



Implementing the Wood Review Recommendations

Call for views on how to implement the Wood
Review recommendations to maximise economic
recovery of the UK Continental Shelf

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Contents

Introduction	4
1. Setting up the Oil and Gas Authority: Governance and Scope	8
1.1 The OGA's Remit	9
1.2 Establishing the Authority	9
Question	10
2. Delivering Maximising Economic Recovery from the UKCS	11
Question	14
3. New Regulatory Powers for the OGA	15
3.1 Meeting Access	155
Questions.....	16
3.2 Sharing Data and Information.....	16
Questions.....	17
3.3 Dispute Resolution	18
Questions.....	20
3.4 Reviewing Existing Powers	20
Question	20
4. Sanctions Regime.....	21
Questions.....	22
5. Cost Recovery	23
Questions.....	25
Annex A: List of Questions.....	26
Annex B: Glossary of Terms	27
Annex C: Glossary of Terms	30

Introduction

The Wood Review

In June 2013 the Secretary of State for Energy and Climate Change, Edward Davey, tasked Sir Ian Wood to conduct an independently-led review of UK Continental Shelf (**UKCS**) oil and gas recovery.¹ The UK's oil and gas sector makes a substantial contribution to the economy, supporting around 450,000 jobs,² and supplies the UK with more than half of the oil and gas we use.³ It is vital, both for Britain's energy security and long-term economic outlook, that steps are taken to maximise the economic recovery of our indigenous hydrocarbon reserves. This approach is consistent with the Government's decarbonisation objectives. While we continue to decarbonise and transition into a low carbon economy, the Government's Carbon Plan⁴ has shown Britain will continue to need significant oil and gas supplies.

Sir Ian published the Wood Review⁵ in February 2014. The Review made four main recommendations to maximise economic recovery from the UKCS:

- Government and Industry should develop and commit to a new strategy for Maximising Economic Recovery from the UKCS (**MER UK**);
- Stewardship of the UKCS should move to a new better resourced arm's length body, funded by Industry;
- The body should be provided with additional powers to implement MER UK; and
- The new body should work with Industry to develop and implement new sector strategies, such as on exploration and decommissioning cost reduction.

Government Response and progress to date

Sir Ian Wood reported on the outcome of his review to a meeting of The Cabinet which took place in Aberdeen on 24 February 2014. The Government welcomed and accepted his report and recommendations and has made significant progress in taking forward work on the main recommendations as follows:

- The Government has formed an Interim Advisory Panel, chaired by Sir Ian Wood and attended by industry and Government representatives. The Panel, which has met several times, has a role in advising on Wood Review implementation.

¹ Announcement and Written Ministerial Statement <https://www.gov.uk/oil-and-gas-review-of-uk-offshore-oil-and-gas-recovery>

² *Economic Report 2013*. Oil & Gas UK. 2013. <https://cld.bz/N6D1Taa#6>

³ *Energy Trends*: Tables 1.3a & 1.3b. DECC. June 2013. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208560/et_june_2013.PDF

⁴ Government Carbon Plan <https://www.gov.uk/government/publications/the-carbon-plan-reducing-greenhouse-gas-emissions--2>

⁵ *UKCS Maximising Recovery Review: Final Report*. Sir Ian Wood. 24 February 2014 <http://www.woodreview.co.uk/>

- In July, the Government published its **formal response to the review**, setting out the proposed approach to implementing the review's recommendations. There are two key strands to this: establishing the OGA in law, as the successor to DECC, with the appropriate objectives, duties, powers and functions; and taking practical steps to get the OGA up and running as quickly as possible.
- The **final corporate structure** of the new regulatory body has been determined. The Oil and Gas Authority (**OGA**) will be a Government Company (**GovCo**), headquartered in Aberdeen with a significant presence in London. Subject to the successful appointment of a CEO, in spring 2015 the OGA will be established, initially as an Executive Agency (**EA**) which, subject to the next Government's legislative programme and the approval of Parliament, will then transition to a GovCo by summer 2016.
- **A CEO** that will lead and shape the OGA has been appointed. We will also shortly launch a **recruitment competition for the chair** of the OGA. The chair will subsequently lead the process of bringing together the OGA's board.
- The first part of putting the OGA on a legal footing has been initiated by the introduction into the **Infrastructure Bill** in July 2014 of clauses, which give the Secretary of State a duty, in consultation with industry, to publish a strategy for the achievement of MER UK and providing the Secretary of State with a power to raise a levy to provide stable funding for the OGA. The Infrastructure Bill is expected to pass into law next year.
- DECC is now in the early stages of work to prepare a **bill for the first session of the new Parliament** in 2015 (first session Bill), which will complete the establishment of the OGA as a fully arms'-length steward and regulator of the UK's oil and gas reserves. This involves developing and defining the objectives, duties, powers and functions that the new body will need in line with the Wood review recommendations and ensuring the smooth transfer of functions from DECC. The passage of any future legislation will be a matter for the Government of the day to determine, but DECC's objective is to have a draft first session bill, consulted on and ready for introduction very early in the new Parliament's programme. **This call for evidence is a key part of the preparation for this legislation.**
- Finally, in anticipation of the establishment of the OGA as an executive agency, DECC is actively recruiting specialist staff to fill vacancies and start to build the technical capacity of our teams, to give the OGA the best start possible.

Scope of this document

To ensure the OGA is a competent and influential regulator we will need to provide it with the tools and capabilities to make effective decisions, and to influence the oil and gas sector in order to implement MER UK effectively. To provide the OGA with these powers, we must explain to Parliament why they are necessary, proportionate and can be practically implemented, supported by a sound evidence base. We are, therefore, publishing this call for evidence to engage with, and give all relevant and interested, parties an opportunity to support our policy making by providing views and evidence as to how the Wood Review recommendations should be implemented. The purpose of this call for evidence is to seek views on how to put in place the recommendations of Sir Ian's report. It is not our intention to reopen questions addressed by the report.

In the spirit of the tripartite approach endorsed in the Wood Review, we would like to invite your comments on *how* we should implement the Wood Review's recommendations to ensure the OGA can fulfil its new and vital mission. We ask that, where possible, you provide evidence to support your responses.

This document is structured as follows:

Chapter 1 details the progress made on developing the governance, scope and remit of the OGA.

Chapters 2 - 5 set out:

- Potential characteristics of the MER UK strategy that will complement the legislation.
- Our current considerations regarding how the recommendations might be implemented in legislation.

Implementing MER UK for the onshore oil and gas sector

The Government Response affirmed our intention to extend MER UK principles to the recovery of onshore petroleum and to develop a separate strategy for this environment. The proposed duty to establish a strategy for the achievement of MER UK, set out in the Infrastructure Bill, which is currently being considered by Parliament, applies only to offshore oil and gas reserves.

The current nascent state of the unconventional oil and gas industry onshore means that it would be difficult to establish a clear and stable equivalent of the MER UK strategy for the onshore environment at this time. Nor is the need for such a strategy as pressing as it is offshore, where the maturity of the UKCS is creating new and urgent challenges. The Government will work with the OGA and industry to address the question in due course.

However, it is the intention that the OGA will take on all of DECC's current petroleum licensing functions, onshore and offshore and accordingly it intends that the levy making powers described above will apply to all holders of UK petroleum licences.

How to Respond, Next Steps and Implementation Timeline

On 11 November 2014 the consultation will be officially launched by DECC Ministers. As part of the call for evidence process, a number of workshops will be held to enable the questions raised in this document to be discussed in detail and for further evidence to be gathered. These workshops will take place in Aberdeen on 19 and 20 November 2014, London on 21 November 2014 and Norwich on 26 November 2014 with further sessions to be scheduled in December 2014. To register your interest in attending the workshops and for further information on them please visit <https://www.gov.uk/government/groups/wood-review-implementation-team>.

Key next steps are below:

Milestone:	Timescale:
Call for Evidence opens	6 November 2014
Launch Event	11 November 2014
Workshops (1 st round)	Mid-November 2014
Workshops (2 nd round)	Early December 2014
Call for Evidence closes	31 December 2014
Government response	Spring 2015
Shadow body operational	April 2015
Royal Assent for Infrastructure Bill (new powers in place)	April/May 2015 (subject to Parliament)
Policy development	Spring 2015
First Session Bill ready for introduction to Parliament	Summer 2015

The call for evidence will close on 31 December 2014. If you would like to respond we invite you to use the e-consultation form especially produced for this process, which can be found at: <https://econsultation.decc.gov.uk/decc-executive/wood-review-implementation-call-for-evidence>.

Alternatively, you can submit your comments by email to woodreviewimplementation@decc.gsi.gov.uk or in writing at the following address:

Wood Review Implementation Team

Area 3B, DECC

3 Whitehall Place

London

SW1A 2AW

Please note that due to the timescales we are working to we will not be able to grant any extensions beyond this date.

1. Setting up the Oil and Gas Authority: Governance and Scope

The Government intends to establish a new body, the OGA, to undertake the regulation of the UK's oil and gas reserves. It will have its headquarters in Aberdeen but will also require a substantial presence in London.

In its final form, the OGA will be established as a GovCo⁶ providing the operational freedoms from Government that it needs to be fully effective in meeting its objectives. DECC is now in the early stages of work to prepare a bill for the first session of the new Parliament in 2015, which will establish the OGA as a fully arms'-length steward and regulator of the UK's oil and gas reserves. This involves developing and defining the objectives, duties, powers and functions that the new body will need in line with the Wood Review recommendations and ensuring the smooth transfer of functions from DECC. The passage of any future legislation will be a matter for the Government of the day to determine, but DECC's objective is to have a draft first session Bill ready for introduction very early in the new Parliament's programme. The Government aim is for the OGA to be fully vested as a GovCo by summer 2016.

Initially, as an EA, the OGA will operate as an arm's-length agency of DECC taking over the current work programme of DECC's Licensing, Exploration and Development team and exercising its powers and functions on behalf of the Secretary of State. Once the current Infrastructure Bill achieves Royal Assent and the MER UK strategy and levy making powers are enacted, the OGA, operating as an EA will also be responsible for ensuring compliance with this legislation and for carrying out any necessary enforcement activity.

In line with the MER UK clauses in the Infrastructure Bill, once the MER UK strategy has been developed and approved by Parliament, the OGA and relevant parties will have an obligation to comply with it. The EA will be responsible for delivering specific outputs within a framework of accountabilities to Ministers. Recognising that EA status is a temporary step on the way to becoming a GovCo, DECC is committed to designing the framework of accountabilities to reflect, as closely as possible, the governance arrangements of the final GovCo. This will ensure the maximum possible operational independence of the OGA as an EA and will allow it to operate, so far as is possible, as it will as a GovCo in due course.

Work is currently underway to establish the OGA in its interim form as an EA. A detailed governance plan is being developed, outlining the EA's powers, responsibilities and accountabilities, recognising, as noted above, that it is an interim step towards the OGA becoming a GovCo. This plan will be set out within the OGA's Framework Document (which will explain the operating relationship between the OGA and SoS), which will come into effect once agreed across Government. As previously stated, we expect this to occur in spring 2015.

⁶ A private company, limited by shares, under the Companies Act 2006, with the Secretary of State of DECC as the sole shareholder.

1.1 The OGA's Remit

The OGA will be a strong, effective steward and regulator, using its influence and powers as a last resort for the good of the UK.

To do so, the OGA will:

- Work proactively with Industry and Government to develop and deliver a coherent tripartite agreed, long-term MER UK Strategy;
- ensure individual licence holders, and Industry more generally, are held to account for their performance and act in accordance with the MER UK Strategy;
- encourage, facilitate and support collaboration across Industry, ultimately using its powers as necessary, having regard to competition law, to require behaviours which will deliver MER UK; and
- provide advice and expertise to Industry and Government.

The OGA will fulfil all of the functions currently carried out by LED, including:

- Exercising its functions, such as awarding petroleum licences and issuing consents for related activity;
- applying powers as necessary to regulate third party access to upstream petroleum infrastructure;
- promoting sound commercial behaviours and efficient use of infrastructure, information and technology;
- working collectively with Industry and HM Treasury and with individual companies to maximise the commercial value of fields and the UK's petroleum resources as a whole;
- working with Industry on upstream emergency plans that are relevant to security of energy supplies; and
- providing input to longer term plans for gas storage and carbon capture.

1.2 Establishing the OGA

As noted above, the OGA will ultimately be established as a GovCo, and we are aiming for this to take place by summer 2016. The GovCo will be a private company, limited by shares, with the DECC Secretary of State (SoS) as its sole-shareholder. By virtue of this, the SoS will have a degree of control over the OGA as resides with the sole-shareholder of any private company; this is appropriate given that it will be delivering Government policy. However, we agree with the Wood Review's rationale for an arm's-length regulatory body being responsible for the management of the UKCS, rather than DECC. As such, the OGA will have the necessary level of independence to develop its own strategies and plans and to carry out its day to day operations in line with its agreed objectives. Crucially, it will have the means to be able to recruit the right calibre of staff, in both leadership and specialist technical functions, within a high level pay framework, agreed from time to time with the SoS.

As with other arm's-length regulators, we intend to establish both the OGA's powers, and a set of important legal controls, that the SoS will require over the body, in legislation and within the OGA's governance documents. We are currently working to develop the necessary governance documents in parallel with this legislation.

This work will identify the fundamental legislation necessary for the OGA to operate efficiently as a GovCo, which may include the following:

- **Purpose:** the legislation will need to make clear the purpose of the OGA in order to establish the space in which it will be lawful for it to operate.
- **Framework of control:** the legislation will set out the relationship between the OGA and Ministers and Parliament. It will need to specify in detail the nature of the strategic relationship between the OGA and Government and Parliament, as reflected in governance arrangements for the OGA. This will include how and by whom its board is appointed and how the board's accountabilities and reporting should operate. In line with the constitution established for most existing sectoral regulators, it is likely that the SoS will have a power, *in extremis*, to direct the OGA. Powers of direction usually exist to allow the elected Government of the day to ensure that arm's-length bodies do not exceed their powers and act in accordance with the wishes of the Government. This set of statutory relationships will be underpinned by a Framework Document (or equivalent) which will set out in detail the delegated freedoms that the OGA will enjoy. This arrangement will also need to be mirrored in the Memorandum and Articles of Association that the OGA will require commensurate with its status as a private limited company. The legislation will establish how the OGA is to be funded and to whom the OGA is accountable for the use of public funds.
- **Duties:** The OGA will adhere to all legislation that affects it, for example regulations concerning oil and gas as well as general regulations affecting all businesses such as health and safety and competition law.
- **Powers:** The Wood Review supports the use by the OGA of the full range of relevant existing powers available to DECC, for example the powers set out in the Petroleum Act (1998), which permit the SoS to issue licences, alongside some new powers, for example the power of the OGA to attend licence consortia meetings. The relevant existing statutory powers that DECC is currently able to use, in order to perform its oil and gas management functions, will need to be transferred from the SoS to the OGA.

Question

Do you foresee any unintended consequences with the intention set out? If so why? Please provide evidence and examples where possible.

2. Delivering Maximising Economic Recovery from the UKCS

The Wood Review concluded that a new holistic approach is needed to maximise economic recovery in the UKCS. This new approach underpins the MER UK Strategy, which the Government welcomed in its response to the report.

The Wood Review noted:

The Report details the key principles of MER UK central to which will be the regulator exercising its functions with a view to securing the maximum amount of economically recoverable petroleum from UK waters, and licence holders required to act in a manner best calculated to give rise to the recovery of the maximum amount of petroleum from UK waters as a whole, not just recoverable under their own licences.”⁷

The MER UK strategy requires tripartite working between the OGA, HM Treasury and Industry to maximise the significant economic and energy security opportunities still offered by the UKCS. The core principles and sector strategies described in the Wood Review provide the building blocks of the overarching MER UK strategy.

2.1 Government’s Response

Government accepted the core principles recommended by the Wood Review and is taking steps to establish the MER UK principles in statute. This is being achieved via clauses in the Infrastructure Bill, which is currently under Parliamentary consideration. Clause 30 establishes the “principle objective” as:

“... maximising the economic recovery of UK petroleum, in particular through –

- (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”.*

⁷ UKCS Maximising Recovery Review: Final Report. Sir Ian Wood. 24 February 2014, page 6
<http://www.woodreview.co.uk/>

There is a requirement on the SoS, to produce a MER UK Strategy to deliver MER UK. The clauses ensure that the SoS, as well as petroleum licence holders, operators appointed under those licences, owners of upstream petroleum infrastructure and those planning and carrying out the commissioning of upstream petroleum infrastructure, are required to adhere to the MER UK Strategy.

The MER UK Strategy is therefore a crucial document that commits the OGA, Government and Industry to work collaboratively to deliver MER UK.⁸ The clauses establish a robust framework for delivering an effective MER UK Strategy within 12 months of commencement of the Infrastructure Bill clauses. When developing the Strategy, a draft must be consulted on, any representations made in relation to the draft must be considered, and then a final draft presented for Parliamentary scrutiny, before the MER UK Strategy can be brought into force.

Given the central importance of the MER UK Strategy, and the fact that, subject to Parliamentary approval, there will be commitments from all parts of the tripartite arrangement to act in accordance with it, it is essential that it is subjected to detailed consideration. The process to produce the MER UK Strategy will be led by the OGA (once it is established) and will take some time to complete. However, we want to begin early discussions now on the high level principles, definition and scope of the Strategy, to inform the OGA's thinking on these issues. Starting this process now will help us ensure that we provide the OGA with the right powers to implement the Strategy.

To secure these powers within legislation, we need to set the parameters within which they will be used, providing the OGA with the required freedoms and Industry with the appropriate amount of protection by ensuring the powers are not too wide-reaching. In addition, it is difficult to have a detailed discussion on the proposed powers in the following chapters of this Call for Evidence without an indication of the likely requirements industry and the OGA will face in relation to the MER UK strategy.

This Call for Evidence therefore, asks for your views on the scope and definition of the MER UK strategy, and our initial proposals for underlying guiding principles which will enable MER UK to be delivered. In setting out these proposals we have attempted to strike a balance between creating principles that give clarity over what behaviours would deliver outcomes consistent with MER UK, without being overly prescriptive to the extent that it becomes an "operational" guide that could stifle innovation.

For the purposes of this call for evidence, below is an illustrative example of the relevant defining components of the strategy.

⁸ The MER UK Strategy should not be confused with the six Sector Strategies recommended in the Wood Review. The sector strategies are more detailed operational documents which will set out to address the specific challenges facing the UKCS.

Maximising Economic Recovery of UKCS Hydrocarbons

1. Definition

MER UK may be defined as maximising the cost-effective recovery of oil and gas from the UKCS, in order to maximise long-term added value to the UK as a whole.

All companies¹ within the industry will be motivated and/or required to work individually and in collaboration with others in such a way as to maximise the overall ultimate economic recovery of oil and gas from their own and other companies' licence areas, and so that the companies receive a reasonable economic return on their investment.

The benefits of MER UK will accrue through enhanced public and commercial¹ value, tax revenues, enhanced security of supply of primary fuels and key chemical feedstocks, import substitution and the direct and indirect benefits of hosting a substantial and in some regards, world-leading oil and gas industry and its supply chain in the UK.

In delivering MER UK, the OGA will work with the UK Government and the Devolved Administrations to contribute to maximising the spill over opportunities and benefits for the UK economy (for example in jobs, growth, skills, R&D and innovation, and exports) that flow from hosting a substantial and strongly rooted oil and gas industry across the UK. The aim of all partners, working together will be to sustain and further grow this key industrial sector and anchor it more firmly in the UK for the long term.

This MER UK strategy guides all parties to work to optimise these benefits for the good of the UK as a whole.

2. Approach

The achievement of MER UK will be guided by the following approach:

- Tripartite arrangement: Government – DECC, the OGA and HM Treasury - and industry will work together to maximise the economic recovery of oil and gas from the UKCS and so increase the returns to all participants in the long run.
- Collaboration: operators and licence holders¹ will start from a default position in which they will, with an open mind, explore all commercially acceptable avenues for collaborating (within the bounds of competition law) on maximising economic recovery of oil and gas in their fields, surrounding clusters and areas and across the UKCS as a whole consistent with the needs and reasonable expectations of their shareholders.
- In Regulation: the OGA will work as convener, facilitator and coach in motivating, encouraging and promoting behaviour consistent with MER UK. It will resort to the use of its statutory and licence powers where needed to deliver an outcome that is consistent with MER UK.

¹ This includes holders of petroleum licences, operators under petroleum licences, owners of upstream petroleum infrastructure and persons planning and carrying out the commissioning of upstream petroleum infrastructure.

- HMT will retain control of the fiscal framework, but will work with the OGA to ensure that tax and regulatory systems work together to support the MER UK strategy. DECC will proactively maintain open lines of reporting with the OGA.

MER UK all parties must continue to take account of the need for strong safety performance and regulation.

3. MER UK Strategy

For the purposes of this strategy, achieving MER UK will extend to include all stages of the basin's development, including:

- Exploration
- Development
- Production
- Decommissioning

Under the leadership of the OGA, the partners in the tripartite arrangement will work together to set the conditions to maximise economic recovery at each of these stages through:

- Revitalising exploration of the UKCS
- Effective asset stewardship to ensure production efficiency of UKCS assets is at the best international standards
- Collaborating on ways of managing the UKCS on a cluster and area basis so as to enable fields and areas to be operated and exploited optimally
- Collaborating to prolong the life of existing infrastructure, including achieving better and faster outcomes for operators seeking to access existing infrastructure
- Working to ensure that existing technologies are deployed to their full effect and that relevant new technologies and innovations are deployed to support MER UK
- Developing a new strategy, building on the work to extend the lives of existing assets, to achieve decommissioning at the lowest cost and to maximise the benefits of this very substantial opportunity for the UK supply chain
- Working across the basin to contain and reduce costs and so enhancing the international competitiveness of the UKCS.

Recognising the time value of money and the need for investor certainty, the OGA will work with operators and licence holders to ensure that projects are brought forward in good time consistent with a collaborative and more strategic approach to maximising recovery over clusters and areas.

The OGA, working with DECC, HMT and industry will determine and publish its operational priorities for tackling this agenda as well as clarifying success criteria, deliverables and milestones.

Question

Is this a useful start to defining the MER UK strategy, and are there any other factors that need to be considered?

3. New Regulatory Powers for the OGA

To be a strong, effective regulator the OGA will need to be appropriately resourced with knowledge, capability and experience. We recognise that the OGA also needs to be equipped with the right powers, although we intend that the OGA should succeed by influencing, facilitating and convening, only occasionally needing to resort to use of its harder regulatory powers.

The Wood Review recognised that it is appropriate for the OGA to be provided with some additional powers to ensure effective delivery of the MER UK Strategy. In providing the OGA with these new powers, we must ensure that they are fit for purpose and constrained by a degree of protection to prevent them from being used unreasonably and without merit. This Call for Evidence seeks to explore **how** we can provide the OGA with the additional powers recommended by the Wood Review, such that we strike the right balance between allowing it the operational capabilities and freedoms it needs, yet protecting Industry from unnecessary burdens. We are seeking further evidence from stakeholders on this and we would welcome your responses to the questions set out below.

3.1 Meeting Access

3.1.1 Background

The Wood Review recommended that the OGA should have the right to attend Operational and Technical Management Committee meetings as an observer, in order for it to fully understand the challenges faced by industry. In particular, the OGA should be able to attend meetings where matters relating to fulfilling licence obligations are under discussion, matters related to MER UK are being discussed, or meetings relating to an on-going dispute, for which the OGA is providing (or might in the future provide) dispute resolution. The purpose of this is to inform the OGA in its management of the UKCS, allowing it to better understand the challenges faced by Industry and to work with Industry to resolve issues from an earlier stage.

3.1.2 Government's Response

Government agreed with this recommendation and committed to consider what powers the OGA would need to ensure it could attend Industry meetings.

3.1.3 Other Jurisdictions

In the Netherlands and Norway, the state regulators frequently attend Operational and Technical Management Committee meetings. The Norwegian Petroleum Directorate (**NPD**), which holds the function of regulating the Norwegian Continental Shelf, holds observer status, without voting rights, at these meetings. They are able to submit questions and have questions posed to them. A similar arrangement in the UK could encourage effective collaboration and promote behaviours that deliver MER UK.

The IT portal discussed in section 3.2 ensures that information that is useful in decision making, which may not be raised at the meetings attended by the NPD, is still available to them and able to be taken into account.

3.1.4 Attending Meetings in Practice

Attendance of every meeting would not be an efficient use of the OGA's time, particularly in cases where operators are behaving in accordance with the MER UK Strategy. The OGA should adopt a targeted approach to attend meetings, primarily where there are concerns related to delivering MER UK or where disputes are discussed. The OGA should be able to attend meetings between parties operating under joint venture or those where one company is operating alone.

To allow the OGA to decide which meetings to prioritise, and to protect licence holders' freedom to define their own decision making structures, the power to attend meetings should not specifically define which meetings are in scope. However, in accordance with the principles of Better Regulation, we must also avoid taking powers which are too broad. In practice, it is expected that the tripartite approach will create a collaborative relationship between the OGA and Industry, and invitations to relevant meetings will be forthcoming. Nevertheless, the OGA will require a power to ensure that it is not locked out of meetings important to the delivery of MER UK.

Questions

Our current intention is to provide the OGA with a general power to attend all meetings, where issues are discussed that may impact on MER UK. The OGA will be able to require Industry to inform it in advance of key meetings, including Operational Committee meetings and Technical Committee meetings, and to provide it with agendas and papers. It will then be for the OGA to prioritise which meetings it attends. Failure by the company to advise OGA of forthcoming meetings and to provide the paperwork, and unreasonably withholding access for the OGA to attend meetings may result in the OGA using sanctions against the company.

- a) Do you agree with Government's current intention?
- b) How can the OGA ensure that important issues are not omitted from the agendas of meetings it attends?

3.2 Sharing Data and Information

3.2.1 Background

The Wood Review recommended that, in order to give full effect to its recommendations, the OGA should have the power to access appropriate and sufficient data from licence holders. This is all the more important in an industry which relies on good data to create value and support its safe operation.

3.2.2 Government's Response

The Government agreed with the principle that provision of good data promotes investment, creates value and supports safe operations. Further, it expressed its commitment to increasing the transparency and access to data and to ensure appropriate powers, resources and enforcement procedures are in place to facilitate the sharing of data. The Government notes that it already has wide powers to access data from licence holders.

3.2.4 Access to data under Licences

The sharing of data is a key part of the tripartite approach envisaged in the Wood Review and will inform the OGA and HM Treasury in the development of the MER UK strategy and fiscal environment. It should also help to promote exploration and development activity.

DECC currently has the power to require access to any data pertinent to the terms of a licence. Such data relates to production, asset stewardship, asset production efficiency and recovery efficiency, and includes geological, geophysical and seismic data. Current licences require that this data is made public after three years, a recent reduction from five years, which was reduced with the agreement of licence holders.

Not all licence holders provide this data to DECC or provide it swiftly. The timely provision of this data to the OGA should become the norm so as to avoid the OGA wasting resources on making further specific requests. The Wood Review recommends that production data should be provided monthly, within three weeks of the end of each reporting month.

The Wood Review found a need to further shorten the release period for production and seismic data and suggested a period of twelve months, down from three or four years, depending on the terms of individual licenses, and further suggested shortening the period for releasing speculative seismic data from the current ten years. In addition, the Wood Review recommended that when licences are relinquished, all relevant information should be passed to the OGA for the benefit of future licensees, as is the practice in Norway. The collection of such 'added value data' by the OGA would require an additional power.

3.2.3 Other Jurisdictions

The NPD uses an IT portal which allows licence holders to upload all discussion documents to a secure web space, accessible by the NPD. During and immediately preceding licencing rounds, the NPD follows negotiations between consortia partners, allowing the regulator to be better informed of the commercial environment than DECC is currently able to be.

The NPD website and mobile apps provide a wealth of data for public access; geographical datasets, wellbore statistics and field production information are presented in a clearly organised and accessible format. Such transparency underpins and promotes a more collaborative culture between government and industry. A similar platform for the UKCS could assist the tripartite approach envisioned in the Wood Review.

Data collected by the NPD is released depending on its commercial sensitivity, with a rule that interpreted data is more commercially sensitive.

3.2.5 Compliance

Not all licence holders currently comply with data requests. Given the importance of data to the market, transparency is a key part of the MER UK Strategy. Refusal to give access to data as set down in licences must therefore be considered a breach of licence conditions and the MER UK Strategy, and offending individuals and companies will be subject to the sanctions regime detailed in Chapter 4.

Questions

- a) What data is needed to further MER UK and after what length of time is it most appropriate to share?
- b) What considerations should be taken into account when developing the Wood Review recommendation for reducing the release timeframe for speculative seismic data? Should different considerations apply to 2D, 3D and 4D data?
- c) How can reporting be timetabled so as to minimise burden on licence holders whilst maintaining a supply of relevant and up-to-date data?

3.3 Dispute Resolution

3.3.1 Background

The Wood Review found that a significant number of disputes on commercial and technical issues including, but not limited to, access to processing and transport infrastructure and new field cluster developments, had the potential to impact on MER UK. As a solution, it was recommended that the OGA should work with Industry to develop protocols and processes for dispute resolution including the use of expert assessors where appropriate, noting that legislation already exists to allow the SoS to impose terms in third party access disputes. It was further recommended that the OGA should be provided with a power to resolve such disputes by making a non-binding recommendation to the parties, who could be subject to sanctions for a breach of MER UK, or other licence clauses, if they failed to accept the opinion.

3.3.2 Government's Response

Government welcomed the Wood Review's recommendation and agreed that it would be beneficial for the OGA to have an enhanced role in this area. It committed to provide the OGA with the power to resolve disputes and disagreements in good time on matters relevant to licences and MER UK.

3.3.3 The Dispute Resolution Process

The Wood Review suggested the scope of the OGA's dispute resolution processes should;

- be capable of determining disputes arising out of matters relevant to the licence and/or in relation to potential for collaboration;
- apply to disputes brought to the OGA within six months of the disagreement;
- apply to disputes within licence holding consortia; and
- result in a non-binding determination, which might be subject to sanction but would not prejudice the normal legal rights of the parties

The new dispute resolution power could be provided for in further legislation in a number of ways.

- (i) Setting out the whole scheme within legislation, as the third party access scheme is.
- (ii) Defining the scheme within legislation, setting parameters such as the scope of the scheme, referral requirements, applicable time limits and sanctions, and powers to require information, and allowing the OGA to define the detailed process by which it will determine disputes including the use of independent assessors. This is similar to the way in which OFCOM's dispute resolution scheme is set up.

Whilst it is our intention to provide the OGA with independence in its decision making, it would not be possible, nor would it be good law, to provide it with a broad power to create its own dispute resolution process, without setting parameters around the way that power should be used. This provides a degree of certainty to Parliament that the powers will be used appropriately, as well as protections to Industry.

We feel that option (ii) above provides both the required independence for the OGA and the industry protections needed and we would welcome your views on its viability and the necessary parameters below.

3.3.4 Necessary Parameters

- **Scope and Parties** - Other regulatory dispute resolution processes are restricted in their scope to specific types of dispute⁹ and the parties that may refer a dispute. The Government intends that the OGA should have the ability to require parties to enter the dispute resolution process and seeks evidence on who else should be able to initiate the process.
- **Timeframes** – Dispute resolution processes are usually structured and subject to deadlines for initiating the resolution process, for providing information and for reaching a conclusion. We would expect parties to bring a dispute to the OGA’s attention without delay and that they would comply with any applicable timeframes during the process to assist the OGA in reaching a swift conclusion. We seek evidence as to when timeframes should apply during the dispute resolution process and also whether it would be appropriate to set a single deadline for the resolution of all types of dispute, and what that should be.
- **Sanctions** - Regulatory sanctions are usually imposed as a result of misconduct by a regulated party, whether that is their behaviour in the regulated market, non-compliance or non-cooperation with either agreed processes or their regulator. The Government intends to make sanctions available for non-compliance with the overall dispute resolution process, such as unreasonable delay or a failure to provide required information. We seek evidence on whether there is merit in this. This is not something currently available with the third party access dispute process, however, this process is open to disruption from unreasonable delays by the parties, something that could work against MER UK.
- **Expert Assessors, Provision of Information etc** - The Wood Review stated that the process for dispute resolution should include the use of expert assessors. The NPD has the power to instruct external consultants and subject experts where necessary or to require companies to undertake studies where such a study would assist it in determining a dispute. It is intended that this would form part of the OGA’s dispute resolution process, and that the costs of the expert assessors would be paid by the parties in dispute.

Additionally, other dispute resolution processes contain powers allowing for specific information to be required and for inspections or studies to be carried out. We intend that the OGA will have the power to require Industry to provide all relevant information that it may need to resolve a dispute. The Government seeks evidence as to what, if any, additional powers should be provided for in the OGA’s dispute resolution process.

Complexity of the Legal and Commercial process

The Wood Review also set out that the Industry should learn from past disputes and be given one year to come up with their solution to simplify the complexity and significantly reduce the time required in UKCS commercial and legal negotiations. The review stated that if the Industry cannot provide a satisfactory framework, the OGA should make and impose its own recommendations. We seek evidence as to what the specific difficulties are with the legal and commercial processes and how they could be addressed by the OGA.

⁹ For example, the DECC Third Party Access dispute process

Questions:

- a) To what degree should Government set the parameters of the OGA's dispute resolution process?
- b) Do you agree that the key parameters set out above are the right ones?

3.4 Reviewing Existing Powers

In parallel with this work, DECC plans to carry out a review of the existing powers available to LED and which will transfer to the OGA. The purpose of this is to ensure the current powers are effective and capable of use under the scheme envisaged for the OGA.

Question:

Do you have any views or evidence on the effectiveness of the existing powers and what could be done to make them more effective?

4. Sanctions Regime

An integral part of the MER UK Strategy is that it should be supported by a sanctions regime that is flexible enough to impose sanctions proportionate to breaches with sufficient powers to ensure compliance. In introducing the MER UK Strategy the Wood Review stated: “*Core to the strategy is: The evolution of the present Regulator to an independent, stronger, more experienced body with broader disciplines and powers*”.

The current sanctions regime was identified as not providing a range of possible sanctions that are proportionate to all levels of breach, consisting only of official notifications and revocation of licences. The new sanctions regime will be applied to both the new powers to be vested in the OGA as well as being used to enforce existing powers.

4.1 Government’s Response

In the official response to the Wood Review, Government noted that some of the current sanctions exist in extreme form (such as licence revocation), making their use difficult and disproportionate in many cases, therefore proposing to create a more graduated regime. Other Regulatory functions provided by Government, such as those under the remit of Ofgem, Ofwat or the Financial Conduct Authority, have a broader range of sanctions available including publicised Improvement Notices and financial penalties, and it is envisaged that the OGA will have a similar suite of sanctions.

4.2 When may sanctions be pursued?

Currently a company is subject to sanction if it is in breach of the Model Clauses. Companies are jointly and severally liable in the event of a breach. The MER UK principles will create a duty for all licence holders and operators, both existing and new, to comply with the MER UK strategy. Where operators or licence holders are part of a joint venture, sanctions will only be applied to those parties acting in conflict with MER UK, to avoid imposing penalties on licence holders and operators who are acting in compliance with the MER UK strategy.

4.3 The Sanctions Process

In keeping with the tripartite approach set out in the Wood Review, any formal sanction would be preceded by discussion between the OGA and the companies involved. If the matter is not resolved, the first step would be for the OGA to issue an informal, private notification to the company/companies. The informal notification would indicate the time period by which the issue should have been rectified, after which the finding of a breach would be made public, and a formal Improvement Notice would be issued. A formal Improvement notice would set out key information on how the company/companies should improve performance. As is the case with other regulatory systems, we expect that a public declaration that a licence holder or operator is in breach will act as a strong deterrent. In the event that Improvement Notices are not sufficient to ensure parties comply with MER UK, the OGA will need access to other sanctions. These are described below.

4.4 Financial Penalties

In addition to the powers proposed by the Wood Review, Government proposes to equip the OGA with the power to impose financial penalties.¹⁰ The Wood Review neither recommended nor advised against the use of financial penalties in a sanctions regime. However, as part of a graduated suite of sanctions, such penalties do provide a proportionate sanction for violations not severe enough to warrant revocation of licence, but where Improvement Notices are not sufficient to deal with the breach. We also note that the Norwegian Government has the power to issue financial penalties to the oil and gas industry. The OGA should have the flexibility to apply the most appropriate sanction to each breach. We would like to seek views on whether or not industry believes financial penalties would be an appropriate enforcement tool for the OGA.

Financial penalties serve three purposes: to penalise wrongdoing; to remove financial benefit from breaching MER UK strategy; and to discourage others from similar action. It would also seem appropriate for a financial penalty to apply if the behaviour of the company was belligerent or uncooperative. This should also serve to deter others from similar courses of action.

As is the case with other Regulators, financial penalties, if introduced, should be capped at a ceiling which retains the deterrent nature of the penalty but remains flexible enough for application to companies of varied sizes and does not drive business away from the UKCS. The size of the actual penalty imposed should be dependent, among other things, on the nature of the breach, including intent or recklessness on behalf of the company, the seriousness of the breach's impact and the affordability of the penalty amount. Government seeks evidence as to what the limits should be for financial penalties and which breaches should attract the highest penalties.

4.5 Further Sanctions

If use of the sanctions listed above are not a sufficient deterrent to compel a licence holder to comply, further sanctions may be necessary. Currently, revocation is limited as a recourse as surface facilities remain the property of the ex-licensees. A solution to make revocation a more realistically usable recourse is to introduce a system by which these facilities can be easily transferred to a new licensee, subject to existing legal protections for the sanctioned party.

At this stage the Regulator should have options available: to suspend, transfer or to revoke the licence. In some circumstances it may be desirable to facilitate the transfer of a licence and the OGA would work with existing licensees to find a new, suitable licensee to take over. The Regulator would carefully consider what the appropriate response would be.

Questions

- a) Are the steps outlined above sufficient to ensure adherence to MR UK Strategy?
- b) Please provide views and evidence on whether financial penalties would be an appropriate and useful enforcement tool for the OGA?

¹⁰ *Government Response to Sir Ian Wood's UKCS: Maximising Economic Recovery Review, p15*
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330927/Wood_Review_Government_Response_Final.pdf

5. Cost Recovery

The Wood Review noted that many regulatory bodies, including Ofgem, Ofcom and Financial Conduct Authority are fully funded by their respective industries and this funding model seems appropriate for the OGA.¹¹

5.1 Government's response

Government agrees with the Wood Review that the challenges of delivering MER UK require the OGA to be significantly better resourced than the current team in DECC and this will require financial flexibility to attract the most experienced and suitable candidates to work in the OGA. To ensure that the OGA will be in a position in future to attract a world class workforce, the Government considers it appropriate that, in the long-term, the OGA should recover its costs from companies regulated by the OGA. However, in the short term, from 2016-17 for a period of 5 years, Government has agreed to contribute £3m per year towards the costs of running the OGA to ensure it is well-funded from the outset, and to demonstrate Government's commitment to the tripartite approach to delivering MER UK.

To fully fund the OGA and the functions it will carry out, Government intends to introduce a full cost-recovery mechanism which will include a set of charges for services, including licence consents and permits,¹² along with a new levy on licence holders to cover the remaining net costs which the OGA will incur. The charges and levy will be cost reflective and will comply with the guidance in *Managing Public Money*. The total income from charges and levy in a financial year will not exceed the best estimate of the costs the OGA will incur in its role as a robust regulator and steward of the UKCS.

Clauses to provide for a levy-making power are included in the Infrastructure Bill which is currently undergoing Parliamentary scrutiny.

5.2 Scope of levy funded activity

DECC already charges companies for some services it provides in relation to licenses and consents. The existing charging powers are set out in section 188 of the Energy Act 2004 and the existing charging structure and levels are set out under the Gas and Petroleum (Consents) Charges Regulations 2013.¹³ Charges covered include a wide scope of services, including approvals of offshore Field Development Plans (FDPs), approvals and authorisation of pipelines and storage facilities, consents to drilling operations, and consideration of a license application. Together, however, the current schedule of charges only recover around 20% of the costs of the regulator in DECC.

Other costs, not currently recovered by DECC, encompass activity required to underpin those services (such as licencing policy, and work to prepare future licence rounds), and activities that benefit, to greater or lesser degree, all licence holders. We also do not recover the costs of

¹¹ *UKCS Maximising Recovery Review: Final Report*. Sir Ian Wood. 24 February 2014 p21
<http://www.woodreview.co.uk/>

¹² <http://www.legislation.gov.uk/ukxi/2013/1138/contents/made>

¹³ <http://www.legislation.gov.uk/ukpga/2004/20/part/4/crossheading/imposition-of-charges> and
http://www.legislation.gov.uk/ukxi/2013/1138/made?utm_source=feedly

activity to support the supply chain, research and development work (for example on innovative techniques for extraction of hydrocarbons) and costs related to collection and dissemination of data (for example surveys in relation to geological work). DECC intends that in the future, all of these costs should be recovered by Petroleum licence holders.

In the future, the OGA will also incur costs in the course of developing the MER UK strategy and implementing the Sector Strategies to maximise recovery of hydrocarbons from the UKCS. DECC intends that, in the future, all of these costs should be recovered by Petroleum licence holders, and provision for this has been made in the clauses added to the Infrastructure Bill.

DECC has reviewed the current charging regime and the set of activities the OGA is expected to undertake and proposes to set charges (under the section 188 of the Energy Act 2004 powers) for two new services the regulator currently undertakes, but for which the costs are not currently recovered. These are the costs associated with extending licences, and the costs for carrying out metering inspections.

Government proposes that the OGA's remaining activities should be recovered via the levy with the intention that the levy should come into effect in October 2015 (subject to Parliament). In this call for evidence DECC is asking for industry's views on the design of the levy to enable firm proposals on how the levy will be allocated among licence holders to be developed for a consultation on draft Regulations in the first quarter of 2015.

At the same time we will also consult industry on proposals to charge for metering inspections and process licence extension requests under revised Gas and Petroleum (Consents) Charges Regulations.

The table attached at annex B sets out our intent for what activities will incur a direct charge as opposed to the costs being recovered through the levy.

5.3 Levy design

In designing the levy, we wish to strike the right balance between simplicity and fairness, while making the costs industry faces as transparent and cost-reflective as possible. We will also ensure the Governance arrangements created for the OGA mitigate against the real or perceived risk that the OGA's decisions are influenced by the amount of levy different companies pay.

The levy-power proposed in the Infrastructure Bill envisages that through Regulations, where there is evidence of cost drivers, a levy could be based on licence acreage or output; different rates could apply to different types of licence (e.g. Exploration licence, Production licence); different ages of licences; or different terms of a licence.

Using such flexibilities could help ensure licence holders' levy rates better reflect the costs associated with the OGA's work in relation to particular licence holders.

We wish to ensure that from the outset there are effective and proportionate controls over the design and setting of the levy, so that the OGA faces adequate pressures to control costs and maximise efficiency. This process will involve the OGA submitting its annual business plans each year for the following financial year to DECC for approval.

- Levy calculation metrics. Licence acreage and production output are the two most obvious metrics to use for determining levy amounts per licence. Government deems that using acreage would be the most appropriate as this could be applied to all licence holders, it would mirror the approach taken for licence rentals, and would reinforce the disincentive to hoard unwanted acreage so that it is available for others. However,

recognising that pre-production licences will not be generating revenue we believe it is appropriate to levy pre-production licence holders at a lower rate per acre, and/or to exclude the costs of certain activities that do not relate to these types of licences, from the rates they will pay. Government deems that it is sensible to apply this principle (of setting different rates per acre and/or excluding certain costs) when setting the rates for different types of licences that the OGA will regulate – whether onshore, offshore, Carbon Dioxide Storage, or Gas Storage. Government will consult in Q1 2015 on the rates per acre we propose to apply to each type of licence.

- Collecting the levy: We believe that the process we use to collect the levy should be simple for both industry and the OGA, while enabling the OGA to remain in a positive cash-flow position.

Our initial views on how we might best achieve this are below. We welcome views and any evidence on our proposals:

- The annual levy rates would be set out in Regulations and would be subject to Parliamentary scrutiny following the “negative resolution” procedure.
- The annual levy for each licence will be paid annually in advance of the start of the financial year, in one single payment.
- The OGA would retain the right to amend the levy rates upwards or downwards within year should unforeseen circumstances lead to outturn costs deviating significantly from expected costs. However, this would entail approval from DECC, as well as the same level of Parliamentary scrutiny required for setting the annual rate.

Questions:

- a) Do you agree that using acreage is the most suitable metric on which to base the levy calculations?
- b) Do you have any comments or observations on our initial proposals for collecting the levy from industry?

Annex A: List of Questions

Chapter Number : Theme	Questions
1: Setting up the Oil and Gas Authority	Do you foresee any unintended consequences with the intention set out? If so why? Please provide evidence and examples where possible.
2: Delivering Maximising Recovery from the UKCS	Is this a useful start to defining the MER UK strategy, and are there any other factors that need to be considered?
3.1: New Regulatory Powers for the Authority – Meeting Access	<ul style="list-style-type: none"> a) Do you agree with Government’s current intention? b) How can the OGA ensure that important issues are not omitted from the agendas of meetings it attends?
3.2: New Regulatory Powers for the Authority – Sharing Data and Information	<ul style="list-style-type: none"> c) What data is needed to further MER UK and after what length of time is it most appropriate to share? d) What considerations should be taken into account when developing the Wood Review recommendation for reducing the release timeframe for speculative seismic data? Should different considerations apply to 2D, 3D and 4D data? e) How can reporting be timetabled so as to minimise burden on licence holders whilst maintaining a supply of relevant and up-to-date data?
3.3: New Regulatory Powers for the Authority – Dispute Resolution	<ul style="list-style-type: none"> a) To what degree should Government set the parameters of the OGA’s dispute resolution process? b) Do you agree that the key parameters set out above are the right ones?
3.4: Reviewing Existing Powers	Do you have any views or evidence on the effectiveness of the existing powers and what could be done to make them more effective?
4: Sanctions Regime	<ul style="list-style-type: none"> a) Are the steps outlined above sufficient to ensure adherence to MR UK Strategy? b) Please provide views and evidence on whether financial penalties would be an appropriate and useful enforcement tool for the OGA?
5: Cost Recovery Mechanism	<ul style="list-style-type: none"> a) Do you agree that using acreage is the most suitable metric on which to base the levy calculations? b) Do you have any comments or observations on our initial proposals for collecting the levy from industry?

ANNEX B: Current and Proposed schedule of direct charges and costs to be recovered under levy

<http://www.legislation.gov.uk/ukxi/2013/1138/contents/made>

Activities <u>currently</u> directly charged for under S.188 Powers	Additional Activities <u>proposed</u> to be charged for directly under S.188 Power	Activities to be recovered by levy.
Approval of an onshore or offshore Field Development Plan (FDP) - including approval to revisions and addenda.	Inspecting metering systems on offshore platforms and onshore production sites.	Developing UKCS Strategy (PILOT / MER UK)
Approval of an offshore Gas Storage Development Plan including approval to revisions and addenda.	Licence extensions	Responding to non-license related / public correspondence and FOI requests
Approval of an offshore carbon dioxide Storage Permit including approval revisions and addenda.		Data: Production returns & projections

Pipeline Works Authorisations and variations thereto.		Operational Licensing Policy
Pipeline deposit consents.		The Field Teams (Non FDP approval work)
<p><u>Consent to drilling operations</u></p> <p>To drill a new well</p> <p>To drill a sidetrack</p> <p>To complete (perforate) a well</p> <p>To suspend a well</p> <p>To re-enter a well</p> <p>To abandon a well</p>		Exploration Team (e.g. Fallow Work)
<p><u>Consent to Licence Changes</u></p> <p>Change of licensee</p> <p>Change of the beneficiary of a petroleum field or subarea</p> <p>Change of the operator of a petroleum field or subarea</p>		Upstream Emergency Planning

Production/Flaring /Vent consents.		Upstream Petroleum Infrastructure Third party access disputes resolution procedures.
Methodology proposed for the measurement of petroleum (PON6 approval)		Other activities not charged for directly within scope of Infrastructure Bill provisions.
Extended Well Tests		

Annex C: Glossary of Terms

DECC – Department of Energy and Climate Change

EA – a Government Executive Agency

First Session Bill - a new Bill that is introduced to Parliament during its first sitting session of its legislative programme

GovCo – a Government Company

HM Treasury – Her Majesty's Treasury

MER UK – Maximising Economic Recovery of the UKCS as recommended in the Wood Review

OGA– the Oil and Gas Authority (the new arm's-length regulatory body for the oil and gas sector)

Tripartite approach – an approach agreed by the Authority, Industry and Government

UKCS – United Kingdom Continental Shelf

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