access to the NTS, interconnectors or LNG import terminals.

The ICoP is intended to clarify, streamline and facilitate the timely resolution of access requests on a negotiated, non-discriminatory basis. The ICoP is voluntary and is not legally binding. However, the OGA encourages parties to follow the ICoP and if the OGA becomes involved in a dispute about third party access, then one of the many factors it considers is whether the parties have followed the ICoP.

Owners of upstream infrastructure are required to make available information regarding available capacity for that infrastructure. Third parties wishing to obtain access to such facilities must enter into more substantive discussions.

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8 Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UK Continental Shelf, Oil & Gas UK, November 2012 and Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UK Continental Shelf Guidance Notes, Oil & Gas UK, November 2012

9 Guidance on Disputes over Third Party Access to Upstream Oil and Gas Infrastructure, Oil & Gas Authority
with the relevant infrastructure owners/operators. To facilitate such discussions, “bona fide enquirers” are required to provide certain information, including a broad outline of the development, to the infrastructure owners/operators. Following receipt of this information, infrastructure owners/operators should provide such additional information as may be appropriate to successfully conclude a commercial agreement. Negotiations should be completed as quickly as possible and infrastructure owners/operators are required to negotiate and offer terms to third parties in good faith, without favour to any particular company.

Infrastructure owners/operators are required to publish short summaries of newly concluded construction and tie-in agreements, transportation and processing agreements and/or operating services agreements within one month of these becoming unconditional.

Where a party that seeks access to upstream oil and gas infrastructure cannot agree rights of access with the owner, it has the right and, in certain circumstances, where satisfactory negotiations for access have not concluded within six months, the obligation to apply to the OGA for a notice granting the relevant rights. The OGA will consider such an application only if it decides that the parties have had reasonable time in which to reach an agreement. In considering such applications, the OGA will have a duty to avoid prejudice to the infrastructure owners and existing users and will be required to take account of a number of factors specified in the legislation, including:

- capacity which is or can reasonably be made available in the pipeline or facility in question;
- the reasonable needs of the infrastructure owner and any associate of the owner for the conveying and processing of petroleum;
- the interests of all users and operators of the pipeline or facility; and
- the need to maintain security and regularity of supplies of petroleum.

The OGA will also take into account any other material considerations relevant to the dispute, including financial information.

If the OGA issues a third party access notice, this notice may be subject to various conditions, including any conditions the OGA considers appropriate to ensure that no person suffers a loss due to the mixing together of substances being transported or processed using the relevant facility.

Importantly, the OGA can issue an access notice under its own initiative, where parties have had sufficient time in which to reach an agreement and there is no realistic prospect of an agreement being reached, guidance from the OGA envisages that this power would be used in only very limited circumstances.
The taxation regime that applies to profits derived from oil and gas production in the UKCS was until recently made up of three main components but this was reduced to two by the Finance Act 2016:

**Petroleum revenue tax (PRT)**
This was a field-based tax charged on the profits arising from oil and gas extraction of individual oil fields and not in relation to the aggregate profits from all oil fields owned by each relevant company. PRT only applied to fields for which development consent was given before 16 March 1993. Ring fence corporation tax and the supplementary charge are also payable on profits from these fields, but PRT was deducted when calculating these charges. The Finance Act 2016 reduced the rate of PRT to 0% for chargeable periods ending after 31 December 2015. This preserves the ability to carry back losses on decommissioning against historic PRT payments.

**Ring fence corporation tax (RFCT)**
This is a modification of the corporation tax that applies to all companies by way of a “ring fence”. In contrast to PRT where each individual field is separately ring fenced on a field by field basis, RFCT includes all oil and gas exploration and production activity carried on by the relevant company. It aims to prevent profits from oil and gas extraction activities and rights in the UK and UKCS being reduced for tax purposes by the setting off of losses from other trading activities or by excessive interest payments and applies regardless of when development consent was granted.

The profits from oil and gas extraction activities and rights are “ring fenced” and treated for tax purposes as a separate trade, so that only losses derived from these activities can be set off against profits from these activities. Since 1 April 2008, the main rate of RFCT has been fixed at 30% and the UK Government has announced that it will remain at 30% despite the phased reduction in the main rate of Corporation Tax on non-ring fence profits over recent years (from 30% in 2008 to the current rate of 20% and scheduled to fall to 17% by 2020). The small profits rate of RFCT is currently 19%, with a marginal rate applying between the small and main rates. RFCT liabilities are based on the book profits of the company, which are then adjusted to arrive at the taxable profits. Deductions are available for items such as:

- plant and machinery allowances;
- research and development;
- expenditure on mineral exploration and access; and
- decommissioning.

However, there are restrictions on the use of interest on borrowings to reduce ring fence profits.

The ring fence expenditure supplement (RFES) allows ring fence companies to uplift the value (by 10%) of losses or pre-trading expenditure to maintain their value until
they can be set against future profits. Finance Act 2015 extended the RFES from six to ten years for all (both onshore and offshore projects) ring fence oil and gas losses and pre-commencement expenditure incurred on or after 5 December 2013.

**Supplementary charge**
This is also a tax imposed on profits arising from any ring fenced activities but excludes finance costs. It was originally introduced in 2002 and set at a rate of 10%. However, the UK Government subsequently revised the rate of the supplementary charge several times.

The Finance Act 2016 reduced the rate of the Supplementary Charge to 10% for accounting periods beginning on or after 1 January 2016.

To support onshore oil and gas exploration, the Finance Act 2015 introduced a new basin-wide investment allowance, applicable to investment expenditure incurred on or after 1 April 2015 in both new and existing fields and infrastructure within the ring fence tax regime. The new allowance exempts a proportion of a company’s adjusted ring fence profits (an amount equal to 62.5% of qualifying capital expenditure) from the supplementary charge.

For high pressure, high temperature fields in a designated cluster area, the Finance Act 2015 also introduced an allowance that reduces a company’s adjusted ring fence profits subject to the supplementary charge by an amount equal to 62.5% of capital expenditure and certain non-capital expenditure incurred in the designated cluster area.

**Value added tax (VAT)**
All non-UK resident companies that make taxable supplies in the UK for VAT purposes must register for UK VAT. UK resident companies must register for VAT if the value of their taxable supplies exceeds the VAT registration threshold (from 1 April 2016 GBP 83,000 per year in relation to VAT taxable turnover). Where a VAT registered entity incurs input VAT on goods and supplies it purchases, any such input VAT is generally recoverable to the extent that the entity makes taxable supplies for VAT purposes.

VAT is potentially chargeable on all supplies of goods and services made in the UK and its territorial waters (up to the 12-mile limit). There are different applicable VAT rates depending on whether the supply of oil is for domestic or commercial use.

**Customs duty**
All goods imported into the UK from outside the EU, including fuels, are potentially liable to customs duty. For these purposes, the UKCS, being the area beyond the 12-mile limit, is outside the EU. Any customs duty due is payable at the time of importation of goods except when entered for warehousing or cleared on remission of duty under a specified relief regime (for example, relief from duty is permitted in certain circumstances on oil intended to be exported after processing).

**Excise duty**
Oil becomes liable to excise duty either when it is imported, or when it is produced in the UK and delivered for domestic use within the UK from a refinery and certain other premises.
The current rates are:

- GBP 0.5795 per litre for unleaded petrol
- GBP 0.3770 per litre for aviation gasoline
- GBP 0.6767 per litre for light oil (other than unleaded petrol or aviation gasoline)
- GBP 0.5795 per litre for heavy oil

Excise duty is suspended while the oil is held in an approved warehouse. LPG is not liable to excise duty unless it is set aside or used as a road fuel. The main constituent of natural gas (methane) is not liable to excise duty. Relief from excise duty is available for oil put to use in an industrial process under the Industrial Relief Scheme (known as the “Tied Oils Scheme”).

**Climate change levy**

The climate change levy (CCL) is an environmental tax on downstream activities and is chargeable on supplies of commodities used as fuels for lighting, heating and power by business consumers (where no exclusion or exemption applies). There are broadly four categories of taxable commodities:

- Electricity
- Natural gas as supplied by a gas utility
- Petroleum and hydrocarbon gas in a liquid state (including LPG)
- Solid fuels

The levy is applied at a specified rate per nominal unit of energy (per kilowatt hour (kWh) or per kilogram).

The rates from 1 April 2016 are:

- 0.559 pence per kilowatt hour for electricity supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility
- 0.195 pence per kilowatt hour for gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility
- 1.251 pence per kilogram for any petroleum gas, or other gaseous hydrocarbon supplied in a liquid state
- 1.526 pence per kilogram for any other taxable commodity

While the exemption for renewable source electricity has now been removed (effective 1 August 2015), there are still exemptions for supplies:

- Used in some forms of transport
- Used to produce other forms of energy
- To good quality combined heat and power schemes
- Not used as fuel

UK residents who import taxable commodities and make supplies to end-users, or who are themselves end-users of taxable commodities, must register for the CCL. Importers who do not themselves use taxable commodities, but who sell them on to wholesalers or retailers (as opposed to end-users), are not required to register or account for CCL provided they obtain the necessary notifications from customers, which state the customer’s intention to sell on the commodities.

For non-UK residents who make taxable supplies and who are not a utility, the liability to register and account for the main rates of CCL due rests with the person to whom the supply is made, based on their own taxable use or taxable supplies to business customers.
Health, Safety and the Environment
Exploration

The HSE is responsible for regulating the risks to health and safety arising from work activities in the offshore industry on the UKCS. Following the Piper Alpha disaster in 1988, which claimed the lives of 167 oil workers, Lord Cullen’s recommendations following a public inquiry led to sweeping changes to the offshore regulatory regime. As a consequence, the offshore health and safety legislative regime in the UK is robust, complex and far reaching. The primary piece of legislation is the Health & Safety at Work Act 1974 (HSWA). Sections 1 to 59 and 80 to 82 of HSWA apply beyond the mainland of Great Britain to specified offshore areas (including the “territorial sea” and “designated areas”) and work activities by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2013 which came into effect on 6 April 2013.

The legislative regime must be read together with the Approved Code of Practice (ACOP) and guidance documents produced by the HSE to assist with understanding how to comply with the law. The legal status of guidance and ACOPs appear in the relevant publications. An ACOP from the HSE provides practical advice on how to comply with the law and is considered to be best practice. If that advice is followed, then you will have complied with the law. An ACOP has special legal status. If a party is prosecuted, for example, for a breach of the HSWA, and it is proved that it failed to comply with an ACOP, then it will be found guilty unless the party can establish that it adopted an alternative approach which is equally robust and in compliance with the law. As the name suggests, guidance from the HSE is just that and following the guidance is not compulsory unless specifically stated to be so. If a party does follow the guidance, however, it will normally be able to demonstrate compliance with the law.

The cornerstone of the offshore safety regime is the Safety Case which was first introduced in implementation of Lord Cullen’s recommendations following the Piper Alpha public inquiry. The Offshore Installations (Safety Case) Regulations 1992 and 2005 required safety cases to be submitted to the HSE by “duty holders” demonstrating that major accident hazards have been identified and the risks to people reduced to the lowest level that is reasonably practicable. As mentioned above, following on from the Macondo incident in the Gulf of Mexico in 2010, on 12 June 2013 the European Parliament and Council published the OSD 2013. The objective of the OSD 2013 was to “reduce as far as possible the occurrence of major accidents relating to offshore oil and gas operations and to limit their consequences. Thus increasing the protection of the marine environment and coastal economies against pollution, establishing minimum conditions for safe exploration and exploitation of oil and gas and limiting possible disruptions to the Union indigenous energy production and to improve the response mechanisms in case of an accident”.

The OSD 2013 was implemented in the UK by various legislation, including the SCR Regulations (and the HSE Guidance L154) which build on the existing safety case regime and now incorporates the additional requirements of the OSD 2013, including
environmental aspects as well as health and safety matters.

The SCR Regulations came into force on 19 July 2015. They apply to oil and gas operations in external waters (the UK’s territorial sea or designated areas within the UKCS) only. They replace the Offshore Installations (Safety Case) Regulations 2005 in these waters, subject to certain transitional arrangements. Activities in internal waters (for example, estuaries) will continue to be covered by the Offshore Installations (Safety Case) Regulations 2005 and its guidance L30. The main aims of the SCR Regulations reflect the OSD 2013 objective.

The main changes introduced by the SCR Regulations are:

- The establishment of an offshore “Competent Authority” (CA) responsible for overseeing industry compliance with the OSD 2013 and enforcement of the combined safety and environmental requirements of the SCR Regulations. The CA undertakes related functions such as accepting, assessing, approving and/or inspecting relevant Safety cases, Oil Pollution Emergency Plans (OPEPS), Well Notifications and the like. The CA for the UK external waters is the OSDR which is a partnership between the HSE and BEIS. The scope of the partnership responsibilities and status is documented in a Memorandum of Understanding (MoU) between HSE and BEIS issued in November 2016. The purpose of the MoU is to establish the necessary mechanisms and general working arrangements required for the joint operation in the CA by BEIS and HSE in accordance with the OSD 2013. The direction and strategy of the OSDR will be set by a senior Oversight Board and implemented by an Operational Management Team.

- For stakeholders, there is a single OSDR dedicated website and a single online portal for all regulatory notifications and submissions, including safety cases and OPEPs, regardless of whether related to safety or the environment. HSE will normally lead on issues concerning the health and safety of persons and BEIS on environmental issues.

- BEIS retains its responsibilities for the enforcement of environmental statutory provisions and HSE for enforcement of health and safety statutory provisions separate from those joint responsibilities as OSDR.

- The scope of the SCR Regulations covers the management and control of environmental major accident hazards and so environmental protection issues need to be addressed in Corporate Major Accident Prevention Policies (CMAPP), Safety and Environmental Management System (SEMS), verification schemes, emergency response arrangements and demonstrations related to the management and control of major accident hazards. The Safety Case submitted to the CA must now contain environmental information.

- Every “duty holder” (defined as operator of a production installation and owner of a non-production installation) and well operator must now have a CMAPP reflecting a high level overview of how the management and control of major accident
hazards will be implemented.

- Every duty holder and well operator must have a documented SEMS in operation within its organisation which is integrated with its overall management system. An “adequate description” of the SEMS must be included in the duty holder’s safety case and well operator’s well notification. A description of the internal emergency response arrangements must also be included in the safety case.

- The CA has a requirement to inform the LA (defined in OPLR – OGA) when an operator no longer has capacity to fulfil that role and meet the relevant statutory provisions. The CA can also prohibit operations if it considers measures in place to prevent or limit the consequences of a major accident proposed in the safety case are insufficient.

In addition to the SCR Regulations, the following regulations are central to the offshore regulatory regime:

- Offshore Installations (Management and Administration) Regulations 1995 (as amended) (MAR)
- Offshore Installations (Prevention of Fire and Explosion and Emergency Response) Regulations 1995 (PFEER)
- Offshore Installations (Design and Construction) Regulations 1996 (DCR)

However, there are many other relevant regulations such as:

- Management of Health and Safety at Work Regulations 1999 (MHSWR)
- Control of Major Accident Hazards Regulations 1999 (COMAH)
- Provision and Use of Work Equipment Regulations 1999 (PUWER)

Transportation
As far as pipelines are concerned, the legislation is again complex and far reaching. The main legislation, in addition to the HSWA, is:

- Pipelines Safety Regulations 1996 (HSE Guidance L82) made under the HSWA so do not cover the environmental aspects of accidents arising from pipelines. These Regulations set out requirements relating to safety in the design, construction, installation, operation, maintenance and decommissioning of pipelines, thus reducing the risks to the environment. The Regulations apply to all pipelines in Great Britain, and to all pipelines in territorial waters and the UKCS.
- Gas Safety (Management) Regulations 1996 (HSE Guidance L80) covering the transport of natural gas through pipelines to domestic and other customers. The Regulations do not apply offshore. The Regulations require gas transporters to prepare a safety case for approval by the HSE.
- The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended)
require an environmental impact assessment to be carried out – see below).

- Petroleum Act requiring Pipeline Works Authorisation (PWA) for the construction of, or change to, a pipeline. This application is made to the OGA and takes 4-6 months to process.

- Pressure Systems Safety Regulations 2000 (HSE ACOP and Guidance L122). They cover the safe design and use of pressure systems. They apply in Great Britain and offshore.

- SCR Regulations 2015 (including Schedule 2 which requires within the CMAPP confirmation that the likelihood of a major environmental incident has been identified and its environmental consequence assessed and Schedule 6 relating to particulars to be included in a Safety Case).

- The Control of Major Accident Hazards (COMAH) Regulations 2015, which came into force on 1 June 2015 (replacing the 1999 Regulations). These Regulations came into effect on 1 June 2015 and apply to “establishment” as defined within Great Britain and do not apply offshore. The purpose of the Regulations is to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any accidents that do occur. They are enforced by the COMAH CA which is a partnership of HSE, the Environment Agency, SEPA, Natural Resources Wales and the Office for Nuclear Regulation. Dangerous substances in all pipelines and pipework must be taken into account when identifying possible major accident scenarios.

Responsibility for enforcing health and safety law for onshore and offshore Major Accident Hazard (MAH) pipelines lies with the Specialised Industries Gas and Pipelines Unit in HSE’s Hazardous Industries Directorate.

Environmental concerns

HSE’s and BEIS’s legislation has been updated to fully implement the OSD 2013. As referred to above, this includes changes to existing legislation as well as introducing new requirements, such as new regulations to implement environmental and licensing requirements and the establishment of the OSDR. The new regulations were laid in Parliament on 23 March 2015 and came into force on 19 July 2015.

The Infrastructure Act 2015 simplified the procedure for obtaining the right to use underground land 300 metres and below for the purpose of exploiting oil and gas. By section 50, sections 4A and 4B were inserted into the Petroleum Act, prescribing specific requirements and safeguards in relation to onshore hydraulic fracturing in England and Wales. They outline limits to fracking and conditions which must be met before a fracking consent may be issued. On 16 July 2015, the Government published draft regulations and on 10 March 2016 the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016 were made but are not yet in force10.

10 See Friends of the Earth and Another v North Yorkshire County Council, High Court, 20 December 2016 at https://www.judiciary.gov.uk/wp-content/uploads/2016/12/approved-judgment-rfoe-anr-v-n-yorks-cc-anr.pdf. for a useful insight into the considerable scrutiny which the courts will apply to the robustness of, and the MPA’s due diligence applied to, the environmental impact assessment submitted with the planning application.
They shall take effect on the same day as section 4A(3) of the Petroleum Act comes in to force. The Regulations define the “protected groundwater source areas” in which hydraulic fracturing will be prohibited. This is defined as “any land at a depth of less than 1,200 metres beneath a relevant surface area”, this means any land which is within 50 metres of a point at the surface at which water is abstracted and used for domestic water supply or food production. Drinking water is not normally found below 400 metres. Further protection is given to “other protected areas” being areas of land at a depth of less than 1,200 metres beneath National Parks, Areas of Outstanding National Beauty, the Broads and World Heritage Sites, ensuring the process of hydraulic fracturing can only take place below 1200 metres in these areas.

The HSE monitors shale gas operations from a well integrity and site safety perspective. The applicable law is the HSWA, and regulations made under the Act, such as the Borehole Site and Operations Regulations 1995 (BSOR) which applies to shale gas operations and the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996 (DCR).

Environmental impact assessments (EIAs)
The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended) provide that an operator who wishes to carry out certain upstream activities must first make an assessment of the impact that the activity would have on the environment (environmental impact assessment (EIA)) and then summarise and present the conclusions of this in an environmental statement (ES), which must be submitted to the OGA.

The activities for which an EIA is required include:

- Granting and renewal of production consents for field developments
- Drilling of wells (deep boring)
- Construction and installation of production facilities and pipelines in the United Kingdom Territorial Sea and on the UKCS

The OGA recognises that operators may employ independent specialist consultants to aid in the EIA process and preparation of the ES, but it requires operators to assure the quality of the work being done by third parties on their behalf and ultimately to be responsible for the preparation of the ES and the commitments set out in it.

Environmental permits
The UK has a comprehensive framework for the management of the potential environmental consequences of oil and gas exploration and production, with a large number of different approvals and permits being required for various different aspects of operations including, greenhouse gas emissions, combustion equipment on offshore installations, the use of and discharge of chemicals and other waste in relation to oil and gas activities.

For onshore operations, there are some differences in the environmental legislation.
In particular, the Environment Agency in England and the Scottish Environment Protection Agency (SEPA) play a role in the issuing of some of the permits required to carry out onshore exploration and production.

**Flares and vents**
Consent from the OGA is required for venting (Energy Act 1976) and flaring (Petroleum Act). The OGA’s policy is that it is committed to eliminating all unnecessary or wasteful flaring and venting of gas. Operators should seek to minimise this by implementing best practice at an early stage in the design of the development and by continuing to improve on this during the subsequent operational phase. The operator must carefully consider all operational activities in accordance with good oil field practices, taking into consideration plant uptime, efficient processing, handling, uses and transportation of gas.

**Waste**
The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (as amended) (OPPC Regulations) impose a permitting system to control oil discharges from an offshore installation, with enforcement powers available to the BEIS to require remediation of pollution in the event of an unauthorised discharge and to recover costs if it has to intervene if the operator fails to do so. These Regulations also apply in a restricted geographical area (per devolution settlement) to installations or pipelines established or maintained for the additional offshore energy-related activities of natural gas unloading and carbon dioxide.

Prior to any discharge of oil, an Oil Discharge Permit is required and can be obtained by application to the OGA on a Subsidiary Application Template (SAT) within the portal application process. Applications for new oil discharge permits are subject to public notice in newspapers, except for those permit applications referred to in Regulation 5A(5) of the OPPC Regulations. The public notice must be published in newspapers on occasions that are likely to come to the attention of any persons likely to be interested in, or affected by, the discharge of oil to which the application relates. An Oil Discharge Permit is not required for the discharge of hydrocarbons that are subject to a permit under the Offshore Chemicals Regulations 2002 (as amended) which control the use and discharge (including injection) of offshore chemicals.

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11 A summary of the process involved in applying for and gaining consent from OGA for the flaring and venting of gas during the production phase of a field development can be found at [https://www.ogauthority.co.uk/media/2467/flaring-and-venting-during-the-production-phase-1016.pdf](https://www.ogauthority.co.uk/media/2467/flaring-and-venting-during-the-production-phase-1016.pdf).
Decommissioning
The decommissioning of offshore oil and gas installations and pipelines on the UKCS is regulated by the BEIS Offshore Decommissioning Unit through the Petroleum Act, as amended by the Energy Act 2008 and the Energy Act. The UK’s international obligations on decommissioning are governed principally by the 1992 Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR Convention). The OGA works with BEIS and is specifically required by the Energy Act to assess decommissioning programmes to ensure they meet the MER UK principal objectives on the basis of cost-savings, future alternative use and collaboration.

### Liability for Decommissioning

Decommissioning obligations arise when the Secretary of State serves a section 29 notice under the Petroleum Act, requiring the recipients to submit a decommissioning programme for approval. The notice will either specify the date by which a decommissioning programme for each installation or pipeline is to be submitted or, as is more usual, provide for it to be submitted on or before such date as the Secretary of State may direct.

Amendments introduced by the Energy Act clarify that decommissioning of an offshore installation or submarine pipeline may not be carried out unless a decommissioning programme approved by the Secretary of State is in effect. Recipients of a section 29 notice are required to consult the OGA before submitting a decommissioning programme to the Secretary of State and to ensure that the programme is framed to keep the cost of carrying it out to the minimum that is reasonably practicable in the circumstances.

The Secretary of State can serve a section 29 notice on a range of persons, including the operator, licensees, the parties to the relevant joint operating agreement (or similar agreement), the owners of any installation and any persons who have transferred an interest in a licence to another party without the prior approval of the Secretary of State.

As the objective of the regime is to shield the UK taxpayers from decommissioning costs, the Secretary of State may also serve a section 29 notice on a wider group of parties, not just the current licensees, including a parent or associated companies of a licensee. It is expected that the Secretary of State will send a section 29 notice to this wider class of parties if it finds the decommissioning arrangements proposed by the operator and licensees to be unsatisfactory. The Secretary of State cannot send a section 29 notice to a person if that person has never been entitled to derive any benefit, whether financial or otherwise, from an installation and they are a licensee or party to a joint operating
agreement (or similar agreement) but have never been within one of the other categories of person to whom a section 29 notice may be served.

The section 29 notice holders remain liable for decommissioning obligations unless the section 29 notice is withdrawn and the obligation to carry out the approved decommissioning programme is joint and several. When an asset changes hands, the Secretary of State may release a former licensee from its section 29 obligations. In most cases, the section 29 notice is withdrawn once the Secretary of State is satisfied that adequate financial security arrangements are in place in relation to the decommissioning liabilities.

It is important to note that the Secretary of State has the right to place a duty to carry out a decommissioning programme on anyone on whom a section 29 notice could have been served at any time after the first section 29 notice was served. This is the case even if that person had not previously received a section 29 notice or is a person whose section 29 notice had subsequently been withdrawn. This could mean that any company which has been a licensee at any time since development of a field is potentially liable for the decommissioning of that field until decommissioning is complete. Guidance Notes published by BEIS (formerly DECC) state that such a situation would be regarded as a measure of last resort.¹²

## Decommissioning programmes

A decommissioning programme sets out the measures to decommission disused installations and/or pipelines, and will describe in detail the methods required to undertake the work including, where it is proposed that an installation or pipeline is to remain in position, provision for maintenance. A fee is payable for approving and revising offshore (oil and gas) decommissioning programmes and is based on the type of facility, ranging from GBP 50,000 in respect of a revision to a decommissioning programme, GBP 100,000 in respect of a submarine pipeline up to GBP 250,000 for multiple large-scale offshore installations.

The Secretary of State usually requests the submission of a decommissioning programme towards the end of the life of the field and facilities, although for smaller fields the Secretary of State may require a programme at the time of approval of the final field development plan. The Secretary of State may approve or reject a decommissioning programme submitted and, if it is approved, may approve it with or without modifications and either subject to conditions or unconditionally. Before reaching any such decision, the Secretary of State is required to consult the OGA but final approval rests with BEIS.

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Once the decommissioning programme is approved, the section 29 notice-holders are legally obliged to carry it out on a joint and several liability basis. If a programme is not carried out or its conditions are not complied with, the Secretary of State may, by written notice, require remedial action to be taken. Failure to comply with any such notice is an offence and the Secretary of State can carry out the remedial action and recover the costs from the person to whom the notice was given.

**Tax relief**

As decommissioning is an inherent cost of doing business on the UKCS, obtaining tax relief for decommissioning costs is critical in determining whether to invest and a crucial factor in enabling participants to meet the overall cost of decommissioning. Tax relief for such costs is given at the point they are incurred and the decommissioning carried out. Relief is given against RFCT and Supplementary Charge as well as PRT. Typically, the relief will produce losses that can be carried back and set against earlier profits.

In September 2013 the Government introduced Decommissioning Relief Deeds, legal agreements between the government and oil and gas investors aiming to give the latter certainty as to the tax relief available for decommissioning expenditure in certain circumstances, such as in the event of a default by a licensee. Fixing the applicable rate of tax relief that companies will be entitled to in connection with decommissioning activities at the time at which security agreements are entered into enables companies to calculate the amount of security required, having taken into account the amount of tax relief to which it will be entitled. The rationale is that this will reduce the amount of security required (prior to this security would be given without taking account of tax relief which therefore increased the amount required) thereby freeing up funds for asset transactions and investments and discouraging early decommissioning.

**Security**

The Secretary of State can require a person to provide specified financial information and documents in order to assist him in considering whether to impose a decommissioning obligation on a person. In relation to section 29 notice holders and persons under a duty to carry out a decommissioning programme, the Secretary of State may require information and documents, including financial information and information relating to the estimated costs of decommissioning in order to determine whether a person will be capable of carrying out any decommissioning programme.

If the Secretary of State is not satisfied that a person will be capable of carrying out their decommissioning obligations then, after consulting the Treasury, it may require them to provide security, such as a letter of credit, in order to reduce the risk to the UK taxpayer (who could otherwise bear this liability). Any funds set aside in a secure manner to meet decommissioning obligations (such as a trust or other arrangement that was established on or after 1 December 2007) will not be accessible.
Decommissioning security agreements are entered into by licensees to ensure that guaranteed funds will be available to cover the costs of decommissioning an installation. A template Decommissioning Security Agreement has been developed and is available from Oil & Gas UK. Whilst it is not usual for the Secretary of State to be a party to decommissioning security agreements, the Secretary may become a party, for example, to facilitate the withdrawal of a section 29 notice from a licensee transferring its licence interest to another party. The Secretary of State has certain minimum requirements when he is party to a decommissioning security agreement, including the provision of security in certain forms only (for example cash, irrevocable standby letters of credit or on-demand performance bonds from prime banks or regulated insurers) to cover each party’s share of the cost of decommissioning.

**Decommissioning Strategy**

The OGA is committed to achieving the maximum economic extension of field life and ensuring that decommissioning is executed in a safe, environmentally-sound and cost-effective manner. It also considers decommissioning as an area of opportunity in which UKCS expertise can be developed and exported globally.

The OGA published its “Decommissioning Strategy” in June 2016, which is to be implemented and delivered in line with the Energy Act and the MER UK Strategy and which focuses on three priorities:

- Cost certainty and reduction, undertaken in a technically competent, safe and environmentally responsible manner. The OGA is targeting a cost reduction in late-life asset management and the execution of decommissioning projects of at least 35%, relative to the 2015 base case cost.
- Decommissioning delivery and capability, in terms of supply chain expertise and capacity. The initial focus will be on capturing data regarding existing supply chain expertise and competencies. The intention is that this will feed into the development of a new model of technically competent, efficient and cost-effective decommissioning capability where costs are reduced and risks and liabilities appropriately allocated.
- Decommissioning scope, guidance and stakeholder engagement by working with BEIS and other parties to identify and evaluate opportunities to optimise and define parameters for decommissioning scope. The OGA is seeking to improve industry engagement with relevant regulatory bodies at an early stage to ensure that guidance is understood and the scope for decommissioning activities clearly defined, with a view to eliminating unnecessary work, releasing value and reducing costs.

A MER UK Decommissioning Board has been set up, reporting to the MER UK Forum, to ensure implementation of the Decommissioning Strategy. Its purpose is to establish a respected, stable and sustainable decommissioning industry, effectively minimising costs and maximising economic recovery through collaboration and fit for purpose lifecycle planning, policies, solutions and execution.
Enforcement of Regulation
OGA enforcement powers

As explained above, from 1 April 2015, the OGA replaced DECC as the entity responsible for petroleum licensing and regulation of the upstream oil and gas sector. In Part 2, Chapter 5 (sections 42 to 60) of the Energy Act, commencing on 1 October 2016, the OGA has been granted powers to issue sanction notices where it considers that there has been a failure to comply with a petroleum-related requirement which is defined as either a duty to act in accordance with the MER UK Strategy, or a term or condition of an offshore licence, or a requirement imposed by certain provisions of the Energy Act. The OGA’s enforcement activity falls into four categories of sanction notices:

- **Enforcement notices**: inform the recipient of the alleged breach of petroleum requirements and allows time for compliance with the prescribed conditions.
- **Financial penalty notices**: require the recipient to comply with the relevant petroleum-related requirement within a given timeframe and impose a specified financial penalty payable to the OGA in respect of the relevant breach.
- **Revocation notices**: revoke the petroleum licence of the recipient following a failure to comply with specified petroleum-related requirements imposed on a licensee in that capacity. If such a notice is only given to one licensee in relation to a licence held by several licensees, the licence is not revoked in relation to the licensees other than the recipient.
- **Operator removal notices**: require the recipient licence holders to remove the operator from its position following a failure to comply with specified petroleum-related requirements.

OGA has published a statement of the procedure it proposes to follow in relation to enforcement decisions concerning sanctions. Where there may have been a failure to comply with a petroleum-related requirement (an **Incident**) and the OGA’s initial assessment has determined that the Incident is appropriate for the sanction notice process, the OGA will undertake an enquiry into the Incident and will normally inform the relevant person that it is making an enquiry and may request further information.

The purpose of the enquiry is to determine whether there is sufficient initial evidence of an Incident and whether the circumstances merit a full investigation. In making such a determination, the OGA will weigh the likely benefits of conducting an investigation against the time and money that would be required to carry out that investigation and the comparative benefits to the MER UK Strategy. The OGA will aim to reach a conclusion on whether or not to open an investigation within 15 working days.

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13 Sanction Procedure, Oil & Gas Authority, October 2016
If the OGA undertakes a full investigation into a suspected Incident, it will usually take account of the following:

- the strength of evidence that there has been an Incident;
- the significance of the Incident for the objectives of the MER UK Strategy;
- whether pursuing the Incident will establish a material principle or precedent;
- the prospect of success of imposing a sanction that will correct the Incident;
- the relationship of the Incident with the OGA’s broader strategic goals;
- the severity of the Incident in the context of the relevant petroleum-related requirement;
- the wider impacts of the Incident;
- the suitability of the imposition of sanctions to address the Incident;
- the availability of money and time within the OGA to pursue the Incident; and
- the urgency for action.

If the OGA proposes to give a sanction notice as a result of an investigation, the OGA must issue a sanction warning notice before issuing a proposed sanction notice, setting out the alleged breach of petroleum-related requirements and allowing the recipient to make representations to the OGA in relation to such issues within a specified time. The OGA will take into account any representations made and, in deciding whether to issue a sanction notice and which type and level of sanction to apply, it will also consider:

- the effectiveness of any sanction in addressing the underlying cause of the Incident;
- whether a sanction would be dissuasive of a future Incident;
- whether a sanction would be proportionate;
- the extent to which any person may have benefitted from an Incident;
- the degree of harm caused to the MER UK Strategy or cost incurred by others by the Incident;
- the severity of the Incident in the context of the petroleum-related requirement;
- the extent to which the parties have followed industry codes of practice;
- the duration of the contravention;
- co-operation with the OGA’s investigation;
- mitigating circumstances or behaviours; and
- aggravating circumstances or behaviours.

Where a sanction notice is being issued in relation to a petroleum-related requirement applying jointly to two or more entities, the OGA may give the relevant sanction notice to only one of such entities, or to some or all of them jointly.

The OGA may publish details of any sanction notice given, but may not publish anything that is, in its opinion, commercially sensitive, not in the public interest or is otherwise not appropriate for publication. The OGA intends to publish sanction notices where it would be to the benefit of the MER UK Strategy, but it does not intend to publish material preceding the sanction notice, such as the sanction
warning notice. The OGA has emphasised that, whilst its use of sanctions will be proportionate, they will not be used as a last resort only, parties should therefore expect to see the exercise by the OGA of these new powers.

**Other enforcement powers**

The HSE also has enforcement powers regarding violation of legislation and regulation related to health and safety, particularly the HSWA. HSE inspectors derive their powers principally from Sections 20 to 23 of the HSWA and associated legislation. They have, for example, power of entry to all work places, including docks and offshore installations, to inspect health and safety conditions and to investigate accidents to personnel working in a port or while loading or unloading a ship. They can similarly investigate accidents occurring to a ship's crew.

The Maritime and Coastguard Agency (MCA) is responsible for enforcing all merchant shipping regulations in respect of occupational health and safety, the safety of vessels, safe navigation and operation (including manning levels and crew competency). The MCA and HSE share responsibility for enforcement in relation to vessels operating on coastal and inland waters, and have split this responsibility as set out in a Memorandum of Understanding between the HSE, the MCA and the Marine Accident Investigation Branch for health and safety enforcement activities at the water margin and offshore.

**Fines**

The OGA has the power to issue financial penalty notices carrying fines of up to GBP 1 million (section 45(1) of the Energy Act). The Secretary of State may by regulations amend that limit to an amount not exceeding GBP 5 million. The OGA undertook a public consultation on the proposed OGA guidance to be issued as to the matters to which it will have regard when determining the amount of the financial penalty to be imposed by a financial penalty notice under the Energy Act, section 45. The consultation closed on 3 November 2016. It is anticipated that the OGA will publish the final guidance within 12 weeks of that date and it will come into force after being laid before both Houses of Parliament. Once again, the guidance will be kept under review and revised in light of experience and developing law and practice. The draft guidance on which the consultation proceeded provided that the financial penalty determined by the OGA should be effective in addressing the cause of failure to comply, dissuasive and proportionate. The OGA must also have regard, for example, to any gain made as a consequence of the failure, the degree of harm caused, the extent to which persons may have sought to benefit from the failure and any mitigating or aggravating circumstances associated with the failure.
In relation to fines imposed for breaches of health and safety legislation prosecuted by HSE and offences and convictions under the Corporate Manslaughter and Corporate Homicide Act 2007, new sentencing guidelines came into force on 1 February 2016 in England and Wales. Under these sentencing guidelines fines of up to £10 million can be imposed in the event of breach of health and safety legislation and regulations, or up to £20 million in the event of corporate manslaughter convictions, with the potential to impose even larger fines for companies with a turnover which “very greatly exceeds the threshold for large organisations”, namely a £50 million turnover.

**Right of appeal**

The enforcement regime entitles the permit holder or licensed operator to appeal against sanction notices issued by the OGA to a First-tier tribunal. Appeals against enforcement decisions of the HSE can be brought through an independent appeals structure to an Employment Tribunal, within 21 days of the relevant decision with further appeals available on a point of law. Appeals against BEIS enforcement decisions can also be appealed and the form and timing of that appeal depends on which environmental regulations have been contravened. For example, enforcement decisions to serve an Enforcement or Prohibition Notice arising from contravention of the OPPC Regulations 2005 as amended can be appealed to the High Court in England and the Court of Session in Scotland.

Prosecutions introduced by any of the OGA, the HSE, the BEIS or the Maritime and Coastguard Agency can be appealed against in accordance with the normal rules for criminal appeals in the UK.

**Reform**

The publication of the Wood Report in February 2014 and the implementation of the recommendations set out in that Report continue to result in significant reforms for the UK oil and gas industry.

The MER UK Strategy was finalised and brought into force on 18 March 2016, the Energy Act received royal assent on 12 May 2016 and the OGA was formally established as a fully-independent regulator and a government-owned company, charged with the asset stewardship and regulation of domestic oil and gas recovery and with the Secretary of State as the sole shareholder on 1 October 2016.

We expect significant changes to continue to be felt across the industry as the OGA begins to implement and exercise the powers it has under the new legislative and regulatory regime and to develop further strategies, the industry continues to adapt to the low oil price environment, onshore drilling and hydraulic fracturing looks set to restart in England and new onshore licensing powers are devolved to the Scottish Government.
Enforcement of Regulation
The Regulatory Authorities

Oil & Gas Authority (OGA)
www.gov.uk/government/organisations/oil-and-gas-authority

Main responsibilities: The OGA has recently succeeded DECC as the regulator of the offshore and onshore oil and gas sector in the UK, including oil and gas licensing, oil and gas exploration and production, oil and gas fields and wells, oil and gas infrastructure and carbon storage licensing.

Department for Business, Energy and Industrial Strategy (BEIS)
www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy

Main responsibilities: BEIS is responsible for setting energy and climate change mitigation policies, and establishing the framework for achieving the policy goals in those areas.

Office of Gas and Electricity Markets (Ofgem)
www.ofgem.gov.uk/Pages/OfgemHome.aspx

Main responsibilities: Ofgem is responsible for regulation of the downstream gas market in Great Britain.

Health and Safety Executive (HSE)
www.hse.gov.uk

Main responsibilities: The HSE is an independent regulator, responsible for enforcing health and safety legislation in workplaces.

Environment Agency (EA)
www.environment-agency.gov.uk

Main responsibilities: The EA is the environmental regulator for all onshore oil and gas operations, including shale gas, coal bed methane and underground coal gasification in England. In April 2013, Natural Resources Wales (NRW), a new body formed by the Welsh Government, took over the functions previously carried out by the Environment Agency in Wales.

Offshore Safety Directive Regulator (OSDR)
www.hse.gov.uk/osdr

Main responsibilities: The OSDR is the Competent Authority responsible for overseeing industry compliance with the EU Directive on the safety of offshore oil and gas operations. The OSDR is a partnership between BEIS’s Offshore Oil and Gas Environment and Decommissioning Team (OGED) and HSE’s Energy Division (ED).
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The Clyde & Co team of oil & gas specialist lawyers operates across our global network and are recognised as true experts in the oil & gas industry. This core team consists of a group of both transactional and contentious professionals who work full time with the oil & gas industry.

We recognise that due to the pioneering nature of the industry, our oil & gas clients are often working in frontier markets, dealing with complex multi-jurisdictional and cross-border transactions and disputes. They require legal advisors who are not only expert lawyers with a deep understanding of the industry but have a commercial approach and pragmatic mindset assisting clients to achieve their goals cost effectively and with a minimum of risk.

The group specialises in all areas of contentious and noncontentious disciplines in oil & gas exploration and production (E&P), upstream and downstream projects and their related infrastructure.

It is supported by a wider group of lawyers that have extensive experience in the oil & gas sector across corporate, commercial, finance, projects, disputes and international arbitration. This includes specialised areas such as employment, HSE, regulatory and compliance, insurance, trading and derivatives.

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For further information, please contact our oil & gas team at energy@clydeco.com or get in touch with your usual Clyde & Co contact.

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