



Oil & Gas
Authority

Dispute Resolution Guidance

OGA's guidance for the handling of disputes
under Chapter 2, Energy Act 2016

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Section 1

Scope of this guidance

What does this guidance cover?

1. The Oil & Gas Authority (the 'OGA') is able to consider formally a range of disputes that occur within the upstream oil & gas industry and try to bring about a collaborative solution that will help to maximise the economic recovery of petroleum that is found in the UK.
2. Sections 19 to 26 of the Energy Act 2016 (the 'Act') set out the OGA's duties and powers in considering qualifying disputes.
3. This guidance sets out how the OGA will likely handle such disputes referred to it in accordance with those sections. In particular:

Section 20 states that a party to a dispute may refer the dispute to the OGA, with the reference to be made in such manner as the OGA may require.

Section 21 states that the OGA must decide whether such a reference is to be rejected, adjourned (to enable further negotiation between the parties to the dispute), or accepted and to issue guidance about the matters it will have regard to when so deciding.

Section 23 states that, where the OGA accepts a reference or decides to consider a dispute on its own initiative, it must consider the dispute and make a recommendation for resolving it. It further provides that the OGA must set a timetable for considering the

dispute and making a recommendation for resolving it.

In this regard, the OGA's recommendation must be one which it considers will enable the dispute to be resolved in a way which best contributes to the fulfilment of the principal objective¹, being maximising the economic recovery of UK petroleum, whilst having regard to the need to achieve an economically viable position for the parties to the dispute.

¹ Section 9A(1) of the Petroleum Act 1998, as inserted by section 41 of the Infrastructure Act 2015.

It also states that the procedure for considering the dispute and making a recommendation must be that which the OGA considers most appropriate.

Further, it states that the OGA may publish the recommendation or any part of it.

Finally, it requires that the OGA issue guidance about the matters to which it will have regard to when performing its duties under this section.

Status and purpose of this guidance

4. This guidance sets out the form and manner in which dispute referrals should be made and the approach the OGA is likely to take in considering such disputes, taking into account that each referral will be assessed on its facts, case-by-case.

Section 1

5. This guidance is not a substitute for any regulation or law and is not legal advice.
6. This guidance will be kept under review and be amended as appropriate in the light of further experience and developing law and practice, and any change to the OGA's powers and responsibilities .
7. This guidance sets out the OGA's general approach to dispute resolution in the areas covered by the guidance. It does not have binding legal effect. Where the OGA departs from the approach set out in this guidance, the OGA will explain why.

Qualifying Subject-matter and Parties

8. This guidance relates to the consideration of a dispute reference where such a dispute relates to issues relevant to the fulfilment of the principal objective, in particular through the—
 - a) development, construction, deployment and use of equipment used in the petroleum industry (including upstream petroleum infrastructure), and
 - b) collaboration among the following persons—
 - (i) holders of petroleum licences;
 - (ii) operators under petroleum licences;
 - (iii) owners of upstream petroleum infrastructure;
 - (iv) persons planning and carrying out the commissioning of upstream petroleum infrastructure;
 - (v) owners of relevant offshore installations;

or it relates to activities carried out under an offshore licence and is not the subject

of an application made under section 82 of the Energy Act 2011.

9. In addition, one of the parties to the dispute must be one of the five persons listed above to whom the duty of collaboration applies.

General Principles

10. Under section 20² of the Act, a dispute reference is to be made in such manner as the OGA may require. In this guidance, the OGA has set a minimum standard that all dispute references must meet.

² This Guidance is compliant with the eight rules of good guidance in the Code of Practice on Guidance on Regulation (BIS, October 2009).

11. In this regard, the OGA will normally not accept a dispute without evidence of the failure of meaningful commercial negotiations. Section 19 of the Act only applies to matters that are in dispute, consequently the OGA should only be asked to consider a dispute between parties when all avenues of commercial negotiation have failed.

Requests for the provision of access and requests for changes to terms and conditions (including prices) should be addressed by commercial negotiation between the relevant parties and only where these negotiations fail should the OGA be called on to consider a dispute.

12. When receiving a dispute reference, the OGA will require an officer, preferably the Chief Executive Officer, of a company making that reference to verify that the company has taken due care in checking that the evidence submitted is correct and complete and that every effort has been made to resolve the dispute through commercial negotiation.

Section 1

13. The OGA expects companies to make adequate submissions and may reject submissions that do not meet the standard defined in this guidance. However, the OGA will assist individuals, small businesses and companies that require advice on the use of this guidance, noting that such assistance cannot give any assurances about the outcome of the consideration of a reference.
14. As described in section 23 of the Act, the purpose of the disputes procedure is connected with fulfilling the principal objective (maximising economic recovery) in that the OGA's recommendation must be one which it considers will enable the dispute to be resolved in a way which best contributes to the fulfilment of the principle objective whilst having regard to the need to achieve an economically viable position for the parties to the dispute.
15. In the absence of this, the OGA may consider that alternative mechanisms for dispute resolution would be more appropriate, and may decline to consider a dispute on that basis.
16. The OGA will likely not accept a dispute reference until the scope of the dispute is clear. Once the scope of the dispute has been established, the OGA does not expect to change that scope.
17. If evidence of anti-competitive behaviour is found during the consideration of a dispute reference, the OGA may raise this matter with the Competition and Markets Authority.
18. The OGA will only consult on the outcome of a dispute with stakeholders other than the parties when the issue is of wider interest to industry. In all other cases, consultation will likely be restricted to the parties involved in the dispute.

Section 2

Background and approach

Background

19. The Wood Review³ (the ‘Review’) identified that licence holders were not collaborating on potentially economically viable projects, to deliver those projects, either at all or to their full potential (see 2.3v of the Review).
20. Among other reasons, the OGA was set up to be more deeply involved with the offshore oil and gas industry and to be more proactive in developing the basin, ensuring collaboration and successful development of these opportunities.
21. The Review envisaged that those who hold petroleum licences or whose activities are capable of affecting the principal objective should have access to a dispute resolution procedure whereby the OGA can give a non-binding recommendation on what is the appropriate way to resolve that dispute. This proposal has been implemented in Chapter 2 of the Act.
22. This should not be confused with the separate third party access dispute resolution provisions (sections 82-91) of the Energy Act 2011 which can impose binding terms on parties and for which separate guidance exists⁴.

The OGA would normally expect that such disputes would be considered by the Energy Act 2011 where that legislation can provide a solution.

Approach

23. The approach set out in this guidance is intended to ensure that:
- the procedure for considering disputes is fair and appropriate;
 - the procedure for considering disputes is transparent, subject to appropriate regard to commercial confidentiality; and
 - dispute references are dealt with consistently, expeditiously and avoiding unnecessary expense.
24. The approach is intentionally light touch and the aim is that the procedure should be relatively swift, setting the direction for the parties in dispute to quickly maximise economic recovery.
25. Timescales that are given in this guidance in connection with the various stages of considering a dispute are indicative only and will vary case by case.

Expectations on the Parties

26. As described earlier, it is expected that the parties will normally reach a satisfactory conclusion to their negotiations without the need for referral of those negotiations to the OGA, and so the referral of disputes should be the exception rather than the rule. It is also expected that parties considering making a reference will inform other parties to the dispute in good time.
27. To facilitate the approach described above, it is expected that all parties engaged in the procedure described in this guidance respond promptly to requests for information and/or meeting requests, and make every effort to avoid barriers to timely and effective communications.

³ UKCS Maximising Recovery Review: Final Report

⁴ <https://www.ogauthority.co.uk/regulatory-framework/powers-sanctions/third-party-access/>

Section 3

Overview of disputes procedure

28. Figure 1 shows a simple overview of the disputes procedure, which can be initiated either by one of the parties making a referral or by the OGA acting on its own initiative.

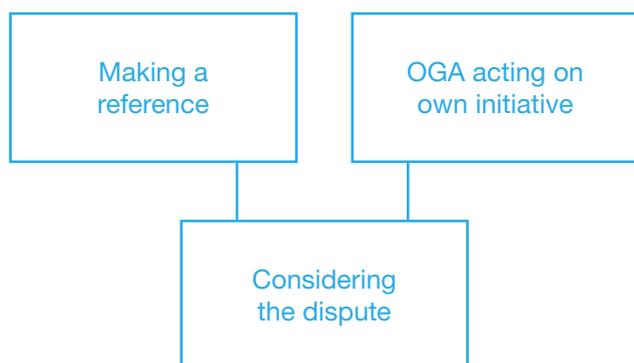


Figure 1

OGA monitoring of negotiations prior to disputes

29. The OGA will normally be made aware of negotiations that have a bearing on the principal objective, during normal regulatory activity.

Making a referral

30. Where a Party decides to refer a dispute, they must formally pass the dispute reference to the OGA in accordance with the Act. Detailed guidance about the procedure that the OGA will likely follow when receiving a reference is given in section 4 – this includes how the decision will likely be made to reject, adjourn or accept that reference.

OGA acting on own initiative

31. The OGA is empowered to invoke the disputes procedure on its own initiative, for example when it considers that a negotiation has reached an impasse.

Detailed guidance about how the OGA will likely act on its own initiative is given in section 5.

Considering the dispute

32. Where the OGA receives a dispute reference, it must determine whether to;

- reject the dispute reference (see section 21(4) of the Act),
- adjourn its consideration of the dispute reference to enable further negotiations between the Parties (see section 21(5) of the Act), or
- accept the dispute reference, and subsequently consider it (see section 23 of the Act).

33. If the OGA acts on its own initiative, it will consider the dispute in a similar manner as if it received a reference and decided to accept it. Further guidance about how the OGA will consider the dispute is given in section 6.

Key Performance Indicators

34. The OGA Corporate Plan 2016-2021⁵ sets a target for reaching a preliminary decision on informal dispute resolution within the timescale set out in guidance in 90% of cases.

The Act requires that the OGA draws up a timetable for considering the dispute and making a recommendation for resolving it, and this timetable will be used to assess performance against that target.

⁵ <https://www.gov.uk/government/publications/oil-and-gas-authority-corporate-plan-2016-2021>

Section 4

Making a referral

35. A summary of the procedure for referring a dispute to the OGA is shown in Figure 2. The main elements of the procedure are described in the subsequent sections.

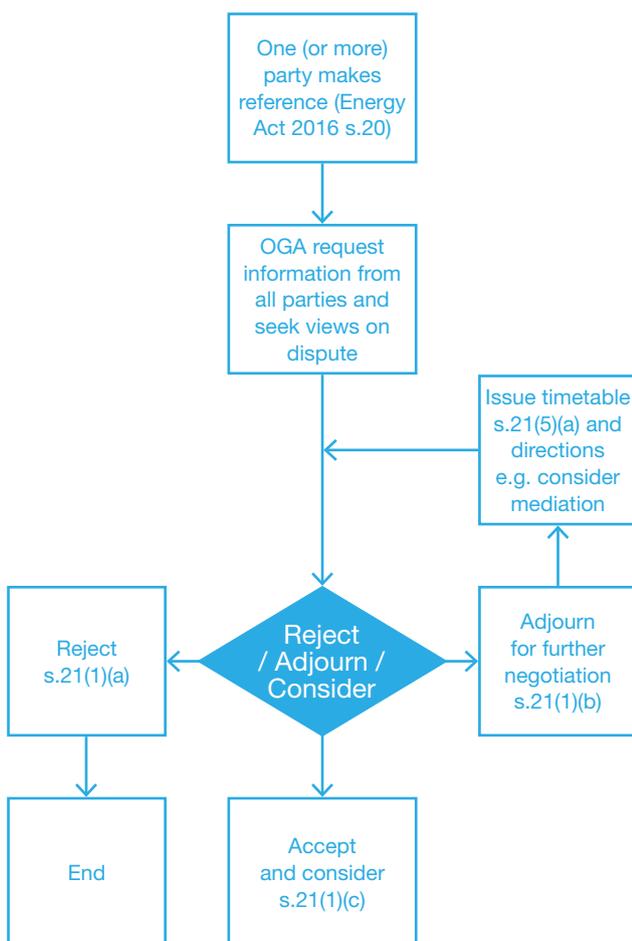


Figure 2

Expectations prior to dispute reference

36. It is expected that that all the parties involved in a negotiation where progress is slowing should be aware that a reference to the OGA is possible. Any party that is considering referring a dispute should therefore make sure that all other parties and the OGA are aware of this intention in good time.

37. This engagement should identify clearly what negotiation is in dispute, and will allow the other parties to prepare their arguments and seek the agreement of their co-licensees or other partners. It will also ensure that the dispute has been escalated sufficiently amongst the parties to gain senior management attention and will give a final opportunity to find a satisfactory solution. From the OGA perspective, this advanced warning will give time to consider whether other methods of dispute resolution (including informal facilitation) may be helpful, and will also aid resource planning. In some cases, the OGA may advise the potential referring Party of possible issues with the dispute reference if subsequently made.

38. The OGA encourages the parties to try to agree the facts of the case and identify the matters still in dispute prior to a reference being made. If successful, this should enable more rapid consideration of the dispute by the OGA and a more efficient process for all. It is acknowledged that this approach may not work in all cases.

Making the referral

39. The referring party should submit at least the information described in Annex 1 of this guidance to the OGA to the person/address specified, and simultaneously inform all other parties to the dispute. This should include the facts of the case where agreed between the parties.

Section 4

Initial action by OGA on receipt of a referral

40. The OGA will nominate an official to manage the dispute reference on its behalf; this official is likely to be in a separate part of the OGA from that which may have been trying to facilitate a solution previously. The official will normally write to the other parties identified in the information submitted by the referring party, using the power in section 24(1)(a) of the Act to request that they provide the information described in items a) to c) in Annex 1 of this guidance. This information should normally be provided within 15 working days; the requested timescale may be shorter if it is considered that the parties already have much of the information to hand. The information may be provided by an operator on behalf of a group of licensees if agreed by those parties.

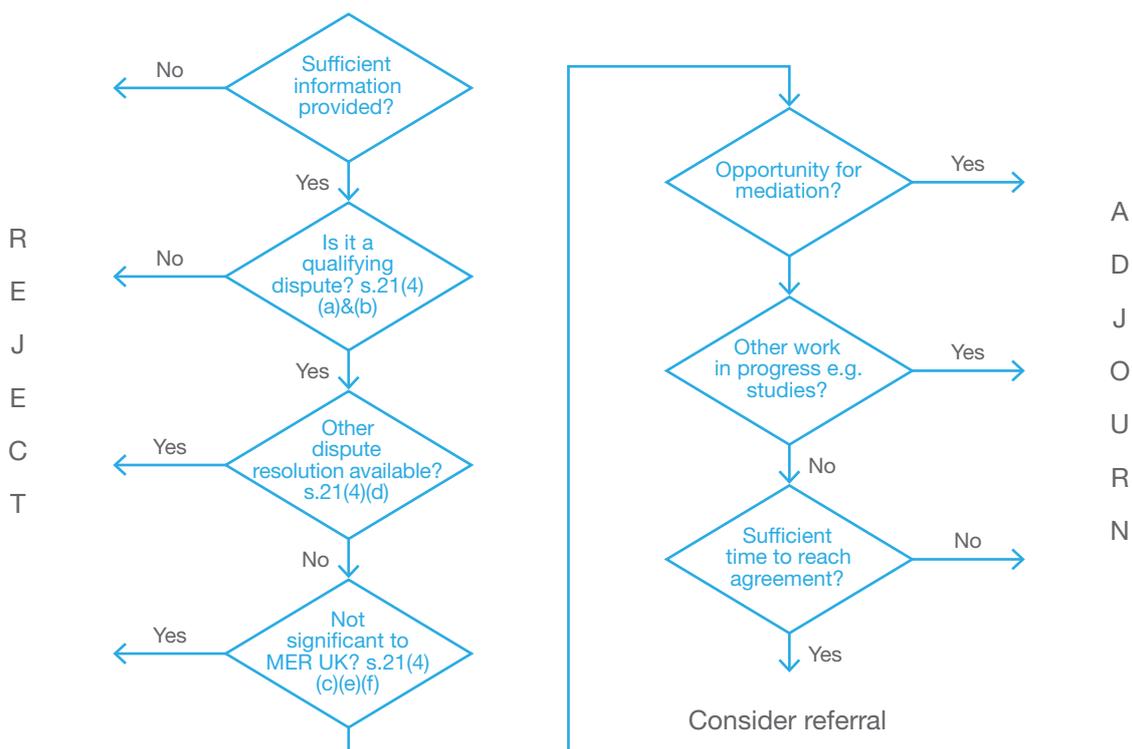
41. Further information (items d) to h)) described in Annex 1 of this guidance may be provided if available within

the specified timescale, and will be requested later if not (see Section 6). Where the parties have agreed the facts of the dispute and identified the matters still in dispute, this information should be submitted in order to meet the requirements in Annex 1 of this guidance as far as possible. In such cases, the OGA would accept a reference prepared jointly by the parties that meets the requirements of Annex 1.

Reject/Adjourn/Consider decision

This section forms the guidance required by section 21(2) of the Energy Act 2016.

42. Figure 3 below sets out the procedure by which the OGA will decide whether to reject, adjourn or consider a dispute. Each box on Figure 3 is described below in more detail. The procedure provides for the OGA to review whether there are grounds to reject or adjourn the reference. If there are no grounds to reject or adjourn the reference, the OGA will accept the reference and consider the dispute.



Section 4

Reject: Sufficient information not provided

43. The information described in Annex 1 of this guidance should be provided in the dispute reference. This includes the requirement to demonstrate that all reasonable efforts have been made to resolve the dispute (including appropriate escalation) by the parties. The reference is therefore likely to be rejected if it does not demonstrate that adequate dialogue has taken place in good time to inform the other parties of the intent to refer the dispute. This is intended to prevent dispute references being made prematurely, possibly before some of the parties being aware that negotiation has come to a halt.

Reject: Not a qualifying dispute or a relevant party

44. Section 21(4)(a) of the Act allows the OGA to reject a dispute reference if it is not a 'qualifying dispute', i.e. if it does not relate to the fulfilment of the principal objective to maximise economic recovery of UK petroleum or activities under an offshore licence, or is already being considered further under section 82 of the Energy Act 2011. Further, the parties to the dispute must include at least one relevant party.

45. The dispute should be referred to the OGA by a relevant party (see section 19(5) of the Act), who is a relevant person (see section 18(1) of the Act) listed in section 9A(1)(b) of the Petroleum Act 1998.

Reject: Other dispute resolution available

46. Section 21(4)(d) of the Act provides that the OGA may reject a reference if there are more appropriate means available for resolving the dispute. Rejection is likely if a formal or informal dispute resolution process is already in progress (e.g. court action, arbitration, mediation), as it is not likely to be effective for the OGA to intervene in such a situation.

47. There are two other situations where the OGA is likely to reject a reference in connection with section 21(4)(d). The first involves a dispute solely involving the terms of an existing contract or agreement where a court is likely to provide the most effective judgment.

The second situation is a dispute where the provisions of section 82 of the Energy Act 2011 (Acquisition of Rights to Use Upstream Petroleum Infrastructure) could provide a solution to the dispute – it is considered that this legislation should be used instead.

Reject: Not significant to principal objective

48. The requirement above for the dispute to be a qualifying dispute means that it must be related to the principal objective or to activities under an offshore licence. Section 21(4)(e) indicates that the dispute should be "sufficiently material" to the fulfilment of the principal objective to warrant consideration by the OGA.

Section 4

The term “sufficiently material” implies that an increasing measure of value or quantity will make consideration of the dispute more likely. However, the materiality of the dispute could be affected by the significance of the signal that a recommendation will send to industry, and so value or quantity alone is not considered to be the only factor here.

49. Section 21(4)(f) states that the dispute should not be considered if the OGA considers that it is unlikely that a satisfactory decision could be made. This could cover situations where a party that is significant to the solution of the dispute is not a “relevant party”, as defined in section 19(5). It may also be relevant if the OGA is not likely to be able to make a decision in a reasonable period of time due to other priority work, and this will be influenced by the test whether the dispute is sufficiently material to the fulfilment of the principal objective as described above.
50. Section 21(4)(c) of the Act allows the OGA to reject a dispute reference if it is frivolous or vexatious. No specific guidance is provided here on that matter.

Adjourn: Opportunity for mediation

51. If the Parties have not already attempted some form of mediation, encouraging them to do so during an adjournment is likely to be considered. This consideration will be guided by the information submitted by the parties.

Factors likely to encourage the OGA to propose or direct mediation include:

- there being sufficient time to carry out mediation in addition to the dispute reference procedure conducted by the OGA (noting that mediation may avoid the need to complete the procedure in some cases);
 - the indication that one or more of the parties has not followed relevant industry codes of practice during negotiation; and
 - where the parties appear to have a different view of the most important issues in dispute, suggesting that they have not fully understood the position of their counterparties.
52. It is likely that the OGA would encourage the parties to engage a trained mediator. The period of mediation would normally be limited to up to a month, and the dispute reference would be withdrawn if the parties are able to reach agreement in that time.

Adjourn: Other work in progress

53. It is likely that the OGA will adjourn consideration of a dispute reference if work is still in progress that could have a significant effect on the recommendation. This work might take the form of technical studies, economic evaluations or inspection activity.

Section 4

This test necessarily involves a degree of judgement; there will always be some uncertainties that are either small or are inherently very difficult to quantify no matter how much further work is performed, and these should not hold up the disputes procedure.

Adjourn: Not sufficient time in which to reach agreement

54. The OGA will come to a view on whether the parties have had sufficient time in which to reach agreement. This will normally be guided by the information provided by the parties as described in Annex 1 of this guidance, particularly the overall timescale of the negotiation and the main interactions between the parties that have taken place.

Accept reference and consider dispute

55. If no grounds are found to reject or adjourn the reference, it will be accepted and considered by the OGA.

Action following the decision to reject, adjourn or consider a reference

56. Section 21(3) of the Act requires that the OGA gives notice in writing stating the decision, the reasons for the decision and the date of the decision. This should be given to relevant parties and any other persons who have contributed during the procedure. It is envisaged that this notice will be issued around 20 working days after the dispute reference has been submitted to the OGA.

57. Where the OGA decides to adjourn the dispute reference, section 21(5) of the Act requires that it sets a timetable for the parties to negotiate further and then revert to the OGA. The section also allows the OGA to give directions to some or all of the parties to carry out during the adjournment; this could take the form of completing work, conducting further negotiation or proposing mediation as indicated above. A further decision on whether to reject, adjourn or consider the dispute reference must be made by the OGA at the end of the adjournment.

58. Where the OGA decides to consider the dispute reference, section 6 of this guidance will then apply.

Section 5

OGA acting on own initiative

59. A summary of the procedure by which the OGA will decide to act on its own initiative is shown in Figure 4 below. The main elements of the procedure are described in the subsequent sections.

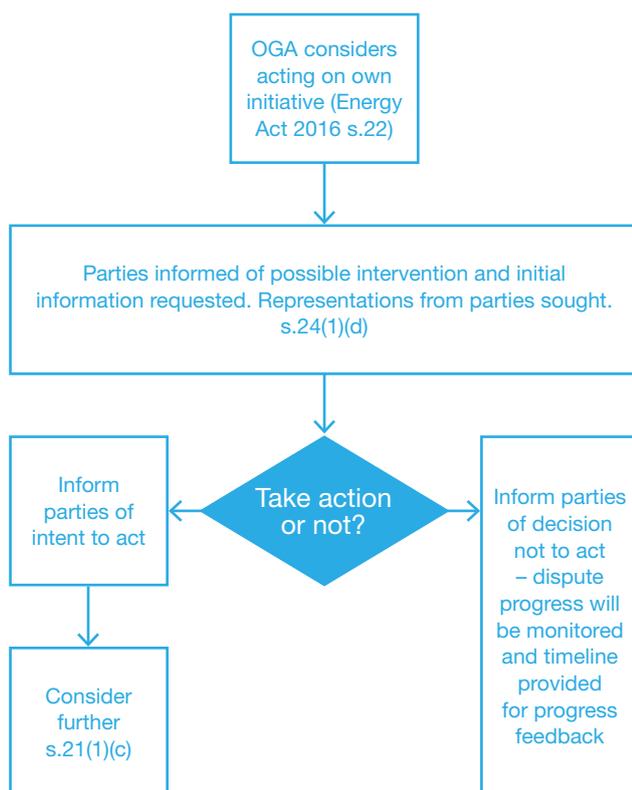


Figure 4

Initial information gathering

60. The OGA will gather information about various ongoing negotiations as part of its normal regulatory duties, and this may indicate that progress with a particular dispute needs to be investigated by a separate group within the OGA (see Section 8 of this guidance). If the OGA considers that it may need to act on its own initiative to consider a dispute, it will inform the parties and request that they provide initial information within 20 working days under section 24(1)(d) of the Act in order to help it make a decision. The information should consist of items a) to c) of Annex 1 of this guidance as a minimum; the requested timescale may be shorter if it is believed that the parties already have much of the information to hand. They may also make a representation regarding their views of the progress of the negotiation and the need (or not) for the dispute to be considered by the OGA.

61. The parties are free to try to agree facts of the case and identify the matters still in dispute during that timescale if they wish.

Deciding whether to consider

62. The decision whether to consider a dispute will follow the steps shown in Figure 3 as appropriate.

Action on decision to consider dispute

63. The Act requires that all the parties to the dispute must be notified if the OGA decides to consider a dispute. Section 6 of this guidance will then apply.

Action on decision not to consider dispute

64. The parties will be advised that the OGA does not intend to consider a dispute at that time. This notification may include an indication of the timescale in which the OGA will be minded to consider a dispute if it is not resolved by then.

Section 6

Considering a dispute

65. A summary of the procedure by which the OGA will consider a dispute is shown in Figure 5. The main elements of the procedure are described in the subsequent sections. This procedure applies whether a dispute reference has been made by a party (section 4 of this guidance) or the OGA has decided to consider a dispute on its own initiative (section 5 of this guidance).

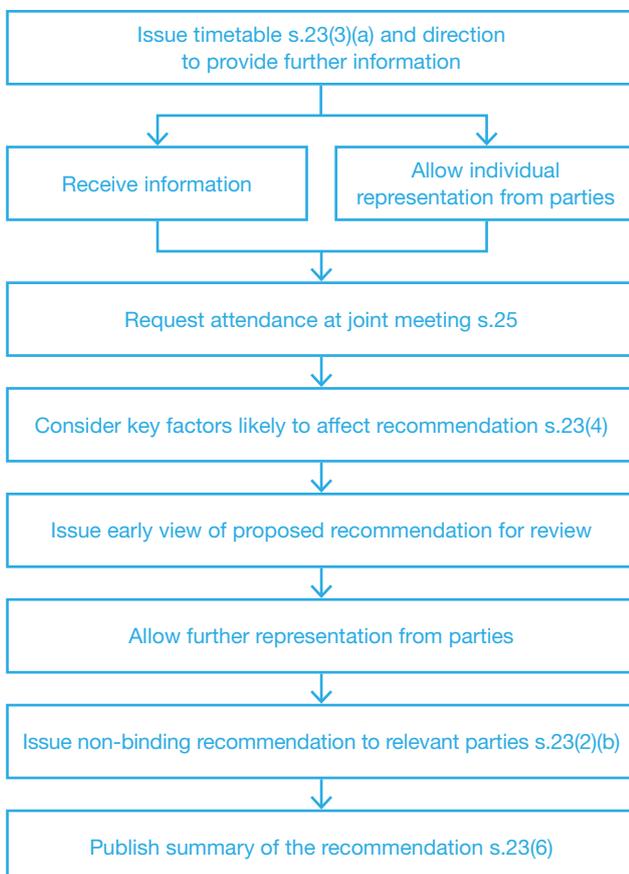


Figure 5

Setting a timetable

66. The Act requires that the OGA draws up a timetable for considering the dispute and making a recommendation. The OGA may also give directions to the parties to assist with this; it is envisaged that such a direction will normally be given to the parties to provide the information described in items d) to h) of Annex 1 of this guidance within 10 working days, if they have not already done so.

67. It is also envisaged that the recommendation will be made within a period of 60 working days from the point that the OGA decides to consider the dispute, but the actual timetable in each case will take account of the perceived complexity and the number of parties involved.

Contact with the Parties:

Individual representations by the Parties

68. When informing the parties that a dispute is to be considered, the OGA will remind them that they may make individual representations to provide further information and views if, for example, they believe that this was not adequately drawn out by the requirements of Annex 1. Any representations should be made in good time, taking account of the proposed timetable. Representations should be directed at the facts of the dispute and try to make all necessary points within one meeting, i.e. to avoid repeated requests for discussion.

Section 6

Holding a joint meeting

69. It is intended that a joint meeting will be held with all parties around 10-25 working days from the point that the OGA decides to consider the dispute.

The objective of the meeting will be to review the matters still in dispute, to discuss how the principal objective relates to the dispute and to explore what solutions may be possible, in order to inform the eventual recommendation.

It may be possible for certain parties to be exempted from the meeting, e.g. if non-operating partners are fully aligned with their operator who can speak on their behalf. However, the OGA reserves the right to insist that certain parties do attend a meeting, using the powers under section 25(1) of the Act. This will be particularly relevant where a party is likely to have a significant impact on the resolution of the dispute.

Requests by the OGA for further information

70. If the OGA considers that further information is needed in order to progress the consideration, this will be requested using the powers in section 24(1)(e) of the Act. The requested timescale for response will take account of the extent and complexity of the information being requested, whilst expecting that the relevant party will make every effort to avoid delays to the disputes procedure.

Factors to consider in making a recommendation

This section forms the guidance required by section 23(8) of the Energy Act 2016.

71. The published strategy for maximising economic recovery for the UK⁶ (the ‘Strategy’) sets out a Central Obligation and various Supporting Obligations, subject to defined Safeguards. When considering making a recommendation, the OGA will normally assess which of the obligations are relevant to the dispute and to what extent.

The recommendation for each dispute will be supported by an explanation of the significance of relevant obligations and how they have helped to influence the recommendation. The recommendation should also be consistent with industry codes of practice, where relevant.

⁶ The Maximising Economic Recovery Strategy for the UK

Early view of the recommendation

72. The OGA considers that it is desirable to provide stakeholders with an opportunity to comment on its provisional views and reasoning, before making a final dispute recommendation. An early view of the (draft) recommendation will therefore be given to all parties, in order to give them the opportunity to check that all relevant information has been taken into consideration and that their arguments have been understood by the OGA.

Section 6

This draft recommendation will be given to the parties around 45 days after the decision has been made to consider the reference, and they will be given 10 working days in which to make comments.

73. Although the parties are generally invited to indicate whether and, if so, on what grounds they consider specific information in a submission to the OGA to be confidential, the OGA will not normally invite further comment from the relevant party once it has expressed its view on the parties' confidentiality markings in disputes.
74. For the avoidance of doubt, the OGA does not regard submissions on legal or regulatory policy to be confidential and any such submissions will normally be disclosed publicly. Further, the OGA will sometimes be required to publish/disclose information marked as confidential in order to meet its obligations.

Form of the recommendation

75. The recommendation will take the form of a statement to all the parties which summarises the procedure that has been conducted and explains the way in which the information that was submitted and the obligations in the Strategy have been taken into account in proposing a solution.

Publishing a summary of the recommendation

76. The OGA will normally publish the recommendation, in the interests of openness and in order to provide clarity on how the disputes procedure has been applied. Section 23(7) of the Act requires that the OGA must give an opportunity to each relevant party prior to publishing anything. The above comments regarding confidentiality of information should be noted.

Section 7

Action following the recommendation

77. After the OGA has issued a recommendation to the parties, they must decide whether to act on it, or set it aside and come up with an alternative solution. There is no fixed timescale for this, but it should be noted that the OGA will continue to closely monitor the status of the dispute. It is expected that the parties will continue to collaborate in good faith, using the recommendation or some other equally effective approach, to work towards a timely resolution in accordance with the Strategy.

78. The disputes procedure described in this guidance is separate from the other powers of the OGA. Where inadequate progress is made in finding a solution to the dispute that was referred to the OGA, use of these powers⁷ may be subsequently considered.

⁷ <https://www.ogauthority.co.uk/regulatory-framework/powers-sanctions/>

Section 8

Safeguards

Independence of the disputes procedure

80. The OGA carries out regular dialogue and intervention with various stakeholders including those who have duties in connection with the principal objective, with the aim to facilitate agreed solutions. Investigation and consideration of disputes using the procedure described in this guidance will normally be carried out by a separate group within the OGA, currently within the Licensing & Legal Directorate. Where the perceived need to consider a dispute has originated from within the Licensing & Legal Directorate, arrangements will be made to ensure that there is sufficient independence between those managing the reference and the originator.

Provision of information

81. Information provided to the OGA will be held in accordance with the Act.
82. Publishing a summary of the OGA's recommendation as a result of the disputes procedure is provided for by section 23(6) of the Act. In publishing a summary of the recommendation, section 65 of the Act permits the inclusion of protected material where it is appropriate to do so.

However, as the OGA must give an opportunity to be heard to each relevant Party to the dispute before publication, this will allow for representations to be made for exclusion of sensitive information (note that Chapter 6 of the Act covers disclosure of protected material more generally).

83. Additionally, the OGA is bound to comply with other relevant obligations such as the Freedom of Information Act 2000 ('FOI') and the Environmental Information Regulations 2000 ('ERA'). Where an FOI/ERA request is received, the OGA will normally circulate a draft of the proposed information to be released to the relevant parties for comment.

Appeals

84. Any party may appeal against the actions of the OGA when considering disputes; these typically apply to situations where actions or the timescales for those actions are considered to be unreasonable. More information can be found in Annex 2.

Annex 1

Information to be provided in a reference

This Annex covers the requirement of section 20(2) of the Act.

The reference should be sent to the OGA, addressed to the Head of Disputes & Sanctions at: 21 Bloomsbury Street, London WC1B 3HF. An electronic submission may alternatively be made with prior agreement. The reference should include at least the following information, with supporting evidence where appropriate:

- a) Details of the parties involved – company names and contact names/addresses.
- b) A description of any negotiations which have taken place between the parties or, in the event that a party has refused to enter into negotiations, evidence to suggest that all reasonable steps have been taken to engage that party in meaningful negotiations including correspondence, notes of meetings and telephone calls, and a chronological summary of the events.

The OGA is aware that in negotiations, parties may make without prejudice offers in an attempt to settle disputes. The OGA does not wish to dissuade parties from actively seeking to resolve disputes in this way, and whilst it may wish to see details of such offers where that offer may be relevant to determining whether meaningful negotiations have taken place, the existence or content of such offers will not normally be treated as relevant information or determine the OGA's resolution of a dispute.

- c) A summary of the dispute, including:
 - i. full details of the relevant products or services in dispute;
 - ii. a list of the issues in dispute;
 - iii. a clear and comprehensive explanation of the commercial context to the dispute, including all relevant background and evidence;
 - iv. the timeline and the main interactions that have occurred between the parties; and,
 - v. relevant documentary evidence of commercial negotiations covering the whole period of negotiation.
- d) The identification and applicability of the principal objective and any other of the OGA's regulatory principles and statutory duties, which the referring party considers is relevant in this case; and a clear explanation of how the subject matter of the dispute may relate to broader regulatory issues or policies.
- e) Constraints affecting the dispute, including existing commercial agreements and an explanation of why commercial agreement could not be reached with reference to relevant industry codes of practice.
- f) Any proposed solution of the dispute and issues preventing its resolution.
- g) Summary of technical and financial analyses that support proposed solution.
- h) Relevant parts of the Strategy and/or licence conditions including in particular:
 - if the dispute relates to a request for a new access product or service, business plans of relevant product or service including forecasts, demonstrating how and when it is intended to make use of the products or services requested; or,
 - if the dispute concerns a variation or amendment to existing agreed terms between the parties, a copy of the relevant version of the contract or terms, clearly identifying the clauses that are subject to the dispute.

Annex 2

Appeals against the OGA regarding the disputes procedure

This Annex applies to any decision of the OGA to which effect is given by one of the actions set out in an entry in column 1 of the table below (copied from section 26(2)).

A person affected by any such decision may appeal to the First tier Tribunal (General Regulatory Chamber)—

- a) on the grounds that the decision was not within the powers of the OGA, or
- b) on the grounds set out in the corresponding entry in column 2 of the table.

On an appeal under this section the Tribunal may—

- a) affirm, vary or quash the decision under appeal,
- b) remit the decision under appeal to the OGA for reconsideration with such directions (if any) as the Tribunal considers appropriate, or substitute its own decision for the decision under appeal.

(1) Action by the OGA	(2) Grounds for appeal
The setting of a timetable under section 20(5)(a).	The timetable is unreasonable.
The giving of directions under section 20(5)(b).	A direction, or a number of directions taken together, are unreasonable.
The giving of directions under section 22(3)(b).	A direction, or a number of directions taken together, are unreasonable.
The imposition of a requirement to provide information under section 23(1).	Either— (a) the information requested is not relevant to the dispute in question, or (b) the period specified under section 23(2) is unreasonable.
The imposition of a requirement under section 24(1) or (2) in relation to attendance at a meeting.	Either— (a) the requirement to attend the meeting is unreasonable, (b) reasonable notice of the meeting was not given, or (c) the requirement as to the knowledge and expertise of the person attending the meeting is unreasonable.