Oil Regulation
2021

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LEXOLOGY
Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the eighteenth edition of *Oil Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ecuador and United Arab Emirates.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Bob Palmer of Mayer Brown International LLP, for his continued assistance with this volume.

LEXOLOGY
Getting The Deal Through

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United Kingdom

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GENERAL

Key commercial aspects

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

According to the Oil and Gas Authority (OGA), the UK's oil & gas industry regulator, as of the end of 2018, almost 45 billion barrels of oil equivalent had been recovered from the UK continental shelf (UKCS). The OGA estimates that a further 10 to 20 billion barrels of oil equivalent could still be recovered from the UKCS. Production from the UKCS peaked in 1999, reaching 137 million tonnes. This was followed by a general decline, with production falling by 5 per cent each year on average. 2018 bucked this trend, with oil and gas production increasing more than 4 per cent from 2017, averaging 1.7 million barrels of oil equivalent per day (Mmboe/d), before dropping to 1.61Mmboe/d in 2020. The OGA predicts production to decline further in 2021 and 2022, anticipating a fall to 1.50 Mmboe/d and 1.44 Mmboe/d respectively. This reflects lower levels of brownfield and greenfield investments, and also takes into account the impact of planned maintenance works due to be carried out. In 2020, UKCS oil production fell to 0.93Mmbbl/d, a decrease of 15.5 per cent from 2019. Gas production remained at 0.58boe/d. Gas production is expected to decline to 0.41boe/d by 2025.

Drilling activity across the UKCS fell by almost one-third between 2015 and 2016. Activity remained low in 2017, with only 71 development wells being drilled. This picked up slightly in 2018 and 2019, recovering to 9 per cent below 2015 levels with 141 wells drilled (112 development, 16 exploration and 13 appraisal). In 2020, 71 wells began drilling on the UKCS. These consisted of seven exploration wells (the lowest since 1965), 2 appraisal wells (the lowest since 1970), and 62 development wells (the lowest activity levels since 1976). The 2020 levels were half the levels seen in 2019 as companies deferred and cancelled activities to preserve cash and reduce operational risk, due to the impact of the Covid-19 pandemic and the oil price crash. Oil & Gas UK (OGUK), the leading industry-representative body for the UK offshore oil & gas sector, predicts a small increase in activity in 2021, with a further potential to increase in 2022 to the levels seen between 2016 and 2018.

The UK has the sixth-largest total refining capacity in Europe and some of its six crude oil refineries are among the largest in Europe. The refining business has experienced several disruptions, including the sale of three refineries in 2011, the closure of the Coryton refinery in 2012 and the closure of the Milford Haven refinery in late 2014. Production of petroleum products by refiners decreased by 4.5 per cent after the first quarter of 2020 compared with 2019. Only two new projects were approved for development by the OGA in 2020 — Wintershall's Sillimanite field and IOG's SNS cluster development of the Blythe, Elgood and Southwark fields.

Before the impact of the covid-19 pandemic hit, with stable market conditions expected, it was anticipated that capital investment in 2020 would be in the region of between £5 billion and £5.5 billion, in line with the 2019 levels. However, this fell by 33 per cent to £3.7 billion in 2020 as a result of activity deferrals and cancellations. An immediate rebound is not expected in 2021, and capital expenditure is anticipated to remain between £3.2 billion and £3.7 billion. OGUK now estimates that in the region of £3 billion of previously expected capital investment has been deferred in 2020 and 2021.

There was a 10 per cent decline in operating costs expenditure in 2020 to £6.6 billion (compared with £7.3 billion in 2019), as companies deferred some offshore activities and reduced offshore personnel levels by around one-fifth to reduce covid-19 exposure risk.

Production tax receipts returned to positive figures in the 2017/18 and 2018/19 tax years, with Her Majesty's Revenue and Customs generating £1.25 billion and £1.28 billion in those years respectively, having paid out £294 million on a constant currency basis in 2016/17. In those two more recent tax years, production tax receipts represented 0.21 per cent of all receipts. The Office for Budget Responsibility forecasts that net production tax payments will amount to £300 million in the financial year 2020/21, adding to contributions of more than £41 billion since 2010 and almost £360 billion since 1970 (in real terms). This tax take represents more than 55 per cent of the total cash flow generated from UKCS production to date.

In 2019, the industry supported around 270,000 jobs; however, the covid-19 pandemic has caused a downturn in this figure over the last year. There are a number of factors, such as the Job Retention Scheme, which are helping to sustain jobs that would have otherwise been lost, resulting in some disconnect between levels of activity and investment and employment levels.

OGUK predicts up to eight new fields will commence production in 2021. OGUK estimates these could produce around 250 million boe over field life. However, given the recent lower rates of new investment, it is expected that there will be less production coming on stream in the next year. New fields gaining regulatory approval in 2020 unlocked 40 million boe of new resources, which is less than one-third of the approvals obtained in 2019 and 85 per cent lower than in 2018.

The OGA announced the North Sea Transition Deal on 24 March 2021. It sets out plans incrementally to decarbonise the North Sea Energy oil and gas sector, complying with the government's net zero emission agenda. The UK government and oil and gas sector plan jointly to invest up to £16 billion, including the replacement of the fossil fuel-based power supplies, on oil and gas platforms with renewable energy by 2035.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

With respect to domestic production, according to statistics published in 2020 by the Department of Business, Energy and Industrial Strategy (BEIS), oil represented 44 per cent of the UK's energy production in 2019:

- natural gas: 29 per cent;
- coal: 1 per cent;
- bioenergy and waste: 11 per cent; and
- electricity: 15 per cent (consisting of wind, solar, natural-flow hydro and nuclear).

According to statistics published in 2020 by BEIS, oil represented 36 per cent of the UK's energy usage in 2019:

- natural gas: 40 per cent;
- coal: 3 per cent;
- bioenergy and waste: 10 per cent; and
- electricity: 11 per cent (consisting of 6 per cent nuclear, 4 per cent renewables and 1 per cent imports).

The UK is now a net importer of all main fuel types, although it remains a net exporter of some products such as motor spirit. In 2019, 28 per cent of oil used and 49 per cent of gas used was imported. In 2020, imports and exports of primary oils were down 23 and 12 per cent respectively, as global trade and shipping reduced. This follows several years of growth since 2014 after renewed investment into several large projects on the UKCS. The UK was a net importer of primary oils by 0.8 million tonnes

For 2018, the contribution by the energy industries to the UK economy was 3.2 per cent of gross domestic product (GDP) (0.3 percentage points higher than the previous year). Of the energy total, oil and gas production contributed to over one-third of the energy sector's total contribution and 1.2 per cent of overall UK GDP (around £24 billion).

Government policy

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Energy Act 2010, which became law in April 2010, implements some of the key measures required to deliver the UK government's low carbon agenda. It includes provisions for delivering a programme for carbon capture and storage and for implementing mandatory social price support. It also introduces a number of measures aimed at ensuring that the energy markets are working fairly for consumers and are delivering secure and sustainable energy supplies. However, it was the Energy Act 2008 that enshrined the UK's present policy for the energy sector. The primary aim of the government in passing the 2008 Act was to tackle climate change, reduce carbon dioxide emissions and ensure secure, clean and affordable energy. The Energy Act 2008 also provided a regulatory framework for offshore gas storage, introduced changes to the offshore oil and gas decommissioning regime and extended third-party access to upstream oil and gas infrastructure. The government has, over a number of years, encouraged smaller companies to apply for licences in the UKCS and has made a concerted effort to maximise recovery of oil from the UKCS through initiatives such as the fallow acreage initiative and the Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UKCS (Infrastructure Code of Practice (ICOP)). This policy was given further standing when the Energy Act 2011 was enacted, providing for the secretary of state to enforce access to upstream infrastructure on behalf of an applicant. Since the publication of the Wood Review in 2013, there has been a further shift in government policy towards maximising the recovery of hydrocarbons from the UKCS through the government entering into consultation with the industry.

The Energy Act 2016, which received royal assent in May 2016, formally established the OGA with the Secretary of State for BEIS as the sole shareholder, to replace the Department for Energy and Climate Change (DECC) as the entity responsible for petroleum licensing and regulation of the upstream oil and gas sector. The 2016 Act also enables a more comprehensive charging of the offshore oil and gas industry for permits and licences for environmental and decommissioning activity.

In addition, the Climate Change Act 2008 introduced the world's first long-term legally binding framework to reduce greenhouse gas emissions and set carbon budgets. Separate additional legislation, the Climate Change (Scotland) Act 2009, is also in place. Also of relevance in terms of greenhouse emissions is the Greenhouse Gas Emissions Trading Scheme Order 2020 as amended. This sets out the framework of the UK Emissions Trading Scheme (ETS), which replaced the UK's participation in the EU ETS on 1 January 2021 following the UK's exit from the EU. The new UK ETS closely follows the EU ETS and provides a carbon pricing mechanism as a tool for achieving the UK's net zero emissions target by 2050. More recently, mandatory reporting requirements were introduced for quoted companies incorporated within the UK to disclose details of their greenhouse gas emissions in their directors' report or in a stand-alone strategic review. In addition, the Energy Savings Opportunity Scheme Regulations (ESOS) 2014 were introduced to implement article 8 of the Energy Efficiency Directive 2012/27/EU. The 2014 Regulations remain UK law. ESOS requires relevant undertakings (as defined in the legislation) and their corporate groups to undertake mandatory energy assessments by 5 December 2015 and every four years thereafter if they continue to qualify.

The OGA's North Sea Transition Deal details how the oil and gas industry in the UK can play its part in the climate emergency. This underscores the UK government's commitment to transition to net zero by 2050, and sets out some key messages in the run up to COP26.

Registering a licence

4 Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The OGA has disabled its previous online register of all existing licences and their respective licensees (the Oil and Gas Portal, latterly the Energy Portal), in favour of a new open data platform. Like the Oil and Gas Portal, the new platform is publicly accessible at no cost. However, the OGA does not accept any responsibility for the accuracy of the information on its website and does not accept any liability as a result of reliance upon such information. There is a process of checking the accuracy of the published data upon lodging any assignment.

The OGA also maintains an index setting out oilfield ownership, operatorship and production, which is publicly accessible at no cost through its website at https://www.ogauthority.co.uk/site-tools/site-index/.

However, as with licences and licensees, the OGA does not accept any responsibility for the accuracy of the information provided, and reports that anyone relying on the information does so at their own risk.

Legal system

5 | Describe the general legal system in your country.

The legal system in England and Wales, Scotland and Northern Ireland is one of the oldest and most established legal systems in the world. As such, many international agreements are governed by English law. The legal system is based on a well-established common law system that has been developed through the years by the courts and the creation of case law, which sets out tests and interpretative procedures that should be followed when determining the meaning of contracts. There is a well-developed appeals procedure from the High Court, to the Court of Appeal and finally to the Supreme Court, which is also the final appeal court in many other jurisdictions around the world. The judiciary maintains its independence from the government and, as such, is able to uphold the rule of law at all times.

REGULATION OVERVIEW

Legal framework for oil regulation

6 | Describe the key laws and regulations that make up the principal legal framework regulating oil and gas activities.

The Petroleum Act 1998 governs oil and gas exploration and production activities in the UK. The Act vests ownership of petroleum in the UK continental shelf (UKCS) in the Crown and empowers the Secretary of State to grant licences for the exclusive right to search for, bore for and extract petroleum in the area covered by the licence. Licences are acquired through competitive licensing rounds held each year by the Oil and Gas Authority (OGA). For the most recent Licensing Round (32nd), on 3 September 2020, the OGA offered for award 113 licence areas over 260 blocks or part-blocks to 65 companies. Following the 32nd round, the OGA will not run a licence round in the 2020/2021 period because of a temporary pause from annual licence round activity.

A company will make (either by itself or as part of a joint venture) an application for a specific area. Licences may also be acquired through asset transfers between companies and the consent of the OGA is required prior to any licence assignment. The conditions of a licence (known as 'model clauses') are set out in secondary legislation, which for existing offshore production licences are the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008. The model clauses set out in detail the conditions for the licence, including term, licence surrender, record-keeping, working obligations, appointment of operator, measurements and pollution. In awarding licences, the OGA must also comply with the Hydrocarbons Licensing Directive Regulations 1995, as amended by the Pipelines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018, which set out additional rules that must be followed when issuing petroleum licences.

In August 2020, the Department for Business, Energy and Industrial Strategy (BEIS) announced it will review its policy on the future UK offshore oil and gas licensing regime as part of the wider aim of achieving net zero greenhouse gas emissions by 2050. In March 2021, BEIS confirmed that it would be introducing a new climate compatibility checkpoint before each future oil and gas licensing round to ensure licences awarded are aligned with wider climate objectives, including net zero emissions by 2050 and the UK's diverse energy supply. The checkpoint will use the latest evidence, looking at domestic demand for oil and gas, the sector's projected production levels, the increasing use of clean technologies such as offshore wind and carbon capture, and the sector's continued progress against its emissions reduction targets.

If the evidence suggests that a future licensing round would undermine the UK's climate goals or delivery of net zero, it will not go ahead. The government will design and implement the checkpoint by the end of 2021 through extensive engagement with a wide range of stakeholders.

In addition to the regulatory requirements, there are a number of voluntary industry-based codes of practice to which many UK continental shelf (UKCS) licensees have signed up to. ICOP is intended to facilitate access by a third party to oil infrastructure in the UKCS such that the parties involved can agree fair and reasonable terms. The fallow acreage initiative places pressure on licensees to deliver activity on old licences where companies have not been active for some time or relinquish licences in order for the acreage to be offered to other companies. With respect to transfers of licences, the Commercial Code of Practice establishes an agreed framework to minimise resources spent on negotiations and promote positive commercial behaviour.

The Bribery Act 2010 came into force on 1 July 2011 and created a number of offences including:

- a number of general bribery offences;
- the offence of bribing a foreign public official; and
- the offence of a commercial organisation failing to prevent bribery on its behalf (this applies to any organisation that has business operations in the UK).

Expropriation of licensee interest

7 | Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

At present, there are no legislative provisions that allow for the expropriation of a licensee's interest. However, as the terms of a licence may be unilaterally altered by the government, any change in the law may allow for the expropriation of a licensee's interest.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

The government can terminate licences for breach, and there is indeed a process of surrender, but otherwise there can be no amendment without agreement. A petroleum licence is an instrument (a mix of contract and regulation) between the licensee and the Crown, that can only be amended (or, absent a breach, terminated) by agreement (as held in *R (Benjamin Dean) v The Secretary of State for Business, Energy and Industrial Strategy* [2017] EWHC 1998 (Admin)). The court noted that the problems for offshore licensees – and the consequent need for flexibility – would be much greater, as their costs are typically an order of magnitude greater than those onshore. The fact that there were certain consent stages in an offshore licence, which must satisfy further regulatory requirements before certain works can begin (eg, environmental impact assessments), did not alter the nature of the grant of exclusive property rights by the Crown and the incidental power to amend the licence by agreement. The only restriction was that no agreed variation to the licence could override those further regulatory requirements.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

Historically, DECC was the government authority primarily responsible for the development and regulation of the oil and gas industry in the UK. DECC was established in October 2008 following a transfer of powers from the Department of Business Enterprise and Regulatory Reform. On 1 April 2015, certain functions passed from DECC to the OGA, a newly created executive agency of DECC structured as a company owned by the Secretary of State. DECC's role in licensing, exploration and development was transferred to the OGA, which is responsible for maximising the cost-effective recovery of oil and gas from the UKCS. In 2016, DECC was merged with the Department for Business, Innovation and Skills. In their place, BEIS was created.

In the event that a licensee breaches the terms and conditions of its licence, the OGA may revoke the licence and the rights granted under it (without prejudice to any obligations and liabilities owed by the licensee). The Energy Act 2016 introduced a right for the OGA to issue a sanction notice on a person that it considers has failed to comply with a petroleum-related requirement. Such a failure can include, inter alia, a failure to comply with the terms and conditions of an offshore licence. Prior to service of such sanction notice, the OGA must first serve a sanction warning notice (to include a specified period in which the recipient may make representations to the OGA). A sanction notice may take one of four forms:

- an enforcement notice (requiring the recipient to comply with the terms specified in the notice);
- a financial penalty notice (requiring payment of a fine not exceeding £1 million, although the Secretary of State reserves the right to increase such a limit to £5 million by way of new regulation);
- a revocation notice (revoking the recipient's licence); or
- an operator removal notice (requiring a licensee to remove its operator).

If a recipient fails to comply with an enforcement notice, the OGA may serve one of the other sanction notices. A recipient may appeal a sanction notice on the basis that there was no failure by it to comply with the petroleum-related requirement or that the sanction given in the notice was unreasonable or not within the powers of the OGA. Sanction notices issued by the OGA may be published (subject to redaction of information that is commercially sensitive, not in the public's best interest or inappropriate).

Other regulatory bodies include the Health and Safety Executive (HSE), which is responsible for health and safety, and the Hazardous Installations Directorate, which is responsible for regulating and promoting improvements in health and safety across the offshore oil and gas sector. The HSE may also impose sanctions for breach of health and safety regulations.

Government statistics

10 What government body maintains oil production, export and import statistics?

The Office for National Statistics is the central data source, where the statistics for oil production, export and import are produced to a high professional standard. Since March 2019, the OGA has also published its own information (known as Oil and Gas Authority Open Data), generated via the National Data Repository contributed to by licensees since February 2019.

NATURAL RESOURCES

Title

11 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

The Crown (through the Petroleum Act 1998) holds all title and rights to oil reservoirs within the UK and its territorial waters. The United Nations (UN) Convention on the Law of the Sea 1982 provides that the UK's territorial waters extend to 12 miles from the UK coast and the Oil and Gas Authority (OGA) (as the UK's exclusive economic zone) stretches up to 188 miles beyond territorial waters. The UK continental shelf (UKCS) (on behalf of the Crown) has the power and discretion to grant licences to persons deemed fit to search for and extract oil and to further distribute and sell such oil in the market.

Where hydrocarbons are extracted pursuant to a licence within the UKCS, title to such hydrocarbons will transfer to the relevant licensee(s) as they pass the wellhead.

Exploration and production – general

12 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

UK oil exploration and production activity is predominantly conducted offshore. Such activities are regulated by a licensing regime. Each licence covers a particular area, and there are separate licensing regimes for onshore and offshore exploration and production activities. Such activities (whether onshore or offshore) can be restricted for environmental, conservation or military reasons. The OGA is required to carry out a strategic environmental assessment on areas proposed to be licensed to examine the impact of such activities on the environment.

Onshore exploration and production activity is also subject to additional environmental and planning legislation. On 10 March 2016, the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016 were passed. The Regulations define 'protected groundwater source areas' in which hydraulic fracturing will be prohibited (above 1,200 metres in specified groundwater areas, national parks, areas of outstanding natural beauty and world heritage sites). In November 2019, the government announced a total stop to hydraulic fracturing following an OGA report on earthquake risks related to the practice.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The OGA works with BEIS and regulates the exploration and development of the UK's offshore and onshore oil and gas resources. Previously, DECC had this responsibility.

From 1 April 2015, many of the regulatory functions of DECC were passed to the OGA. This was in line with recommendations made by the Wood Review (the Wood Review can be found at www.gov.uk/government/groups/wood-review-implementation-team). Regulation is through a licensing regime rather than a production-sharing arrangement. Applications for a licence are made (either individually or through a joint venture) to the OGA as part of a formal annual licensing round that is advertised online and in the European Journal. All applications are made in a prescribed form and companies applying for a licence must be registered in the UK, either as a company or as a branch of a foreign company.

The timing for the application will vary depending on the size of the licensing round. A large licensing round with many licences and applicants, some of which are subject to Appropriate Assessment, can take up to two years. The most recently completed 32nd Licensing Round awards were awarded within 10 months of the application closing date.

'Appropriate assessment' is the additional environmental assessment procedure required under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended) for licence blocks containing Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). In the 30th Seaward Licensing Round, there were 61 blocks identified as requiring further environmental assessments prior to decisions on whether to grant licences.

At present, there are two types of offshore licence awarded by the OGA – the 'exploration' licence and the 'production' licence. Under a seaward petroleum exploration licence, seismic surveys and shallow drilling can be performed in acreage not already licensed. Other parties may hold an exploration licence over the same area, and it is therefore a non-exclusive licence. Under a seaward petroleum production licence, the licensee is granted the right to search for, bore for and extract hydrocarbons from the UKCS in the area prescribed under the terms of the licence for the full life of the field from the exploration phase and development to decommissioning.

Prior to the introduction of the innovate licence there were three subcategories of seaward production licence. The most common of these was the 'traditional licence'. Potential applicants must have been able to demonstrate financial, technical and environmental capability in order to be successful. The 'promote' licence (introduced in 2002) was designed to award smaller companies with production rights and allow a two-year period in which to obtain the requisite financial and technical capabilities prior to development. The 'frontier' licence (introduced in 2003) recognised the difficulties in sourcing oil in remote areas of the UKCS (such as the deep waters west of Shetland) and permitted screening over a large area to look for a wide range of prospects.

Onshore production is governed by the petroleum exploration and development licence, which follows a similar form to the offshore licences described above.

Government participation

14 | Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The government does not have the right to participate and be carried in a licence.

Royalties and tax stabilisation

15 | If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are any tax stabilisation measures in place?

Royalties are no longer payable under a licence. Licences do carry a small annual charge, known as a rental, which is due on each anniversary of the date of the licence. On 1 October 2015, the Oil and Gas Authority (Levy) Regulations 2015 came into force making provision for a levy to be imposed on offshore licence holders between October 2015 and March 2016. The levy, to be set annually, is to ensure that the OGA has the resources to meet the Wood Review's aim of maximising economic recovery from the UKCS. New regulations were introduced in 2016, which set out the rate of the levy payable on an annual basis from April of each year. The levy amount for the period from 1 April 2020 to 31 March 2021 is:

- microbusiness and promote or innovate phase A licensee (non-producing): £1,425.38;
- microbusiness and innovate phase B licensee (non-producing): £2,850.77;
- other non-producing and innovate phase C licensee: £14,253.85;
- offshore production licence: £102,274.11; and
- offshore exploration licence: £14,253.85.

The OGA levy does not apply to the onshore sector.

A climate change levy has also been set, and rates from 1 April 2021 are 2.175 pence per kilogram for any petroleum gas or other gaseous hydrocarbon supplied in a liquid state.

There are no tax stabilisation measures in place.

Licence duration

16 | What is the customary duration of oil leases, concessions or licences?

Since 1 April 2015, numerous DECC regulatory functions were passed to the OGA; therefore, the OGA is responsible for the administration of licences. Except in special circumstances, production licences run for three successive periods (or terms). Subject to obtaining agreement from the OGA, the duration of each term can be varied.

Offshore licences

As from the 29th licensing round, the 'innovate licence' now replaces several subcategories of Seaward Production Licence – the Traditional, Promote and Frontier licences. In successive licensing rounds, all Seaward Production Licences will be innovate licences. A licence will expire automatically at the end of each term, unless certain conditions allowing the licensee to advance to the next term have been fulfilled.

In cases where an applicant for a licence does not propose to carry out any exploration at all, but proposes to develop an existing discovery or undertake redevelopment of a field, a licence may be awarded with no initial term. This is called a 'Straight to Second Term' licence.

Offshore innovate licences

The innovate licence was introduced by the OGA to offer flexibility in the duration of the initial and second terms of the production licence. Applicants for an innovate licence are able to propose the duration of the initial and second terms and, among the combinations that may be proposed, are those that represent durations associated with each of the four older licence types (see below).

As for the older licence types, an innovate licence may only continue from the initial term into the second term if (among other things) the initial term's work programme has been completed and 50 per cent of the initial acreage has been surrendered.

Traditional licences

The duration of a traditional licence was split into successive terms of four, four and 18 years. To progress from the initial to the second term, the licensee must have completed a work programme as approved by OGA and relinquished a minimum of 50 per cent of the acreage under the licence. If, during the second term, the Secretary of State has approved the development plan and all of the acreage outside that development has been relinquished, the licence may continue into the third term. The Secretary of State may exercise its discretion to extend the third term beyond the prescribed 18-year period if production is ongoing but the OGA reserves the right to reconsider the provisions of the licence, particularly the acreage and rentals, before doing so.

Frontier licences

The duration of a frontier licence was split into successive terms of six, six and 18 years. By the end of the third year of the first term, the licensee must have relinquished 75 per cent of the licence area. At the end of the sixth year, the licensee must relinquish a further 50 per cent of the remaining acreage. This equates to a total relinquishment of seven-eighths of the original licence area by the end of the initial term. The OGA may, in exceptional circumstances, where prospectivity can be demonstrated over more than 25 per cent of the licence area, allow, at its discretion, a licensee to relinquish only 50 per cent of the acreage by the end of the third year. However, the licensee would still need to relinquish all but one-eighth of the original licence area at the end of the initial term and must have completed the work programme in order to progress from the initial to the second term.

A different type of frontier licence designed for the areas west of Scotland was introduced in the 26th licensing round announced in January 2010. This frontier licence differs from the original frontier licence in that the first of its three terms is nine years. This is in recognition of the particularly challenging nature of the geographical area where it applies and the relative scarcity of geophysical data. Owing to the nature of the region, additional requirements apply to this type of licence.

Promote licences

The duration of a promote licence was split into the same successive periods as a traditional licence. However, the licence will expire at the end of the second year if the OGA is not satisfied that the licensee has sufficient financial, technical and environmental capacity to undertake the work programme. At the end of the second year, the licensee must also decide whether to 'drill or drop', in essence the licensee must make a firm commitment to the OGA to drill a well in order for the licence to continue. Having committed to drilling, the licensee then has until the end of the initial period in which to drill.

Onshore licences

Onshore (landward) production licences follow the same pattern as with Seaward Production Licences. They are known formally as Petroleum Exploration and Development Licences. The licensee must complete the agreed exploratory work programme in the initial term before advancing to the second term. A development plan must then be approved during the second term before progressing to the third production term.

In addition, the Fallow Initiative may apply to certain blocks and discoveries under an older licence. Blocks and discoveries are considered fallow after three years if there has been no significant activity such as appraisal drilling, dedicated seismic acquisition or extended well testing. Ultimately, fallow blocks and discoveries, if not 'rescued', will be relicensed. Since most blocks under older licences have been reviewed, this initiative may now be at an end.

Extent of offshore regulation

17 | For offshore production, how far seaward does the regulatory regime extend?

The regulatory regime extends to the UK's territorial waters and the UKCS. UK territorial waters extend from the low water mark (established by the Territorial Waters Order in Council 1964) for 12 nautical miles. The designated area of the UKCS has been redefined over the years through a series of designations under the Continental Shelf Act 1964, following boundary agreements with neighbouring states. The Continental Shelf (Designation of Areas) Order 2013 replaces two previous orders and designates the areas of the continental shelf within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources are exercisable. The Order designates the area of the United Kingdom's continental shelf resulting from the treaties with Belgium, Denmark, France, Germany, Ireland, the Netherlands and Norway. The area designated includes the exclusive economic zone, declared around the United Kingdom on 31 March 2014 under the Marine and Coastal Access Act 2009 pursuant to the Exclusive Economic Zone Order 2013, together with any areas of the continental shelf beyond 200 nautical miles from the United Kingdom's baselines.

Onshore offshore regimes

18 | Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

The onshore and offshore regimes are historically similar, although there are distinctions in the means of designating licence areas. Offshore uses a 'grid system' for the designation (quadrants of 1-degree latitude by 1-degree longitude, split into 'blocks' of 25km by 10km).

Onshore does not use a grid system, because the blocks are not regular and are much smaller than offshore. In addition to the regulatory regime, onshore operations must also adhere to the usual rules of Scottish land law in Scotland and English land law in England and Wales (as exemplified by *Bocardo SA v Star Energy UK Onshore Ltd* [2010] UKSC 35, where, despite having obtained the licence to get petroleum, nominal damages were awarded against an oil company for its failure to obtain landowner consent to drill diagonally through strata beneath the land). The *Bocardo SA v Star Energy* case has now largely been circumvented by the Infrastructure Act 2015, which provides a right to drill through deep level land (at least 300 metres below the surface). Crude oil, gas and shale gas all fall under the definition of 'petroleum' in the Petroleum Act 1998 and are, therefore, governed by the same regime.

Authorised E&P entities

19 | Which entities may perform exploration and production activities? Describe any registration requirements. What criteria and procedures apply in selecting such entities?

Companies may only perform exploration and production activities in the UK under a licence. Applications for a licence are made (either individually or through a joint venture) to the OGA as part of a formal annual licensing round.

The licensing round is advertised online and in the European Journal. All applications are made in a prescribed form and companies applying for a licence must be registered in the UK, either as a company or as a branch of a foreign company, the timing of which is not overly onerous. The OGA considers each application on a case-by-case basis and will require a company to demonstrate its financial worthiness (that it is able to finance its share of the relevant work programme for the licence in question). With regard to technical capability, non-operators are not required to demonstrate a high level of technical expertise.

Companies wishing to be appointed as operator are considered against additional criteria including previous experience, technical expertise and environmental awareness.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The terms of the licence require that only an entity approved by the OGA may act as operator. Approval will not be refused provided the intended operator is competent to act as operator. Approval may be revoked at any time by notice to the licensee where the OGA considers the approved person is no longer competent to act as operator.

Joint ventures

21 | What is the legal regime for joint ventures?

Companies generally engage in oil activities through unincorporated joint venture associations. The companies will normally enter into a joint operating agreement (JOA) to govern contractual relations between parties to the joint venture. An industry-standard JOA has been produced by Oil & Gas UK (the oil industry representative body), which is often used as a template by parties and then tailored to a specific situation. The JOA will cover such matters as the appointment of the operator and the percentage interests of each of the parties and govern the day-to-day operational activities carried out by the operator.

Reservoir unitisation

22 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Where a field is situated in two or more adjacent blocks that are licensed to different companies, the OGA will require, prior to approving a field development programme, that the companies show that recovery of oil will be maximised and that competitive drilling is avoided. In most cases, this will require a unit operating agreement (UOA) to be entered into by the companies. The terms of the UOA will be heavily negotiated, especially provisions relating to the parties' participating interests, the selection of the operator and the ability to require a redetermination of the field. In the case of cross-border unitisation agreements, these issues may be compounded by country differences on matters such as taxation and export preferences. The government has, in the past, been willing to assist licensees with resolving cross-border issues on an intergovernmental level.

Licensee liability

23 Is there any limit on a party's liability under a licence, contract or concession?

The liability of a licensee under a UKCS licence is joint and several. It is the joint operating agreement that splits liability between the parties in proportion to their beneficial interest in the licence. There is no limit on liability contained within the relevant statutes. However, under common law any claim for damages must be reasonably foreseeable, arise naturally from the breach and the parties would, at the time when they entered into the contract, have reasonably expected the probable result of such a breach.

Guarantees and security deposits

24 Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

As a general rule, the OGA requires a parent company guarantee (PCG) whenever the licensee is dependent upon the financial support of its parent company in order to meet its licence obligations.

A PCG will also be required from a new parent company if, prior to an acquisition, sufficient value had been transferred out of the licensee to render it unable to meet its licence obligations without the financial assistance of the new parent.

Whether the parent company is the immediate parent or the ultimate parent company will depend upon where the financial support for the licensee to meet its obligations under the licence comes from. Liability of the parent company under the PCG will mirror that of the licensee that it is supporting.

No specific security deposits are required in respect of work commitments; however, any PCG provided is likely to cover any and all work commitments.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

25 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services, capital or personnel?

There are no local content requirements in the United Kingdom.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

None. However, the International Petroleum Industry Environmental Conservation Association (the global oil and gas industry association for environmental and social issues) aims to assist countries in developing natural structures and capability for oil spill preparedness, with four regional programmes developed to meet those objectives.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Consent from the Oil and Gas Authority (OGA) is required for a production licence assignment. An exploration licence cannot be sold or transferred to another party. There is no requirement for the OGA to approve a change of control of a licensee; however, because the OGA has a right to revoke any licences following a change of control of the licensee, it is usual practice to request a comfort letter from the OGA confirming that it has no objection to the change of control. The OGA operates an e-licence administration system (the Petroleum E-Licensing Assignments and Relinquishments System (PEARS), now part of the Energy Portal) for the submission of licence assignment applications for offshore production licences. The timing for consent depends on such factors as the complexity of the assignment, the quality of information initially provided by the licensee through PEARS and the number of other applications being processed. In addition, as part of a general drive by the OGA towards improvement of the quality of records, each application will be checked for consistency between its starting point and the records of the licence's current position. The first time each licence is implicated in a PEARS application, the user will have to confirm this consistency, or notify the OGA through the system about any discrepancies and upload supporting documentation for the OGA to consider; and, if appropriate, implement a correction, which can also affect timing. The OGA generally aims to process a straightforward case in 10 working days (although this cannot be guaranteed). Production operatorship and financial checks in particular can take longer than this; the overall processing time will increase to 25 to 30 days where (straightforward) financial checks are involved. Once consent is granted, the licensee must submit a scanned copy of the implementing agreement.

The model clauses provide that the OGA has the power to order a further change of control if a licensee transfers into unapproved hands (and may revoke the licence if the onward transfer is not made). The OGA is unlikely to make such an order if the licensee demonstrates that the change will not prejudice its ability to meet its licence commitments, liabilities and obligations. Where a licensee is dependent upon the financial support of its present corporate parent (or assets reduced prior to the change of control (eg, by means of a pre-completion dividend) to enable it to meet its licence obligations and will become reliant upon the financial support of its new corporate parent, the OGA will require a parent company guarantee from the new corporate parent to replace any existing source of funding.

There are no pre-emptive rights reserved to the government.

Approval to change operator

28 | Is government consent required for a change of operator?

OGA approval is required prior to the appointment of an operator to ensure the entity has the financial and technical capability to act as operator. The government does not have the right to participate in the operatorship. Approval is sought by submitting the operator appointment through PEARS.

Transfer fees

29 | Are there any specific fees or taxes levied by the government on a transfer or change of control?

There are no specific fees or taxes on a transfer or change of control, aside from any land and buildings transaction tax (in Scotland), land transaction tax (in Wales) or stamp duty land tax (in the rest of the United Kingdom) that may be payable on an asset transfer that includes facilities situated above the low water mark. Stamp duty will be payable by the purchaser on a transfer of any shares in a company. The OGA will charge certain fees to process the relevant application through PEARS.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Ownership of facilities and equipment for oil exploration, development and transportation activities is not restricted within the UK continental shelf (UKCS). Facilities and equipment relating to a particular licence area are usually owned by the relevant licensees; however, they can be independently owned.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The domestic UK legislation has taken on board a number of international and regional treaties, including the United Nations (UN) Convention on the Law of the Sea 1982 (article 60(3)), International Maritime Organization Guidelines and Standards 1989 and 1992, OSPAR Convention 1992 (Recommendation 2006/05 was adopted by the 2006 OSPAR Commission, which introduced a management regime for offshore drill cuttings piles).

Under section 29 of the Petroleum Act 1998, the secretary of state is empowered to serve notice on a wide range of persons indicating that those persons are jointly and severally liable to carry out an approved decommissioning programme. In the first instance this would include parties to joint operating agreements for installations and owners for pipelines. 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. The primary liability rests on the parties to the asset at the time of decommissioning. The Secretary of State may withdraw a section 29 notice, for example, on the sale of an asset; this right used to be automatic but is now less so. However, the Secretary holds a significant 'clawback' power under section 34, whereby the liability net can be expanded to include anyone on whom a section 29 notice could have been served at any time after the first section 29 notice is served (ie, former owners – even those who have previously had the section 29 notice withdrawn – and affiliates of such owners).

Parties agree to provide security for their share of decommissioning liabilities – as part of a sale and purchase, as part of a field agreement with partners or as part of an agreement with the OGA or government (relatively rare). The amount of security, which is recalculated each year, is based on an estimate of the decommissioning cost. The usual form of security is a letter of credit, but a suitably rated parent company guarantee can also be provided. The proceeds are paid to a trustee if the licensee defaults or is insolvent or does not renew the credit. A fund is therefore available to meet decommissioning costs.

The potential tax relief available for decommissioning is huge. In the 2013 Budget, the Chancellor committed to the introduction of decommissioning relief deeds (DRDs). These deeds provide the oil and gas industry with certainty over decommissioning tax relief on the UKCS, which in turn allows a greatly reduced level of security to be put up by companies for decommissioning (as such security will be calculated on a net tax rather than gross tax basis). The Finance Act 2013 is the enabling Act that brought in the DRDs and enables payments to be made under them. DRDs are now final and the first ones were signed in October 2013. Under these deeds, if the tax relief available were to be reduced in the future, the government would make a compensating payment to the oil and gas company affected. In most situations, it is sufficient for one company in a group to have a DRD and then under the Contracts (Rights of Third Parties) Act all group companies will be covered by that DRD. If an affiliate is to be sold to a group without a DRD, then that affiliate may obtain a separate DRD to ensure coverage.

In the 2017 Autumn Budget, the Chancellor introduced a new mechanism for deals that complete on or after 1 November 2018. An innovative concept known as 'transferable tax history', it allows UK oil producers selling North Sea oil and gas fields to transfer some of their corporate tax payment history to the buyers of those fields. The buyers will then be able to set the costs of decommissioning the fields at the end of their lives against this tax history, to the extent that the buyer has insufficient tax history to fully utilise the tax losses generated through decommissioning. This can reduce the risk to new entrants of bearing higher effective decommissioning costs, as a result of their not having a long history of tax payments.

Security deposits for decommissioning

32 | Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The amount of security provided by the licensees is recalculated each year and is based on an estimate of the decommissioning costs. The usual form of security is a letter of credit.

If the licensee defaults, becomes insolvent or fails to renew the credit, then the security is paid to a trustee. There is therefore a fund in place to meet decommissioning costs even if not all of the licensees are able to do so.

TRANSPORTATION

Regulation

33 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The Energy Charter Treaty (ECT) requires the UK to take measures to facilitate oil transit across its national boundaries in a non-discriminatory manner and according to the principles of freedom of transit; namely, without distinction as to the origin, destination or ownership of the oil and on the basis of non-discriminatory pricing. All of the United Kingdom's neighbours are parties to the ECT. Offshore pipelines require the approval of the Oil and Gas Authority (OGA) (a pipeline works authorisation) before going ahead, and in granting approval the OGA will have regard to the interests of other users of the sea for the transport of oil as well as the impact on the environment. Transportation of oil by road and rail is regulated by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (amended in 2011 and again in 2020) and is monitored by the Health and Safety Executive. Transportation of oil by sea is regulated by the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019) and the Merchant Shipping (Dangerous Goods and Marine Pollutant) Regulations 1997. The International Maritime Dangerous Goods Code contains internationally agreed guidelines on the transport of dangerous goods.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Not applicable. Under the licensing regime in UKCS, there are no production-sharing contracts or recoverability of costs.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The Health and Safety at Work etc Act 1974 (HSWA 1974) is the principal piece of UK legislation regulating health and safety in the workplace. It applies fully to onshore activities, and many of its provisions apply to offshore activities in the UKCS. It is supplemented by a large number of subordinate regulations relating to specific risks, hazards and industries, including a number of offshore-specific regulations, mentioned below. HSWA 1974 imposes a general obligation on employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of employees and those affected by their undertaking. All employers involved in onshore and offshore work activities, such as third-party contractors, are subject to those general duties and the majority of other health and safety regulations.

The Piper Alpha disaster was seminal in the creation of the present offshore-specific regulatory regime. It is underpinned by the concept of a 'duty holder' (either the owner of a non-production installation or the operator of a production installation) who has overall responsibility for managing risks and hazards on an installation. The cornerstone of this regime was the Offshore Installations (Safety Case) Regulations 2005, which was replaced in 2015 by the Offshore Installations (Offshore Safety Directive) (Safety Case) Regulations 2015. Slightly confusingly, despite the revocation of the 2005 Regulations, they will continue to apply where provided for by the 2015 Regulations, that is, to oil and gas activities in internal waters. These Regulations are supplemented by a suite of offshore-specific legislation, which includes, among many other relevant regulations:

1. the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995;
2. the Offshore Installations (Prevention of Fire and Explosion and Emergency Response) Regulations 1995; and
3. the Offshore Installations and Wells (Design and Constructions, etc) Regulations 1996.

Amendments to (1) and (2) were introduced in 2015 also as a result of the Offshore Safety Directive (OSD), implemented into UK law by the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015.

In terms of formal records and documents, the principal requirement on duty holders is the preparation of a safety case for each installation that must be submitted to, and accepted by, the Offshore Safety Directive Regulator (OSDR). In addition, any offshore employer (including operators, owners and contractor companies), or any person in control of work premises, must record and report certain work-related accidents in terms of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013. A number of other formal notifications are required in respect of, for example, dangers to the integrity of installations and work on wells where there is a substantial risk of unplanned escape of fluids.

The enforcing authority for offshore health and safety matters in the UK is the HSE, Energy Division. In England and Wales, the HSE can investigate and prosecute companies directly for breaches of health and safety legislation, whereas in Scotland, the HSE's power extends to investigations but prosecutions lie in the hands of the procurator fiscal, to whom the HSE reports. In 2014, the OSDR was created to oversee industry compliance with the OSD. Non-compliance with either the offshore-specific legislation or HSWA 1974 can result in criminal prosecution (punishable by unlimited fines and imprisonment for the most serious offences) or imposition of prohibition or improvement notices. Each breach of HSWA 1974 or its subordinate regulations is a separate criminal offence. There are many 'strict liability' offences, which means that an offence may be committed even where there is no 'guilty mind'. Companies may also be prosecuted for corporate manslaughter in relation to fatal accidents that occur offshore. Any fatality occurring offshore will also be subject to investigation by the police under the Corporate Manslaughter and Corporate Homicide Act 2007, which may give rise to a prosecution and conviction of the organisation of corporate manslaughter. Such cases also carry an unlimited fine.

New sentencing guidelines, the 'Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines', have been introduced following the closure of a consultation in February 2015. The guidelines are applicable to England and Wales only; however, the Scottish courts have already begun to apply the English guidelines. The guidelines introduced a very significant increase of the level of fines imposed for breaches of health and safety.

On 18 July 2013, the new EU directive (OSD) came into force as a consequence of the Macondo incident in the Gulf of Mexico. Initially, the European Commission published draft proposals for a regulation to harmonise the offshore health and safety regimes across all 28-member states and Norway. While in many respects the proposed regulation mirrored the UK's world-class 'risk-based' regime, there was concern that it may in fact undermine the UK's existing high standards in some areas. Oil & Gas UK opposed the proposal, and subsequently, it was decided that a less prescriptive EU directive would be more appropriate. The OSD was published on 28 June 2013 and sets out minimum requirements to ensure the prevention of major incidents and provisions to limit adverse environmental and social consequences where incidents have occurred. Some of the requirements of the OSD which were transposed into UK legislation in 2015 include:

- only operators with sufficient technical and financial capacities to remedy possible environmental damage will be allowed to explore and produce oil and gas in EU waters;
- an independent third party must verify the technical solutions proposed by the companies prior to and periodically after the infrastructure installation;
- companies will have to prepare a major hazard report for their installation before the exploration or production begins;
- independent national authorities will inspect the installation, and in the event that an operator does not comply with the minimum standards, the competent authority will take enforcement action or impose penalties, or both;
- comparable information about the standards will be made available to the public;
- companies will prepare emergency response plans based on their rig or platform risk assessments and keep resources at hand to be able to act immediately;
- oil and gas companies will be fully liable for environmental damage caused to protected marine species and natural habitats;
- EU offshore authorities' groups will work together to ensure effective sharing; and
- the EU Commission will support the promotion of the highest safety standards across the world.

The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015, implementing the OSD in the UK, remain UK law. The OSD applies to all offshore regions in Europe and European companies operating outside EU-regulated waters, and extends the geographical zone for environmental damage to waters (from 22km to 370km offshore). The transposition of the OSD was in stages:

- by 19 July 2015, member states had to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive;
- by 19 July 2016, laws, regulations and administrative provisions were to be applied to all owners and operators of planned production installations and operators planning or executing well operations; and
- by 19 July 2018, member states were to apply the laws, regulations and administrative provisions to all existing installations.

The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 came into force on 19 July 2015. Similar legislation was introduced in Wales on the same date. These regulations amend the existing Environment Damage Regulations (England and Wales) 2009 and implement article 38 of the OSD, extending the scope of the regime to include marine waters. Scotland has produced similar implementing legislation in the form of the Environmental Liability (Scotland) Amendment Regulations 2015.

The environmental impact of offshore exploration and production activities is regulated by BEIS. Obligations arising from various international conventions such as the Convention for the Protection of the Marine Environment of North East Atlantic (OSPAR) have culminated in a number of domestic environmental regulations. The Offshore Chemicals (Amendment) Regulations 2011 and Offshore Petroleum Activities (Oil Pollution Prevention and Control) (Amendment) Regulations 2011 amend, respectively, the Offshore Chemicals Regulations 2002 and the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 for the purpose of making changes to the regulatory framework for offshore chemicals and oil pollution, prevention and control. The key changes are those contained in the Offshore Chemicals (Amendment) Regulations 2011, which ensure that enforcement action can be taken in respect of non-operational emissions of chemicals, such as accidental leaks or spills. Following the 2011 amendments cited above, enforcement action can now be taken against organisations that cause an oil or chemical release outside the terms of the permit, whether or not they are the named operator in terms of the permit. Under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, an oil pollution emergency plan (OPEP) must be prepared accordingly and submitted to the HSE for approval. An OPEP must, among other things, provide evidence of financial responsibility and a description of the potential worst-case release of oil to the sea from the installation or connected infrastructure and is required for both production and non-production installations, as well as pipelines and oil handling facilities. Regulatory approvals and consents are withheld until the OPEP is approved. An oil record book must be maintained at all times.

In the event of a significant oil spill the operator, in accordance with its OPEP, would activate its emergency response centre to take appropriate actions to prevent further pollution and implement a response strategy. In the event of an oil leak from a well in UK waters, the liability for all costs lies with the owners of the well. This is unlimited liability. As a back-up, should the operator default, the Offshore Pollution Liability Association Limited was established to help pay for any clean-up and liability costs. The implications of drilling and production-related emissions have seen an increase in regulation in recent years.

There is also a framework of regulations governing offshore atmospheric emissions that relate to the flaring of gas, diesel engines, gas turbines and other 'combustion plant'. A permit is required in order to operate an offshore combustion installation. The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 revoked the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001. As the Industrial Emissions Directive (IED) provisions in respect of the offshore sector mirror those of the Integrated Pollution Prevention and Control (IPPC), DECC considered that the new 2013 regulations did not place any additional administrative or compliance burdens on offshore operators and any extra obligations (eg, preparation of publicly available inspection reports) would be borne by DECC (now the OGA). The 2013 Regulations transpose the provisions of the IED. On land in England and Wales the environmental permitting regime applies to specified activities including certain oil-related activities whereas in Scotland and Northern Ireland the Pollution Prevention Control regime applies.

The main enforcing authorities for environmental matters in the UK are BEIS, the OSDR the Environment Agency (EA) in England, Natural Resources Wales (NRW) in Wales, the Northern Ireland Environment Agency (NIEA) and the Scottish Environmental Protection Agency (SEPA). The Maritime and Coastguard Agency (MCA) is the competent UK authority in terms of counter-pollution measures and response at sea, and the Joint Nature Conservation Committee (JNCC) and Marine Scotland provide advice on environmental sensitivities that may be affected as a result of any oil spill. Both the MCA and JNCC are consulted as part of the OPEP review and regulatory approval process.

Under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, prior to extraction, any operator who wishes to carry out certain upstream activities must undertake an environmental impact assessment (EIA), and present a summary of this EIA (in an environmental statement) to the OGA. Relevant activities for the purposes of the regulations includes drilling of wells, construction and installation of production facilities and pipelines in the UK territorial sea and on the UKCS.

Climate change and marine strategy and management

The Climate Change Act 2008 (CCA 2008) sets targets for the reduction of greenhouse gases (GHGs) for the UK. The provisions of CCA 2008 relating to emissions of GHGs apply to emissions from sources or other matters occurring in, above or below the UK sector of the continental shelf, as they apply to emissions from sources or matters occurring in the UK. Developments may be expected in this area.

The Marine Strategy Framework Directive, implemented in the UK by the Marine Strategy Regulations 2010, requires each member state to develop a marine strategy. These regulations have been retained in UK law post-Brexit. This includes steps to protect and preserve the marine environment, prevent its deterioration and prevent and reduce effects in the marine environment. The UK Marine Strategy Part I was published in December 2012 and outlined an initial assessment of the UK seas and characteristics, targets and indicators of good environmental status. Part II was published in August 2014 and described the UK's marine monitoring programmes to support the targets and indicators for good environmental status. In January 2015, the Department for Environment, Food and Rural Affairs published a consultation on proposals for a UK programme of measures to maintain or achieve good environmental status in UK waters by 2020. Part III was published in December 2015 and is the final part of the marine strategy; it outlines measures that contribute towards good environmental status.

The Marine and Coastal Access Act 2009 provides for greater protection of the marine area and the process to designate marine conservation zones. It divides the UK marine areas into marine planning regions with an associated planning authority that prepares a marine plan for the area. It also establishes a Marine Management Organisation for the waters around England and the UK offshore area. The Marine (Scotland) Act 2010 establishes a similar organisation, Marine Scotland, in Scottish waters. As part of the marine strategy, different plans are in the process of being created, which will identify how oil and gas activities are to be dealt with in the appropriate area. Potential risks identified for oil and gas, both now and under future climates, is how infrastructure is sited and designed to take account of present and future climate conditions.

In December 2015, the Paris Agreement was adopted by the UK as a party to the UN Framework Convention on Climate Change; it came into force in November 2016. As part of the Agreement, the UK met its agreed and legally binding target of generating 15 per cent of its energy from renewable sources by 2020 and intends to continue decarbonising the energy sector in the coming years to meet a target of eliminating net carbon emissions by 2050.

LABOUR

Local and foreign workers

36 | Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Oil and Gas Authority (OGA) does not apply specific standards to those employed in the oil industry. Following the UK's exit from the EU on January 2021, EU citizens moving to the UK for work must obtain a work visa in advance. Employers will continue to be able to confirm an EEA national's right to work using only their passport or national ID card until 30 June 2021. From 1 July 2021, employers will no longer be able to accept a European Economic Area (EEA) or Swiss passport alone as evidence of a permanent right to work in the UK for new employees. They will need to see proof of immigration status, which will be either under the EU Settlement Scheme or the new immigration system. All non-EEA nationals must obtain work permits in order to work in the UK. Those working purely offshore are exempted from this requirement. In order to sponsor an employee to work in the UK, an employer must be licensed to do so by UK Visas and Immigration. Penalties for non-compliance include civil penalties of £20,000 per illegal worker or unlimited fines or imprisonment for up to five years for knowing non-compliance. There is no minimum amount of local labour that must be employed.

Once it has been ascertained that an individual has the right to work in the UK, they also have the benefit of the Equality Act 2010, which provides that employers are prohibited from discriminating against them on various grounds including race (where race includes colour, nationality and ethnic or national origins). The scope of this protection is wide and includes the management of recruitment, terms of employment or engagement, access to job opportunities and benefits and termination. If an employer is found guilty of discrimination under this Act, it could be liable for unlimited compensation arising from the discrimination, including an award for injury to feelings. An employment tribunal may also make recommendations regarding the operations of the employer, and a failure to abide by such recommendations may result in the employer being made to pay further compensation. However, the tribunal's power to make recommendations for the wider workforce that would not benefit the claimant employee was abolished for claims presented on or after 1 October 2015.

There is no prescribed training fund for the local workforce.

TAXATION

Tax regimes

37 | What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

There are two elements of taxation to which companies in the oil industry may be subject – ring fence corporation tax (RFCT) and a supplementary charge (SC). Following the 2016 Budget, petroleum revenue tax (PRT) was effectively abolished. HM Revenue. & Customs Large Business Service – Oil & Gas Sector (formerly the Oil Taxation Office) administers the taxation regime.

Petroleum revenue tax

PRT was a field-based tax charged on the profits arising to each participant from the production of oil under a licence. The PRT tax rate was permanently reduced to zero per cent as part of the 2016 Budget to simplify the regime for investors and level the playing field between investment opportunities in older fields and infrastructure and new developments. The change took effect from 1 January 2016.

Ring fence corporation tax

Oil companies are subject to corporation tax, but there are a number of variations to the usual rules, including the 'ring fence' mechanism. The ring-fence rules prevent taxable profits from oil and gas extraction being reduced by losses from other activities by treating such ring-fenced extraction activities as a separate trade. However, it is possible to carry forward or back ring-fence losses against other activities. Capital allowances on relevant qualifying expenditure are available to reduce profits for corporation tax purposes. The applicable rates of tax are 19 per cent for non-ring-fence profits and 30 per cent for ring-fence profits.

Despite the lower main rate of corporation tax (from 26 per cent in 2011 to 19 per cent in 2017, and scheduled to fall to 17 per cent from 2010), the rate currently remains at 30 per cent for profits from oil extraction in the UK.

Supplementary charge

Introduced in April 2002, the SC constitutes an additional charge on ring-fence profits (calculated in the same way as RFCT) without any deduction for financing costs. Costs that have been deducted for the purpose of paying corporation tax must be re-added before computing the SC liability. The SC is paid and administered at the same time as corporation tax. The SC is 10 per cent with effect from 1 January 2016 (previously 20 per cent). The effective tax rate on ring-fenced activities is therefore 40 per cent, which may be further reduced by the availability of the investment allowance mentioned below.

Legislation was introduced in the Finance Act 2012 that effectively provides for a cap on the tax relief available for SC purposes for decommissioning costs. This restricts the use of SC losses arising as a result of expenditure incurred in connection with decommissioning to the old 20 per cent rate of SC for decommissioning carried out on or after 21 March 2012.

The Finance Act 2015 removed existing field allowances and introduced a basin-wide 'investment allowance'. Rather than being available based on the nature of a particular field, the portion of profits reduced by the investment allowance is dependent on a company's investment expenditure. The allowance removes an amount equal to 62.5 per cent of investment expenditure incurred by a company in relation to a field from its adjusted ring-fence profits subject to the supplementary charge. As part of the 2016 budget, these allowances were extended to include tariff income.

Recent developments

An innovative new mechanism known as transferable tax history was made available in relation to transactions completed on or after 1 November 2018. It allows sellers to transfer a portion of their tax history to buyers of North Sea assets, with the aim of reducing the risk to buyers of late-life assets of bearing higher effective decommissioning costs as a result of having insufficient tax payment history.

COMMODITY PRICE CONTROLS

Crude oil mining

38 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Crude oil and crude oil products in the UK are not subject to a mandatory price-setting regime. The UK adopts a free market approach, and oil and oil products are therefore priced and valued accordingly.

COMPETITION

Competition enforcers

39 What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Competition and Markets Authority (CMA) is the principal body responsible for the enforcement of competition law in the UK.

The CMA is an independent statutory body, created by the Enterprise and Regulatory Reform Act 2013 (ERRA 2013) to replace the Office of Fair Trading (OFT) and the Competition Commission (CC).

The creation of the CMA brought the competition work of the OFT and CC under one single authority. The CMA acquired full powers on 1 April 2014. Sector regulators have concurrent competition powers. There is no sector regulator for the upstream industry, but in the downstream markets, the Office of Gas and Electricity Markets has concurrent powers to enforce the competition prohibitions. There is also a specialist competition court, the Competition Appeal Tribunal, which hears appeals against decisions of the CMA and sector regulators, as well as damages claims and certain other cases.

The CMA and the sector regulators enforce the UK's prohibitions on restrictive agreements and abuse of dominance (Chapter I and Chapter II prohibitions of the Competition Act 1998). From the end of the UK's transition period on 31 December 2020, articles 101 and 102 of the Treaty on the Functioning of the European Union ceased to apply to the UK and UK enforcement authorities will no longer apply EU competition law. Under a new section 60A Competition Act, UK courts and competition authorities must continue to interpret UK competition law in line with EU law and case law as it stood prior to the end of the transition period. UK authorities and courts must also have regard to guidance and future EU case law. Under the Enterprise Act 2002, as amended by ERRA 2013, the CMA also enforces the UK's criminal cartel regime. The Serious Fraud Office assists in the prosecution of the criminal cartel offence.

Penalties for breach of Chapter I and Chapter II prohibitions of the Competition Act 1998 include fines of up to 10 per cent of worldwide turnover, and directions that infringing conduct be brought to an end. Other consequences include possible contractual invalidity or liability to damages actions by aggrieved third parties. The penalties for criminal cartel offences include imprisonment for up to five years or fines, or both. A director involved in anticompetitive behaviour may be disqualified from acting as a director for up to 15 years or may give an undertaking not to act in that capacity. The first directors to be found guilty of the UK criminal cartel offence were involved in the marine hose cartel. They received prison sentences reduced on appeal that ranged between 20 and 30 months.

The Enterprise Act 2002 (as amended by ERRA 2013) makes provision for market investigations. It enables the CMA to carry out both phases of an investigation into a market, starting with an initial study of an entire market or part of it and the power to refer that market for a full investigation where there is a concern that features of that market may restrict or distort competition. Where the CMA carries out a market investigation it has wide powers to specify remedies (but not to impose fines). Government ministers may intervene in market investigations in very limited circumstances on public interest grounds. The Secretary of State for Business has the power to request the CMA to investigate public interest issues alongside competition issues in market investigation cases. ERRA 2013 introduced tight statutory timescales for the completion of studies, investigations and implementation of remedies stemming from investigations.

The merger control regime in the UK is subject to a voluntary notification system. The CMA runs the whole merger process, from Phase I (initial stage review of the proposed merger) to Phase II (second stage review of the proposed merger where it is believed that the merger has a realistic prospect of a substantial lessening of competition). The CMA has a deadline of 40 working days to conduct a Phase I investigation and 24 weeks (subject to extension) from the date of reference to complete Phase II. The CMA has the power to require notifying parties and third parties to provide documentation and to request the attendance of witnesses to assist in an investigation at both phases of the process. The CMA also has powers to impose interim orders to suspend all integration steps and to prevent pre-emptive action in relation to anticipated or completed mergers.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Except for merger control, it is not possible to obtain a determination from any UK competition authority on the competition law compatibility of a proposed action or agreement. Companies are responsible for carrying out their own assessment of whether their activities comply with competition law (there is limited exception to this rule in that the CMA will provide a public short-form opinion on proposals that raise novel or unresolved questions of law in relation to arrangements between competitors where the CMA considers that guidance would benefit business generally). Agreements that technically infringe the prohibition on restrictive agreements but that meet the criteria set out in Chapter 1 (distortion of competition in the United Kingdom) and Chapter 2 (abuse of a dominant market position) of the Competition Act 1998 will be legally enforceable. Companies may have to rely on or defend their conclusions on these matters in front of the competition authorities or the courts. Companies found to have breached the Chapter 1 or Chapter 2 prohibitions may be liable to a fine of up to 10 per cent of worldwide turnover.

The UK domestic merger control regime in the Enterprise Act 2002 is a two-phase process. It does not impose mandatory notification, nor does it impose automatic suspension requirements. Notification is voluntary. The CMA does, however, have the power to start an own-initiative investigation and to refer a transaction for Phase II investigation up to four months after completion of a non-notified transaction. All mergers are subject to a statutory timetable, giving the CMA a deadline of 40 working days to conduct a Phase I investigation. Where a transaction is referred for a second-phase investigation, the CMA must report within 24 weeks, subject to an eight-week extension period. The CMA has broad powers to impose both structural and behavioural remedies.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

Seismic data acquired and owned by oil and gas companies (typically under exploration licences) must be preserved (Model Clause 29(2): 'The licensee shall keep within the United Kingdom accurate geological plans and maps relating to the licensed area and such other records in relation thereto as may be necessary to preserve all information which the licensee has about the geology of the licensed area').

It is a term of the licence that data must be delivered to the Department for Business, Energy and Industrial Strategy (BEIDS) on demand.

BEIS is entitled to release data upon termination of the licence or (20th round licences and later) three years after its acquisition, whichever is earlier.

Under Petroleum Operations Notice 9, a licensee has certain reporting obligations with regard to (among other things) seismic data. The notice applies to all seaward surveys and all exploration, appraisal and development wells in seaward areas.

BEIS and Oil & Gas UK also published the Guidelines for Proprietary Seismic Data Release. Under the Guidelines, the Department of Energy and Climate Change can also require licensees to release data directly to third parties, which is deemed to be equivalent to a request from BEIS for the data and the release of data by BEIS.

INTERNATIONAL

Treaties

42 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

The UK is a signatory to a number of international treaties and multinational agreements that have an impact on UK regulation. Among the most important are the Geneva Convention on the Continental Shelf 1958 and the UN Convention on the Law of the Sea 1982, which together set the limits for a state's territorial sea and continue to govern the UK's access to its continental shelf and beyond. Also significant to the oil industry is the Energy Charter Treaty, which regulates between member states a number of energy-specific areas such as competition, transit of energy goods, trade, investment and dispute resolution. Other notable multinational agreements include the 1998 OSPAR Convention, which has had a significant impact on the UK's decommissioning regulations. Following the OSPAR Commission meeting in June 2013, there has been no change to the policy on derogations for the decommissioning of installations under the OSPAR Convention. However, action has been taken to harmonise the OSPAR Harmonised Mandatory Control System, which regulates the discharge of offshore chemicals and the EU Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation.

Regarding the recognition and enforcement of foreign arbitral awards, the UK is a party to:

- the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), subject to the reciprocity provision that the UK courts only recognise and enforce awards made in the territory of another contracting state;
- the Geneva Convention on the Execution of Foreign Arbitral Awards 1927, which covers a small number of additional countries that are not also signatories of the New York Convention; and
- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966.

Arbitration proceedings are governed by the Arbitration (International Investment Disputes) Act 1966, Part III of which deals with international awards. Some types of arbitral awards are enforceable, including domestic money awards, and domestic declaratory awards.

Foreign ownership

43 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence?

While there is no specific limitation to foreign companies, the Oil and Gas Authority (OGA) has the power to make a public interest assessment of the impact of a foreign company on the market. Further, the OGA requires that, to be a licensee, a company must have a place of business within the United Kingdom. In assessing the suitability of a candidate to act as an operator, the OGA has stated that the location of the company's operations may be a factor in assessing its ability to run operations effectively.

In December 2019, the Queen's Speech announced the government's intention to introduce a National Security and Investment Bill (NSI Bill) to strengthen the government's powers to scrutinise and intervene in takeovers and mergers to protect national security. The NSI Bill seeks to establish a new, standalone statutory regime for government scrutiny of, and intervention in, acquisitions and investments for the purposes of protecting national security. The NSI Bill would bring in several changes, including a mandatory notification system requiring proposed acquirers of shares or voting rights in companies and other entities undertaking specified activities in certain sensitive sectors of the economy to seek authorisation and obtain approval from the Secretary of State for the Department for Business, Energy & Industrial Strategy before completing their acquisition – the energy sector will likely fall within the scope of the mandatory notification regime and therefore, if passed, could impact foreign investment in the oil and gas industry.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Under UK law, cross-border transactions of this nature are not governed by any specific legislation or rules. There are no volumetric supply obligations for the local market that prevail over the rights of the oil producer.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

In general, the oil market has remained characterised by uncertainty in global supply and price volatility, with dated Brent averaging US$71.34, US$64.28 and US$41.90 per barrel over 2018, 2019 and 2020 respectively. The effect of the covid-19 pandemic on transport, travel and consumer demand, together with disputes between OPEC and Russia, led to Brent prices falling below US$20 at points in 2020, with futures contracts for West Texas Intermediate trading at negative prices in April 2020.

The United Kingdom ceased to be an EU member state on 31 January 2020. Specific issues are likely to impact the sector generally, including potential difficulties in attracting highly skilled people and a flexible workforce that can be moved efficiently and quickly from project to project and possible disruption to cross-border trade of oil-based goods. In the short term, the fall in sterling as a result of Brexit led to UK exports becoming more competitive overnight on the basis that oil trades in US dollars and many North Sea costs are in sterling.

Following initial uncertainty following the UK's service of its withdrawal notice to the EU, mergers and acquisitions activity gradually increased and the value of UK upstream M&A deals announced in 2017 surpassed US$8 billion. M&A activity continued during 2018, although at a lesser level than 2017, with approximately US$6.7 billion of UK-related M&A activity in the sector in 2019. However, oil price uncertainty in 2020, coupled with the impact of restrictions introduced to manage risks associated with the pandemic, meant that activity generally, including M&A activity, slowed down in 2020.

Generally, there has been a trend towards divestment from majors that are coming under increasing pressure from stakeholders to demonstrate their commitment to energy transition and achieving UK government-led targets to achieve net-zero emissions by 2050, as well as their own sometimes more ambitious targets.

Coronavirus

46 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

No updates at this time.

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