



Oil & Gas
Authority

Financial Penalty Guidance

Date of publication: 20 March 2017

Oil and Gas Authority

Financial Penalty Guidance

Presented to Parliament pursuant to Section 45 (5) of the Energy Act 2016

20 March 2017

© OGA Copyright 2017

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence, provided that it is reproduced accurately and not used in a misleading context.

To view this licence, visit:

www.nationalarchives.gov.uk/doc/open-government-licence/

or write to:

Information Policy Team,
The National Archives, Kew,
London
TW9 4DU
Email: psi@nationalarchives.gsi.gov.uk

The material must be acknowledged as being OGA copyright and the title of the document/ publication specified.

If you wish to reproduce the OGA logo please ask our permission first at oga.correspondence@ogauthority.co.uk by email or letter to Oil & Gas Authority, AB1 Building, 48 Huntly Street, Aberdeen AB10 1SH.

Any enquiries regarding this publication should be sent to:

Simon Churchfield
The Oil and Gas Authority
AB1 Buildings
48 Huntly Street
Aberdeen
AB10 1 SH
Telephone: 0300 020 1059
Email: financial.penalty.guidance@ogauthority.co.uk

This document is also available from our website at:

www.ogauthority.co.uk/regulatory-framework/powers-sanctions-guidance/sanctions/

Contents

Scope and purpose of this guidance	7
Introduction	8
Context	9
Sanction notices	10
Financial penalty notices	11
Requirement to consult before issuing guidance	12
Matters for determining the amount of financial penalty	13

Revision Table		
Date	Version	Comment
20.03.17	1.0	First publication following consultation

Scope and purpose of this guidance

1. This document provides guidance as to the matters to which the Oil and Gas Authority (“OGA”) will have regard when determining the amount of the financial penalty to be imposed by a financial penalty notice given pursuant to the Energy Act 2016 (“the 2016 Act”).
2. The guidance is not a substitute for any regulation or law and is not legal advice.
3. The guidance will be kept under review and be revised as appropriate in the light of further experience and developing law and practice, and any change to the OGA’s powers and responsibilities. If the OGA proposes to revise this guidance, it will follow the procedure referred to in paragraph 18.

Introduction

4. The 2016 Act received Royal Assent on 12 May 2016. Among other provisions, the 2016 Act gives new powers to the OGA to give sanction notices for failure to comply with a petroleum-related requirement, including the power to impose financial penalties. These powers commenced on 1 October 2016.
5. Section 59 of the 2016 Act requires that the OGA must issue a statement of its proposals for the procedure it proposes to follow in relation to enforcement decisions. The procedure can be found on the OGA website¹.
6. The OGA is required to “issue guidance as to the matters to which it will have regard when determining the amount of the financial penalty to be imposed by a financial penalty notice”. In order to satisfy the requirement to consult such persons as it considers appropriate, the OGA conducted a public consultation from 3 October to 3 November 2016. This document incorporates the feedback from the consultation process. A full response to the feedback can be found on the OGA website.

¹ OGA website is at: www.ogauthority.co.uk/

Context

7. In June 2013 the then Secretary of State for Energy and Climate Change, Edward Davey, asked Sir Ian Wood to conduct an independently led review of the United Kingdom Continental Shelf (“UKCS”) oil and gas recovery, specifically looking at how economic recovery could be maximised. Sir Ian published his report on 24 February 2014 and made four key recommendations to maximise economic recovery from the UKCS². In addition to the production of a strategy for achieving MER UK, the report recommended that the OGA be created and be given the power to impose a range of sanctions including change of operator and termination of the licence should companies fail to comply with their obligations.
8. The Wood Review recommendations were the subject of a consultation process and a response from government that was published in November 2014 under the title “Implementing the Wood Review Recommendations”³. In the response, the Government confirmed its intention to implement graduated sanction powers including financial penalties that would apply to breaches of licence conditions and the other obligations arising from the recommendations.
9. Amendment of the Petroleum Act 1998 (“the 1998 Act”) by the Infrastructure Act 2015 (“the 2015 Act”) established in law the principal objective of maximising economic recovery of UK petroleum (“MER UK”) and required the production of one or more strategies for enabling the principal objective to be met (“MER UK Strategy”)⁴. The MER UK Strategy includes a number of safeguards, and the central and supporting obligations, required actions and behaviours of the MER UK Strategy should be read subject to those safeguards.

² The report can be found at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/471452/UKCS_Maximising_Recovery_Review_FINAL_72pp_locked.pdf

³ The response can be read in full at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/414444/Call_for_Evidence_Govt_Response-FINAL_120315.pdf

⁴ Petroleum Act 1998 (as amended), section 9A. The current MER UK strategy can be found at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/509000/MER_UK_Strategy_FINAL.pdf

Sanction notices

10. Part 2, Chapter 5 (sections 42 to 60) of the 2016 Act details the circumstances under which the OGA is empowered to give sanction notices and the process to be followed (including in relation to any appeal). Sanction notices can be issued where a person has failed to comply with one of three petroleum-related requirements. These are⁵:
 - 10.1. a duty imposed under section 9C of the 1998 Act to act in accordance with the MER UK strategy;
 - 10.2. a term or condition of an offshore licence; and
 - 10.3. a requirement imposed on a person by or under the 2016 Act which is sanctionable in accordance with Chapter 5 of the 2016 Act⁶.
11. There are four forms of sanction notice - enforcement notices (section 43), financial penalty notices (sections 44-46), revocation notices (section 47) and operator removal notices (section 48).

⁵ Energy Act 2016, section 42(3)

⁶ See: Energy Act 2016, sections 21(6), 23(9), 24(4), 25(4) (Disputes); 28(4), 31(8), 33(3)(b), 34(4), 35(5) (Information and Samples); 38(10), 39(4), 40(5) (Meetings); 43(4), 48(8) & 57(4) (Sanctions); and section 87B of the Energy Act 2011 (as amended by section 70 of the Energy Act 2016) (failure to provide information under section 87 of Energy Act 2011).

Financial penalty notices

12. Sections 44, 45 and 46 of the 2016 Act set out the details of financial penalty notices that are relevant to this guidance, and are summarised in paragraphs 13, 14 and 15 below.
13. Section 44 defines a financial penalty notice as a notice which gives details of the failure to comply with the specified petroleum-related requirement and requires, among other things, the person(s) to pay to the OGA the amount of financial penalty specified in the notice before the end of the period specified in the notice (which must not be less than 28 days). It may also, where appropriate, require the person(s) to remedy the failure to comply with the petroleum-related requirement within a timeframe specified in the notice.
14. Section 45 limits the amount of the financial penalty to £1 million. The Secretary of State may by regulations amend that limit to an amount not exceeding £5 million.
15. Section 46 provides that if a financial penalty notice is given to two or more persons, those persons are jointly and severally liable to pay the penalty under it. The payment is recoverable as a civil debt if it is not paid before the end of the period specified for payment. Money received by the OGA under a financial penalty notice must be paid into the Consolidated Fund⁷.

⁷ The Consolidated Fund is the Government's general bank account and does not benefit the OGA directly

Requirement to consult before issuing guidance

16. Section 45(4) of the 2016 Act required the OGA to consult “such persons as it considers appropriate” before issuing guidance as to the matters to which it will have regard when determining the amount of financial penalty to be imposed by a financial penalty notice. These matters are described in paragraphs 19 to 22 below, along with an explanation of why they are considered to be relevant.
17. On 3 October 2016 the OGA issued its proposed guidance for consultation. Following the end of the consultation period, the OGA carefully considered the views and comments expressed in the responses received and published a statement on 20 March 2017 setting out its decisions in relation to the proposed guidance, and its reasons for those decisions. The OGA decided to make minor amendments to the guidance as a result of the consultation. The final guidance was then laid before both Houses of Parliament on 20 March 2017.

Matters for determining the amount of financial penalty

18. The guidance is less example-based than the financial penalty guidelines published by some other regulators due to the OGA's lack of previous history in the imposition of financial penalty notices. However, further to section 45(3) of the 2016 Act, the guidance may be revised and updated in due course, subject to further consultation⁸.
19. The matters to which the OGA will have regard when determining the level of financial penalty are intended to be consistent with the principles of best regulatory practice. In adopting these principles, the OGA has considered the approach taken by other regulators⁹, though noting the difference in their regulatory objectives from the OGA's.
20. The OGA considers that any financial penalty determined should be among other things:
 - 20.1. Effective in addressing the underlying cause of the failure to comply;
 - 20.2. Dissuasive of future failure to comply, either by the person or, further to publication of the penalty notice, other persons in similar circumstances; and
 - 20.3. Proportionate to the significance of the failure in the context of the petroleum-related requirement and the impact on the relevant persons.
21. The OGA may also take into account when determining the amount of the financial penalty matters relating to the specific circumstances of the failure to comply including, but not limited to:
 - 21.1. Specific criteria relevant to adjust the starting figure of any financial penalty such as:
 - 21.1.1. Any gain (financial or otherwise) made by the person(s) or any connected body as a consequence of the failure to comply;
 - 21.1.2. The degree of harm caused, or increased cost incurred, by the failure to comply;

⁸ Revision of the guidance will be in accordance with the provisions of subsections 45(3)-(6) of the Energy Act 2016

⁹ For example; Health and Safety Executive Enforcement Management Model: www.hse.gov.uk/enforce/emm.pdf; Environment Agency Enforcement and Sanctions Guidance: www.gov.uk/government/uploads/system/uploads/attachment_data/file/468315/LIT_5551.pdf; ofgem REMIT Penalties Statement: www.ofgem.gov.uk/sites/default/files/docs/2015/06/remit_penalties_statement_23_june_2015_1.pdf; and Ofcom Penalty Guidelines: https://www.ofcom.org.uk/data/assets/pdf_file/0017/96101/Penalty-guidelines-2015-Section-392-of-the-Communications-Act-2003.pdf

- 21.1.3. The severity of the failure to comply in the context of the relevant petroleum-related requirement, specifically a failure to comply with: a duty imposed under section 9C of the 1998 Act to act in accordance with the MER UK Strategy; or a term or condition of an offshore licence; or a requirement imposed on a person by or under the 2016 Act which is sanctionable in accordance with Chapter 5 of the 2016 Act.
- 21.1.4. The extent to which the person(s) may have sought to benefit from the failure to comply;
- 21.1.5. The extent to which parties have followed industry Codes of Practice¹⁰ where these are relevant to the failure to comply; and
- 21.1.6. The duration of the contravention;
- 21.2. Mitigating circumstances and/or behaviours associated with the failure to comply with the petroleum-related requirement such as:
 - 21.2.1. Action taken by the person(s) in advance to address the failure to comply;
 - 21.2.2. Previous conduct by the person with respect to this and other petroleum related requirements;
 - 21.2.3. The presence of internal mechanisms/processes intended to prevent the failure to comply; and
 - 21.2.4. Co-operation with the OGA's investigation; and
- 21.3. Aggravating circumstances and/or behaviours associated with the failure to comply with the petroleum related requirement such as:
 - 21.3.1. Persistent inaction to address the failure to comply;
 - 21.3.2. Previous conduct by the person with respect to this and other the petroleum related requirements;
 - 21.3.3. Absence of internal mechanisms / processes to prevent the failure to comply; and
 - 21.3.4. Evidence of senior management involvement in support of the failure to comply.
- 22. The OGA, having considered the factors listed above (to the extent they are relevant) and any other circumstances relevant to the particular facts under consideration, will determine an appropriate financial penalty – and where any representations have been made in response to a sanction warning notice¹¹, the OGA will have regard to them in determining the amount of financial penalty to be imposed in a sanction notice.

¹⁰ For example, the Infrastructure Code of Practice and the Commercial Code of Practice

¹¹ Energy Act 2016, section 49



Copyright © Oil and Gas Authority 2017

Oil and Gas Authority is a limited company registered in England and Wales with registered number 09666504 and VAT registered number 249433979. Our registered office is at 21 Bloomsbury Street, London, United Kingdom, WC1B 3HF

ogauthority.co.uk