



Department
of Energy &
Climate Change

Implementing the Wood Review Recommendations

Government Response to 6 November 2014 Call for Evidence on how to
implement the Wood Review recommendations to maximise economic recovery of
oil and gas from the UK Continental Shelf

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Any enquiries regarding this publication should be sent to us at woodreviewimplementation@decc.gsi.gov.uk

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Executive summary

Introduction and overview

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 recovery¹. Sir Ian identified a number of key issues which he sought to address, including rising cost challenges, an increasingly diverse mix of companies operating in the UKCS, who are far more interdependent than before, along with a fall in production, production efficiency and exploration activity.

Sir Ian published his final report² (The Wood Review) in February 2014. The Wood Review made four main recommendations to maximise economic recovery from the UKCS:

- Industry with the Government 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;
- The body should be provided with additional powers to implement MER UK; and
- Industry should work with the new body to develop and implement new sector strategies, such as on exploration and decommissioning cost reduction.

The UK's oil and gas sector continues to make a substantial contribution to the economy, supporting around 375,000 jobs³ and supplies the UK with more than half of the oil and gas we use⁴. It is therefore, vital we continue to move quickly to implement the Wood Review recommendations to maximise economic recovery of our offshore oil and gas reserves, both for Britain's energy security, as well as our long-term economic outlook. 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 Plan⁵ has shown Britain will continue to need significant oil and gas supplies.

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

² *UKCS Maximising Recovery Review: Final Report*. Sir Ian Wood. 24 February 2014 <http://www.woodreview.co.uk/>

³ EY for Oil and Gas UK published in December 2014

⁴ *Energy Trends*: Tables 1.3 December 2014.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386812/ET_Dec_14.pdf

⁵ Government Carbon Plan <https://www.gov.uk/government/publications/the-carbon-plan-reducing-greenhouse-gas-emissions--2>

Scope of Implementing the Wood Review Recommendations Call for Evidence

In July 2014 the Government published its response to the Wood Review, announcing that it would create the Oil and Gas Authority (OGA), in line with Sir Ian's recommendation that stewardship of the UKCS should move to an arm's length body. It is important the Wood Review recommendations are implemented in such a way to empower the OGA to be a competent and influential regulator, equipped with the necessary tools to be able to effectively implement MER UK. It is also important to provide the OGA with the flexibility to deal with the changing needs of the basin and not create too many burdens on business. For this reason, and in line with the tripartite approach endorsed in the Wood Review, the Government undertook an extensive Call for Evidence. The purpose of this Call for Evidence was to seek views from all interested parties on how to implement the recommendations of Sir Ian's report, not to reopen questions addressed by the report itself. Throughout the Call for Evidence we sought practical examples and evidence of the issues currently affecting operations in the North Sea.

Conducting the Call for Evidence Process

The Department for Energy and Climate Change (DECC) carried out a public Call for Evidence for eight weeks, which ran from 6 November through to the 31 December 2014. We held an official launch event on the 11 November 2014 which was attended by both the Rt Hon Matthew Hancock MP, the DECC Secretary of State the Rt Hon Edward Davey MP and a number of industry representatives and other interested parties.

We sought to engage a range of interested parties through the use of the DECC website and bulletins as well as a range of social media tools. In addition, we made sure to publicise the Call for Evidence through industry trade bodies.

DECC held a number of industry workshops, three in Aberdeen and two in London to discuss the questions contained in the Call for Evidence document in greater detail and we very much welcomed the active participation of those who attended.

Key Policy Decisions

Governance and Scope

The Government is committed to creating a strong, effective regulator and the OGA will be established as an Executive Agency on 1 April 2015, before transitioning to a Government Company in summer 2016. The Call for Evidence received strong support for the creation of the OGA as a Government Company. It remains our intention for the OGA to have the operational independence needed for it to effectively perform its functions while it is an Executive Agency. Andy Samuel began his role as Chief Executive of the OGA in January 2015 to design and build the OGA before its establishment as an Executive Agency. Andy continues to recruit his senior leadership team and additional specialist resources, to ensure the OGA will have the capacity and capability it requires to fully deliver its functions as soon as possible.

To effectively respond to the challenges posed to the UKCS, a significant shift in regulatory culture is needed, with a focus on catalysing, encouraging and facilitating collaborative partnerships throughout the sector. The Government has reiterated that the OGA will be a confident, credible and independent regulator, creating long-lasting cultural change within the industry for the ultimate benefit of the UK.

Delivering Maximising Economic Recovery from the UKCS

The Maximising Economic Recovery UK (MER UK) Strategy was a key recommendation from Sir Ian Wood's Review. The Call for Evidence reaffirmed that this will be developed in a tripartite way between industry, the OGA and the Government (DECC and HMT). There was broad agreement that the level of detail of the illustrative draft Strategy contained in the Call for Evidence was appropriate, but most respondents sought clarification in relation to the definition of 'economic' to ensure there is a clear, agreed understanding of the objective the OGA and industry are seeking to achieve. DECC is holding further workshops with all members of the tripartite arrangement to consider the definition and the MER UK Strategy further.

New Regulatory Powers for the OGA

The Government is committed to providing the OGA with the new powers The Wood Review recommended to ensure it is a strong and effective regulator, and to enable delivery of its objectives. The Call for Evidence process provided strong evidence as to how the powers proposed by The Wood Review should be shaped to strike the right balance between allowing the OGA operational capabilities and freedoms, yet protecting industry from unnecessary burdens. The policy positions reached for each of the new powers are set out below and further details are included in chapter 1.

Meeting Access

The Government will ensure the OGA has the right to attend industry meetings as an observer. This will apply to all parties covered by the MER UK Strategy and include meetings between operators within a joint venture, and meetings between licensees, where matters relating to licence obligations or to MER UK are being discussed. We will ensure the OGA has the flexibility to prioritise its attendance of meetings, prioritising those with the most relevance to furthering the objectives of MER UK. Sanctions will be applicable for a failure to comply with the OGA's powers relating to its access to meetings.

Sharing Data and Information

We are currently undertaking a thorough review of current provisions to ensure they remain fit for purpose and to identify where improvements can be made in line with the Wood Review's recommendations. We are therefore proposing to take a fairly broad power in primary legislation, which will allow detailed powers to be developed as the priorities of the OGA become clearer and for further. This will also allow for detailed discussion with industry to ensure disproportionate burdens are not placed on them. We will ensure that the OGA has sufficient powers to gather relevant information from those non-licensee parties captured by the MER UK Strategy. Provision will also be made to allow for sanctions to be imposed for breaches of any data or information obligations.

Dispute Resolution

There is a recognised need for the OGA to have a non-binding role in the resolution of disputes. However, dispute resolution should be seen as a last resort and only used after the parties have made sufficient attempts to reach a resolution, working informally with the OGA. It is important that the OGA has the operational freedom to define the process by which it will consider and resolve disputes. However, the Government will set the scope of the scheme to ensure that the dispute resolution process assists in the delivery of MER UK. Any dispute that relates to licence terms or that impacts, or has the potential to impact, on MER UK may be resolved by the OGA. To ensure that disputes are resolved, any party to the dispute or the OGA will be capable of initiating the process. We will provide the OGA with information gathering powers and the ability to set timeframes for the provision of information, with the aim of speeding up the resolution process. The OGA will also have the power to impose sanctions where parties do not comply with the dispute resolution process.

Reviewing Existing Powers

A review of the existing powers is under way to ensure they remain fit for purpose and, once transferred to it, will sufficiently support the OGA in its role of regulating and stewarding the UKCS. Should the review identify any areas for improvement, the Government is committed to taking this forward.

Sanctions Regime

The Government intends to introduce a more graduated set of sanctions, which will include financial penalties. Sanctions will be applicable to all parties within scope of the MER UK Strategy and will be applicable for breaches of MER UK as well as non-compliance with licence conditions, and with the key powers exercised by the OGA. We are committed to ensuring that sanctions are proportionate so will place a statutory limit of £1 million on individual financial penalties imposed. In case, however, this amount does not prove to be a suitable deterrent in the future, the Government intends to take a reserve power to increase this limit to £5 million, subject to consultation and Parliamentary approval through secondary legislation using the affirmative resolution procedure. To ensure the independence and transparency of the sanctions process, the Government intends to establish an appeals process under the First-tier Tribunal of the General Regulatory Chamber of Her Majesties Courts and Tribunals Service for appeals against sanctions imposed by the OGA.

Cost Recovery

The Government agrees with industry that it is important to ensure that the levy is simple, transparent and cost-reflective. A detailed consultation on final proposals for administering the levy will be published later this month.

In line with the early focus of the OGA, the Government has determined that, initially, the activities and costs which fall under the levy will only relate to Offshore Petroleum Licence holders. The intent is for the OGA to begin collecting the levy in October 2015. The OGA will continue to recover the costs associated with issuing permits and consents via the extant fees and charges regime. However, in accordance with the Principles of HMT's Managing Public Money guidance⁶, the scope of the charges regime will be extended to include some additional activities in due course.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_A_A_v2_-_chapters_annex_web.pdf

Next Steps

We are preparing legislation which, subject to the will of the new Government, will be introduced into Parliament during summer 2015. This legislation will provide the OGA with the additional powers noted above, as well as vesting the OGA with powers as a Government Company. A full impact assessment will accompany the legislation.

The Infrastructure Act 2015, which provides the framework to establish the MER UK Strategy and to create a new levy making power achieved Royal Assent on 12 February 2015. The clauses will be commenced two months later, on 12 April 2015, pursuant to a Commencement Order. In order to provide clarity on the obligations that will stem from the MER UK Strategy, we will continue to work in a tripartite manner to refine and finalise the MER UK Strategy as soon as possible, and certainly ahead of the statutory deadline of 12 April 2016.

In addition, we will publish a detailed consultation on the levy proposals later this month. The consultation will run for four weeks and will help determine the final mechanism by which the levy will be initially apportioned across offshore petroleum licence holders. Regulations will then be laid and subject to the will of Parliament, the OGA will begin collecting the levy in October 2015.

Work has also been ongoing to establish the OGA, which will be launched as an Executive Agency (EA)⁷ on the 1st April 2015, before transitioning to a Government Company (GovCo)⁸ by summer 2016 (subject to the necessary legislative timetable). We have successfully recruited an outstanding Chief Executive Andy Samuel and we have recently appointed Sir Patrick Brown as Chair and are now working to appoint other Board Members as quickly as possible.

Milestone:	Timescale:
Consultation on detailed proposals for the levy is published.	March 2015
OGA launched as an Executive Agency of DECC	April 2015
Legislation introduced to establish the OGA as a Government Company and provide additional powers and functions.	1st session of the new Parliament (June 2015)
OGA begins collecting the levy	October 2015
Statutory deadline for publication of MER UK Strategy	April 2016
Oil and Gas Authority fully established as a Government Company	By Summer 2016

Please note that some of the milestone dates notes above are subject to the will of the new Government and necessary parliamentary procedures.

⁷ Operating as an arm's length agency of DECC and will be responsible for delivering specific outputs within a framework of accountabilities to Ministers.

⁸ A private company, limited by shares, under the Companies Act 2006, with the Secretary of State of DECC as the sole shareholder.

Chapter 1

Detailed Analysis of Call for Evidence Responses and Government Response

1. Governance and Scope

The Call for Evidence document set out our intended approach to establishing the OGA and its governance structures. We invited responses to the following questions:

1. Do you foresee any unintended consequences with the intention set out? If so why?

A summary of the key issues raised and the Government response to each is provided below.

Creation of the OGA

There was strong support from respondents for the creation of the OGA, its purpose, and its establishment in its final form as a Government Company (GovCo). The Government welcomes this support and remains fully committed to establishing the OGA as an effective regulator and steward, with the capacity and capability it requires, as quickly as possible.

Pace of OGA Establishment

We note that some respondents expressed concern that the OGA would not be fully established as a GovCo until 2016, and the potential impact this may have on its effectiveness before this date. It was also the view of a number of respondents that the OGA's senior management team should be put in place urgently to ensure the OGA has an impact as soon as possible. Additionally, respondents emphasised the need for the OGA to have sufficient resources to carry out its functions, and to have the ability to compete with industry to recruit and retain the high calibre staff it requires.

As outlined in the Call for Evidence document, further legislation is required to be passed in the 1st session of the next Parliament, subject to the will of Parliament, before the OGA can be established as a fully empowered GovCo. We expect the OGA to be established in its final form by summer 2016. As a result, and to ensure we address the challenges identified in the Wood Review as soon as possible, the OGA will be established as an Executive Agency (EA) of DECC on 1 April 2015 as a transitional measure. It is intended that the OGA will operate as closely to its final form of a GovCo as possible and this is reflected in the Framework Document⁹ that will be published upon its establishment as an EA.

⁹ A document detailing the operating relationship between the OGA and Secretary of State, which will come into effect once agreed across Government

The Secretary of State for Energy and Climate Change has appointed Andy Samuel as Chief Executive, and recently appointed Sir Patrick Brown as the Chair of the OGA's Board. Andy Samuel took up his post in January 2015 and has spent his first weeks designing and building the new organisation he will lead.

We have also been recruiting for other key posts to increase the capacity and capability of the OGA since the Wood Review was published in February 2014. This recruitment is on-going and we are confident that the OGA will have the freedoms necessary to compete with industry to recruit and retain the high calibre staff it requires.

Meeting the Costs of the OGA

It is noted that a small number of respondents remain opposed to the OGA being funded by industry.

While the Government recognises that no cost increases are welcome for an industry that already faces considerable cost challenges, we believe that in the long-term it is right, and consistent with the 'user pays' principle, which is common in other sectors, that the industry pays the costs of the regulator. However, the Government will continue to support the body with £3 million per annum from 2016/17 for five years to demonstrate its commitment to the tripartite approach, acknowledge the work the OGA will be doing for the Government as well as industry, and help realise the other benefits outlined in the Wood Review.

Furthermore, the Government believes that the relatively modest costs incurred will provide the necessary income required by the OGA to ensure it retains the capacity and capabilities it needs to be effective, and will be paid back over time by improved performance across the UKCS.

Monitoring the OGA's Performance

Some respondents highlighted the need for the OGA's key performance indicators to be published to ensure transparency and to allow industry to input into their development. Some respondents suggested this engagement could take the form of "user watchdogs" or other forums for industry to monitor the performance of the OGA.

The Government will publish the OGA's objectives and key performance indicators to ensure its performance can be monitored, and on establishment the OGA as an EA will publish a business plan, which will set out its priorities for 2015/16. The OGA will engage with industry as it develops its performance indicators.

Industry is currently represented on the OGA's Programme Board and will continue to be engaged on the delivery of the MER UK Strategy, and the OGA's role in this.

The Need for Transparency of Roles in the Oil and Gas Sector and a Rationalisation of Industry Forums

A number of respondents stated that while the creation of the OGA was welcome, it added to an already crowded mix of government departments and other bodies with an interest in the oil and gas sector. Respondents identified the need for transparency regarding the roles and responsibilities between the various organisations, for example between DECC and the OGA. Respondents also indicated that the introduction of the OGA could be used to rationalise and reform the number of industry forums that exist in the oil and gas sector.

The OGA's Framework Document, which will be published alongside its establishment in April 2015, will clearly set out the roles and responsibilities of both the OGA and DECC, as well as setting out how the OGA will engage with other bodies. As part of its leadership role in the UK's offshore oil and gas industry, the OGA will work with the tripartite and other stakeholders to ensure the most effective and efficient processes are in place to support the delivery of MER UK.

On 15 January 2015, in light of the fall in global oil prices, the Government asked Andy Samuel to lead an urgent commission to identify key risks to oil and gas production in the UKCS and to identify what further measures might be taken by the Government and industry to mitigate them.¹⁰ The OGA published its response to this commission on 25 February 2015,¹¹ which set out a number of actions for the OGA, industry and the Government. One specific action involves assessing how the good work of PILOT and other industry forums can be used in a coordinated and focused manner to ensure they best support the delivery of MER UK. The response also outlined key priorities for the OGA for its first year of operation.

Conflict of Interest

A minority of responses to the Call for Evidence highlighted concerns about possible conflicts of interest within the OGA. Primarily, the OGA will be a convenor and facilitator, bringing industry together to try and achieve the aims of MER UK. However, alongside this role, the OGA will also have a suite of regulatory powers which it is likely to need in certain circumstances. To remove any risk of real or perceived conflicts, we will ensure appropriate separation between the OGA's investigative and enforcement functions, providing transparency and mitigating the risk of conflicts of interest.

Powers of Direction

In addition, an issue not specifically focused on during the Call for Evidence, but which is important to address in the governance of the OGA in its final GovCo form, is the appropriateness for the Secretary of State to maintain directional powers over the OGA. We envisage these may be necessary in circumstances where broader reputational, financial or national interests, or national security are at stake.

¹⁰ <https://www.gov.uk/government/news/edward-davey-asks-new-oil-and-gas-authority-ceo-to-lead-urgent-commission-into-north-sea-industry>

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406680/Call_to_Action_-_The_OGA_Commission_2015.pdf

As an EA of DECC, the OGA will exercise the powers of the Secretary of State and, where necessary, will act under the direction of the Secretary of State. However, in its final form, the OGA will have a separate legal identity and will not be capable of exercising the Secretary of State's powers. Following the precedent set by other regulators and arms' length bodies, we will legislate to provide the Secretary of State with the power to direct the OGA in the handling of issues in the national interest of the UK or which constitute a concern to national security. To note, these powers would only be used in exceptional circumstances.

Onshore Role

The Call for Evidence document reaffirmed our intention that the OGA will take on all of DECC's current petroleum licensing functions with regards to the onshore sector. However, due to the current nascent state of the unconventional oil and gas industry onshore we do not think this is the appropriate time to develop the equivalent of the MER UK Strategy for the onshore environment. 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 of maximising onshore recovery in due course.

Following the Scottish referendum on independence, the Smith Commission published its report detailing the Heads of Agreement on further devolution of powers to the Scottish Parliament. One of the Heads of Agreement was for the licencing of onshore oil and gas extraction to be devolved. It is not yet clear how this power will be exercised in Scotland but we will continue to set up the OGA as a reserved body, with flexibility to provide this service if required by the Scottish Government.

2. Delivering MER UK

The Wood Review recommended a new holistic approach to maximising the economic recovery of our offshore oil and gas reserves. This new approach underpins the MER UK Strategy, which the Government welcomed in its response to the Wood Review.

Clauses providing for a Principal Objective of Maximising Economic Recovery of UK (MER UK) Petroleum were scrutinised by Parliament as part of the Infrastructure Bill. The Bill achieved Royal Assent on the 12 February and will be commenced two months later, on 12 April 2015, pursuant to a Commencement Order.

The "MER UK" clause requires the Secretary of State to produce a strategy for enabling the principal objective to be met. The clause also places a duty on the Secretary of State to carry out his relevant functions in accordance with the strategy. Duties are also imposed on holders of petroleum licences, operators appointed under those licences, owners of upstream petroleum infrastructure and persons planning and carrying out the commissioning of upstream petroleum infrastructure, to carry out certain identified activities in accordance with the strategy.

The MER UK Strategy (the Strategy) will be a crucial document that commits the OGA, the Government and Industry to work collaboratively to maximise economic recovery in the UKCS. The Strategy will guide all parties to work to optimise these benefits for the good of the UK as a whole.

In the Call for Evidence, the Government set out a draft definition of Maximising Economic Recovery for discussion. We also provided a high level illustrative MER UK Strategy, which aimed to identify some key guiding principles and expected outcomes.

The Government asked the following question in the Call for Evidence:

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

In general there was support for the level of detail contained in the illustrative strategy and agreement that the principles suggested should underpin delivery of MER UK. However, the majority of responses stressed the importance of having a more detailed definition of the term 'economic' so that there is a clear, agreed understanding of the objective the OGA, the Government and industry are seeking to achieve.

Other key themes to emerge were:

- Offering internationally competitive and 'fair' returns – MER UK should not impinge on companies' freedom to make investment decisions but its objective will be to create an attractive business environment;
- Support for maximising wider benefits across the UK economy;
- Innovation and technology are key to prolonging some of the assets' lives and extending the benefits;
- Stability, sustainability and predictability are essential to incentivise more companies to invest;
- MER UK is for the benefit of UK plc. (misalignment between a licensee and the OGA will only occur when the licensee is acting against the best interest of the UK); and
- Safety and asset stewardship need particular attention (however respondents recognised that safety already falls under the Health & Safety Executive's remit).

Government Response

The Call for Evidence initiated a very important dialogue between the Government and industry. We are very encouraged by this and look forward to this developing into the strong tripartite relationship that The Wood Review outlined as necessary for success in the UKCS. Everyone reiterated the sense of urgency in delivering MER UK. Therefore, it is essential that this work should progress apace.

Building upon the work already in place, DECC is holding additional workshops to bring industry stakeholders together and to move the Strategy drafting work forward and with the intent of refining and finalising the strategy as soon as possible, and certainly ahead of the statutory deadline of 12 April 2016. These sessions will involve the OGA, HMT, DECC and a cross-section of industry members.

As set out in the MER UK provision of the Infrastructure Act 2015, the Strategy will then need to be laid before Parliament (in a process akin to certain types of secondary legislation) for 40 days before it can come into force.

3. New Regulatory Powers for the OGA

Meeting Access

The Call for Evidence outlined proposals to ensure that the OGA has the power to attend industry meetings and asked respondents to provide feedback on the questions below.

3.1 (a) Do you agree with Government's current intention?

The majority of respondents indicated agreement with the Government's intention to provide the OGA with a general power to attend all meetings where issues are discussed that may impact on MER UK, and to require agendas and papers. A minority of respondents either did not agree with the Government's proposal or did not provide a definitive view either in support of, or against, the proposal.

A number of respondents suggested that, in applying this general power, the OGA should have sufficient flexibility to prioritise which meetings it attends in line with its operational framework. This would be important in light of the large number of meetings between joint ventures, which take place across the UKCS. Others suggested there would be resource implications for the OGA if it aimed to attend more than a small number of these meetings, and it should focus its attendance upon meetings where critical issues such as commercial misalignment or disputes between parties within a joint venture are due to be discussed. Those who did not agree with the Government's intention generally felt that the proposed power was cast too widely to be utilised effectively by the OGA.

Several respondents suggested that industry would need to be assured that the OGA would treat commercially-sensitive information obtained during meetings appropriately. Similarly, a minority of respondents stated that there would be some meetings between parties to a licence in which the OGA's attendance would not be appropriate.

Several respondents cited access to infrastructure as a key area of discussion in which the OGA's presence at meetings would be welcomed.

The potential for conflicts of interest was also raised in cases where the OGA may be party to a discussion through its power to attend meetings which may also be linked with matters dealt with through its dispute resolution function.

Government Response

The Government's intention remains that the OGA should have the right to attend industry meetings and to receive papers for discussion. This should include meetings between participants in a joint venture, and meetings between licensees, where matters relating to licence obligations or matters relating to MER UK are being discussed. The power should also apply to meetings held by a single operator in cases where a licence is entirely owned by that company, providing that matters relating to MER UK or licence conditions are under discussion.

The Government intends that the power should apply to the same scope as the MER UK Strategy. Therefore external meetings between any combination of licensees, operators and the following parties will also be covered by the power:

- Owners of upstream petroleum infrastructure; and
- Persons planning and carrying out the commissioning of upstream petroleum infrastructure.

The Government agrees that the OGA should be provided with sufficient flexibility to prioritise its attendance at meetings of key relevance to the MER UK Strategy. The Government intends to define through legislation which categories of meetings are in scope, and the OGA should provide guidance to industry, outlining which matters for discussion should trigger a notification of a relevant meeting. Industry will then be required to notify the OGA of relevant meetings.

Under the current proposals, this power would not extend to holders of Onshore licences, Carbon Storage and Gas Storage licences.

Sanctions should be available for failure to comply with the OGA's power to attend meetings, but the OGA's criteria should be sufficiently precise so as to ensure that all relevant parties are aware of their obligations.

3.1 (b) How can the OGA ensure that important issues are not omitted from the agendas of meetings it attends?

Of the respondents who answered this question, opinions were divided over whether the OGA can fully mitigate this risk. The majority of respondents indicated that the issue could be largely addressed, and proposals included that the OGA would need to be adequately resourced; that it should communicate its priorities for meeting attendance to industry through guidance; and that effective engagement with industry should help it to understand how best to utilise this power.

Other respondents suggested that the OGA would need to become involved throughout the life cycle of key projects in order to clearly understand the major issues facing the UKCS. Others highlighted a risk that the OGA would become overwhelmed with meeting requests, which would lessen its ability to identify the most important issues for discussion. A potential solution was identified, whereby key issues in a region should be identified collectively by industry for discussion with the OGA – the Area Stewardship Forum in the Northern North Sea was cited as a useful example in this regard.

Government Response

The Government agrees that the OGA will be best placed to mitigate this risk and that, primarily, this will be addressed through effective engagement with industry and development of a strong insight into the strategic priorities relevant to MER UK across the basin. The Government agrees that the OGA can learn from existing examples of good practice across the UKCS and that it should make good use of its other key powers, including its access to data, in order to ensure the effective and efficient use of its power to attend industry meetings.

Sharing Data and Information

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. The Call for Evidence sought views and evidence in response to the below questions;

3.2 a) What data is needed to further MER UK and after what length of time is it most appropriate to share?

3.2 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?

3.2 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?

Industry supported the need for access to timely and transparent data but noted that the scope of the data should not be construed too narrowly and that the OGA should only require data for which it has a purpose. There were specific calls for clarity and guidance around the requirements to be placed on industry and the implications for them.

Government Response

A running theme through the responses to the Call for Evidence was that industry considers it important that further work be undertaken to fully scope firm proposals for amendments to current provisions and any new requirements to be placed on industry. We agree with this position and intend to legislate to allow for the detailed data requirement powers to be developed after further discussion with industry. In accordance with The Wood Review recommendations, the Government intends for these regulations to allow for requirements and obligations in the following areas:

- Retention of data and information;
- Submission of information to the OGA and gathering by the OGA including the format, form and frequency;
- Protection of information and confidentiality periods; and
- Publication of data and information.

We will also ensure that the OGA has sufficient powers to gather relevant information from those non-licensee parties that are obliged to comply with the MER UK Strategy to assist the OGA in its delivery of MER UK.

Provision will be made to allow for sanctions to be imposed for breaches of any data or information obligations, a policy supported by industry.

Dispute Resolution

The Call for Evidence set out the Government's intention to provide the OGA with a power to resolve disputes, within key parameters, which would be set by the Government. Respondents were asked for their views and to provide evidence to the following questions.

3.3 (a) To what degree should Government set the parameters of the OGA's dispute resolution process?

3.3 (b) Do you agree that the key parameters set out above are the right ones?

The majority of the responses received which contained comments on dispute resolution supported the OGA having a role in the resolution of disputes. A minority of these respondents stated that the dispute resolution process should be developed with industry once the MER UK Strategy has been defined.

Government Response

We are committed to scoping a strong non-binding dispute resolution process to support delivery of MER UK, whilst allowing the OGA the freedom to define the process by which it will consider and resolve disputes. The Call for Evidence set out a number of key parameters for the dispute resolution process which would provide certainty and protections to industry. These parameters received broad support and each is discussed below alongside the Governments response.

The scope of dispute resolution – During the Call for Evidence concerns were raised over the potential misuse of the dispute resolution process, unless its scope was sufficiently defined. A number of respondents identified types of disputes where OGA involvement would be necessary; these were:

- Access to infrastructure not currently covered by the Third Party Access (TPA) process;
- Blending of gas;
- Access to fuel gas;
- Regional development issues and joint operating agreements; and
- New decisions within Joint Ventures (conflict with investment culture within licences).

The Government agrees that these issues, alongside others, could provoke disputes which the OGA should try to resolve.

The OGA's primary role will be in the delivery of MER UK and, as recommended by The Wood Review, we believe the appropriate scope of the dispute resolution process is any dispute about licence terms or which impacts, or has the potential to impact, on MER UK. In some instances the types of disputes noted above may not relate to licence terms or have the potential to impact on MER UK and, therefore, will be out of scope. This restriction allows the OGA to focus its resources on the most significant of disputes that will be of most benefit to industry and the UK as a whole. The OGA would not be prevented from informally mediating those disputes that are out of scope, subject to availability of resources.

A number of respondents noted the regulatory powers under the TPA process and suggested that the new dispute resolution process should not duplicate or overlap with the existing scheme. We agree that those disputes that have already entered the TPA process, and where consideration has begun, should be excluded from the scope of dispute resolution to prevent duplication. However, for those disputes that have not yet entered the TPA process, there may be instances, such as where the issue forms part of a wider dispute, where it would be appropriate for the issues to be considered together under the dispute resolution process.

Referral of a dispute – the Call for Evidence proposed that all parties to the dispute, as well as the OGA, should be capable of initiating the dispute resolution process. The OGA's increased resource and access to meetings will allow it to be aware of discussions/negotiations between parties at an early stage and, where appropriate, to facilitate these discussions. However, where these discussions do not progress efficiently it is important that the OGA can progress them by initiating the dispute resolution process and issuing its opinion as to how the dispute should be resolved. The majority of the Call for Evidence responses were supportive of this proposal, which will be taken forward by the Government.

Triage – The Call for Evidence workshops identified that it would be appropriate for the OGA to operate a triage process, enabling it to sift out inappropriate referrals and also to fast track those disputes that are subject to time sensitivities. Under the triage process it was suggested that the OGA should be able to reject, adjourn for further work, or accept a dispute referral. The considerations for the OGA in making its decisions whether to accept a dispute should include:

- Have the parties had a reasonable time to reach an agreement?
- Were the negotiations transparent and undertaken in good faith?
- Is the referral frivolous or vexatious?
- Is there an alternative, more appropriate means of resolution that has been initiated or could be initiated (court or other ADR)?
- Have the parties complied with any relevant code of practice?
- The time sensitivities and materiality of the dispute.

Respondents also suggested that the OGA should have ultimate discretion over whether or not to accept a dispute, allowing it to reject or adjourn disputes, should it receive large volumes of dispute referrals. The Government agrees and this will be taken forward.

Interaction with other dispute resolution processes – a number of the Call for Evidence responses raised concerns over the interaction between this new dispute resolution process, other dispute resolution processes, such as the courts, and those provided for under commercial contracts. It is not our intention to inhibit parties' legal rights or for those alternative processes to impact on the OGA's dispute resolution process. We will ensure that the processes can run concurrently. However, as noted above under the triage process, the OGA would be able to reject a dispute if there is a more appropriate alternative process or adjourn it to await the outcome of an alternative process where this has already been initiated. However, in reality the different dispute resolution systems are likely to be looking at a dispute from different perspectives: the courts in relation to determining legal rights and the OGA in relation to what would be best from a MER UK perspective.

Power to require information and third party assessors – the Call for Evidence responses agreed that the OGA should have the power to require information from, and convene meetings between those parties in dispute, which would assist it in reaching its opinion. Responses also agreed that the OGA should be able to set timeframes within which required information should be provided, and they agreed that sanctions should be applied for failures to comply. The responses to the Call for Evidence were in favour of this power, with the caveat that the OGA should only require reasonable information and that it should consider the commercial sensitivity of any information when handling it. It will be necessary for the OGA to have access to information from the point of referral and throughout the triage process.

We recognise that the OGA will be the expert in resolving disputes and that 'expert assessors' should only be used in the minority of cases, where the OGA does not have the specific technical expertise. This view was overwhelmingly supported by industry. Where it is necessary to instruct a third party, the information provided will form part of the wider evidence that the OGA would take into consideration when forming its opinion. Third party experts are used to provide evidence under the current Third Party Access process. These experts are appointed by DECC to fill the gaps in its knowledge base and the associated costs form part of the annual

running costs of LED, which in future will be met by the levy. The Government intends for these principles to apply to any third party experts under the dispute resolution scheme.

Timeframes for resolving disputes – there are calls from industry to make the dispute resolution process clear and efficient, and for there to be a focus towards resolving disputes quickly. The Call for Evidence sought views as to whether we should set a timeframe within which the OGA must determine a dispute. Industry feedback is that this would not be possible due to the diversity in the types of disputes that may be considered under the process. We agree with industry that there should be a focus towards timeliness and that there should be clear guidance on what should be expected of the OGA in its resolution of a dispute. Having considered the evidence, the Government will place a requirement on the OGA to issue guidance detailing how it will resolve disputes, and setting out the timeframes it will work towards in resolving disputes, noting that the exact timetable will depend on the individual circumstances.

Sanctions – The Call for Evidence identified that sanctions should be available where parties failed to comply with the dispute resolution process by for example, failing to provide information or delaying the process. This was supported across industry with the focus being on improvement notices and low level financial penalties. The Government agrees and will take this forward.

Industry did raise concerns about how sanctions would interact with a dispute process, which is non-binding. The OGA's opinion will include an outcome that it believes would be compliant with the licence terms and/or would be most appropriate in the circumstances to further MER UK. The parties would then be expected to take steps to reach this outcome. It is not proposed that a simple failure to comply with the OGA's opinion will result in sanctions being imposed. However, where failure to comply goes further (through the parties' actions, or inactions) and ultimately results in a breach of MER UK or the licence, the OGA will have the power to move to enforcement action and impose sanctions for that breach. Therefore, the outcomes of the dispute resolution process are intended to be a strong and effective contributor to the delivery of MER UK and inform the enforcement work of the OGA.

Publication – There is broad industry support for the OGA having the power to publish its opinions. It was noted that publication will benefit industry as a whole and act as best practice guidance. We acknowledge that there will be commercially sensitive information within many of the OGA's opinions and that in some instances there will be substantive reasons for why an opinion should not be published. As a result, we intend to give the OGA a power, but not a requirement, to publish its opinions, and an objective of transparency. We would expect the OGA to issue guidance on its policy for publication.

Reviewing Existing Powers

The Call for Evidence noted that DECC intends to carry out a review of the existing powers available to LED and which will transfer to the OGA. It also asked for responses to the following question:

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

The key areas that the responses highlighted as areas to be taken into consideration as part of the review were:

- Refining the licence revocation power to prevent an unwilling partner in a co-venture from blocking positive proposals;
- An ability to proactively re-unitise fields or force the sale of a licence where developments are frustrated by lack of cooperation;
- Making compliance with MER UK and licence terms formal considerations for licence award and extension;
- Including the management of decommissioning financial guarantees and liabilities within the remit of the OGA;
- Re-appraising the Fallow initiative in view of the future increase in cooperation between parties resulting from MER UK; and
- Considering whether the determinations under the TPA process should be capable of being applied retrospectively.

The Government is considering these suggestions as part of the ongoing review, and where appropriate, will effect changes through the MER UK Strategy or the new powers being developed for the OGA.

Sanctions Regime

The Call for Evidence outlined proposals to provide the OGA with a more graduated set of sanctions for breaches of licence conditions and the MER UK Strategy, including improvement notices and financial penalties in addition to licence revocation. Respondents were asked to provide feedback to the questions below.

4.5 (a) Are the steps outlined above sufficient to ensure adherence to the MER UK Strategy?

Almost half of the respondents to this question were broadly in agreement that a more graduated set of sanctions for the OGA would help to ensure compliance with the MER UK Strategy. Around a quarter did not agree that the steps were sufficient and almost a third did not provide a definite view either in support of, or against, the proposal.

A number of respondents were clear that sanctions should not be the first power available to the OGA in upholding the MER UK Strategy, but there were likely to be some cases where the use of improvement notices would represent a useful mid-point in a more graduated system of sanctions. Several respondents referred to improvement notices issued by the Health and Safety Executive (HSE) and noted the strong deterrent effect which results from the potential negative publicity associated with these. However, a minority were less convinced that potential negative publicity would be a strong deterrent – especially for operators who may be planning to exit the UKCS in the short or medium term.

Several responses suggested that the sanctions powers should be kept as simple as possible and the HSE model offers a useful precedent (including improvement notices and a clear system of financial penalties). Others highlighted that, in order to address the root cause of a problem, sanctions may need to be applied to other parties within a Joint Operating Agreement, beyond licensees.

Of those who disagreed that the steps set out would be sufficient to achieve the policy objective, a number suggested that compliance with the MER UK Strategy may lead to subjective interpretations by the regulator; and, therefore, sanctions could only be applied to the clearest breaches of MER UK.

A number of respondents also felt that a greater emphasis should be placed upon incentives for behaviour which is conducive to MER UK as well as sanctions. Several respondents also suggested that the practical and legal implications associated with the power to revoke licences required greater clarity.

Government Response

The Government agrees that sanctions should not be the only tool available to the OGA in exercising its stewardship and regulatory function; and, in upholding the effective collaboration with industry that will be key to the OGA's success, sanctions should only be necessary in a minority of cases.

However, the Government also considers that a more graduated set of sanction powers is necessary to underpin delivery of the MER UK Strategy and notes that the greatest proportion of respondents who answered this question indicated broad support for the proposal. The Government intends that sanctions will be applicable for breaches of the MER UK Strategy as well as non-compliance with licence conditions, and non-compliance with key powers exercised by the OGA such as breaches of data obligations or non-compliance with the OGA's power to attend industry meetings.

Sanctions will be applicable to all parties covered by the MER UK Strategy: namely, licence holders, operators under licences, owners of upstream petroleum infrastructure, and those planning and carrying out the commissioning of upstream petroleum infrastructure.

The use of formal improvement notices is an important intermediary sanction, and will provide the OGA with a power to issue clear directions to ensure industry behaviour aligns with the MER UK Strategy. In line with improvement notices issued by other bodies such as the Health and Safety Executive, there should be an assumption that improvement notices will be publishable, although the OGA should have discretion to redact certain commercially sensitive information. The Government also expects that improvement notices will serve as a useful means of identifying and disseminating effective practice across the UKCS. The Government also considers it likely that the deterrent effects of improvement notices will not be sufficient in all cases, and financial penalties should be available to the OGA where it considers that an improvement notice is not sufficient to ensure compliance with MER UK (see question 4.5(b), below).

In line with the existing powers available under petroleum licences, the Government intends that the OGA will also have the power to revoke or partially revoke a licence, as well as to remove an individual operator from a licence, where it considers this action is a necessary and proportionate means of ensuring compliance with the MER UK Strategy or licence conditions. The Government recognises that in order to make licence revocation a more practical recourse, there should be a means of addressing the situation whereby, if a licence is revoked, key infrastructure remains the property of the ex-licensees. The Government will continue work to establish a mechanism by which facilities (or use of them) can be transferred to a new licensee, subject to appropriate legal protections for the sanctioned party.

The Government also considers that parties subject to sanctions should be able to appeal those sanctions. To ensure the independence and transparency of this process, the Government intends to establish an appeals process under the First-Tier Tribunal of the General Regulatory Chamber.

4.5 (b) Please provide views and evidence on whether financial penalties would be an appropriate and useful enforcement tool for the OGA?

The majority of the respondents who answered this question felt that financial penalties could have some use as an enforcement tool. However, a number of these responses also highlighted concern that large financial penalties would not be conducive to MER UK. A minority were not in favour of financial penalties for the OGA in any case (a small minority did not provide a definitive view on the question).

Many respondents stressed that financial sanctions must be proportionate and reasonable. A number of respondents were particularly concerned that penalties which were calculated as a percentage of a company's turnover would not be appropriate as this power, if not used effectively, could negatively impact upon investor confidence. Several respondents suggested that a system of fixed penalties would be more favourable as this would provide greater clarity on the OGA's enforcement criteria and the sanctions which are applicable. A minority were in favour of more rigorous penalties, considering that significant financial penalties would be necessary to provide leverage against obstructive commercial behaviour, and penalties should also aim remove any financial gain that a company obtains from behaviour which is non-compliant with MER UK.

Government Response

The Government intends that the OGA should be able to issue financial penalties for breaches of the MER UK Strategy as well as non-compliance with licence conditions and non-compliance with key powers exercised by the OGA, such as breaches of data obligations or non-compliance with the OGA's power to attend industry meetings.

The Government believes that the OGA should have discretion to set its own framework for financial penalties, and intends to create a legislative requirement for the OGA to set out in guidance the precise factors that it will take into account, and method of calculating, a financial penalty. This will ensure that the OGA has flexibility to define its enforcement framework in line with its operational priorities. Relevant factors to consider when calculating a penalty would likely include: an assessment of the seriousness of the infringement and its impact upon other parties; the need to provide deterrence against further transgressions; and any aggravating or mitigating factors, such as a company's role as a leader in, or an instigator of, the infringement. The Government intends that the OGA should be required to consult such persons as it thinks fit before issuing this guidance.

The Government recognises industry's predominate concerns about the need for proportionality in providing the OGA with the power to issue financial penalties and the need for a cap within legislation. The Government recognises that the OGA's role will not be equivalent to regulators who issue financial penalties on the basis of a company's turnover – such as the Competition and Markets Authority – whose enforcement powers apply to serious breaches of competition law. The Government considers that a proportionate financial sanction, applied with careful consideration by the OGA, will rarely be a deterrent to investment.

The Government therefore intends to provide the OGA with the power under legislation to issue individual financial penalties up to £1 million. This should allow financial penalties that are large enough to act as a genuine deterrent upon companies within the UKCS, whilst mitigating the potential for excessive penalties and reflecting industry views on the need for clarity over the maximum size of a penalty (irrespective of a company's size or commercial presence within the basin). The OGA should also have discretion to issue a further financial penalty in cases where non-compliant behaviour is not corrected within a period of time which it has specified.

The £1 million cap is thought to offer a useful starting point for the OGA, in light of industry feedback to the Call for Evidence. However, since the OGA will be implementing a new enforcement framework (and because the MER UK Strategy is yet to take effect) it is possible that the OGA may in future decide that this level of cap is not sufficiently high to ensure compliance with its key duties and powers. Therefore, the Government intends to take a reserve power in legislation to raise the level of the cap to £5 million if it is considered necessary and appropriate, subject to consultation with such persons as the OGA thinks fit, and Parliamentary approval by secondary legislation, through the affirmative resolution procedure. This will provide a degree of flexibility to support the OGA's enforcement framework. The OGA would not be able to issue a financial penalty above £5 million without changes to primary legislation.

The Government considers that all financial penalties should be appealable through the First Tier Tribunal, and the tribunal should have discretion to increase, decrease or cancel a financial penalty issued by the OGA.

4. Cost Recovery

The Wood Review noted that the challenges of delivering MER UK require the OGA to be significantly better resourced than the current team in DECC. The Government agrees with this approach and considers it appropriate that in the long-term, costs of the OGA should be recovered from companies regulated by the OGA.

The running costs of the OGA, including the costs associated with delivering MER UK, will be recovered through a combination of fees for the provision of services (as per the Gas and Petroleum (Consents) Charges Regulations 2013) and a new levy on licence holders, which is compliant with the Government's Principles for Managing Public Money.

A power to raise such a levy was included in the Infrastructure Bill, which received Royal Assent on 12 February 2015. Provisions set out that the levy must not exceed the costs incurred in carrying out the relevant energy functions and the levy cannot recover costs in respect of areas in which a charge is payable under the Gas and Petroleum (Consents) Charges Regulations 2013.

The clause provides for the Secretary of State to impose a levy on persons holding licences for the exploitation of petroleum, the unloading and storing of gas and the storage of carbon dioxide.

In the Call for Evidence, we set out the scope of levy funded activity, giving more detail on the functions of the OGA and the split of activities covered by the existing charges and the proposed levy.

We also proposed methods to calculate the levy rate – licence acreage and production output – as two potential metrics. The following questions were asked in the Call for Evidence

5 (a) Do you agree that using acreage is the most suitable metric on which to base the levy calculations?

5 (b) Do you have any comments or observations on our initial proposals for collecting the levy from industry?

The majority of respondents called for simplicity, fairness and cost-reflectivity to be taken into consideration when calculating the levy rates. In terms of the metric, the majority of respondents preferred acreage over production output, though a large number of respondents suggested calculating the levy as a surcharge on licence rentals.

Government Response

We have considered responses to the Call for Evidence and will issue a consultation on final proposals for administering the levy later this month. The consultation will include the proposed cost reflective levy methodology as well as proposed cost reflective levy rates for different types of petroleum license holders.

The Government has determined that initially, and in view of the early focus of the OGA, the activities and costs which fall under the levy will only relate to Offshore Petroleum Licence holders. The position with respect to Onshore licences, Carbon Storage and Gas Storage licences will be reviewed once the OGA is established as a Government Company. However, at least for the first 18 months of the OGA's existence, we do not expect the levy to apply to these types of licence.

The consultation will be accompanied by an Impact Assessment and will be open for four weeks, during which we encourage industry to submit their views on our proposals via an email submission.

We plan to introduce the levy structure and amounts to be paid via secondary legislation made under powers contained within the Infrastructure Act 2015. Following the consultation, we will publish a Government Response and draft Regulations to lay before Parliament in summer 2015. Subject to the will of Parliament, the intention is to begin raising the levy in October 2015.

As set out above, the OGA will continue to recover the costs associated with issuing permits and consents via the extant fees and charges regime. During the course of designing the levy we have identified a number of other categories of service which will ultimately be covered through the regime. However, in the short term, until provisions are brought in to apply to these activities, the costs in questions will be recovered via the levy. Our intention is to bring these activities under the fees and charges regime following establishment of the OGA as a Government Company.

Annex A: List of respondents

BG Group
BP North Sea
Carbon Capture and Storage Association
CEASTMENT LTD
Centrica Energy
Chevron North Sea Ltd
Decom North Sea
East of England Energy Group
Eigen Limited
Endeavour
Xcite Energy Resources
ExxonMobil
Fairfield Energy
First Oil
Flare Solutions
Hurricane
IM Energy Forum
JX Nippon
Maersk Oil
Marathon Oil U.K. LLC
National Grid Carbon Ltd
Nexen
Oil and Gas Independents' Association
Oil & Gas UK
OGN Group
OMV (U.K.) Limited
Paul Brindley
Paul Jeffs
Peter Haile
Plexus Ocean Systems
Premier Oil
Shell U.K. Limited
Statoil
Stephen Kirby
Stonebridge Consulting
TAQA
The Crown Estate
ThinkTank Maths Limited
TOTAL E&P UK Limited
University College London Institute for Sustainable Resources, UCL Energy Institute and UK Energy Research Centre

12 other respondents

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Department of Energy & Climate Change

3 Whitehall Place

London SW1A 2AW

www.gov.uk/decc

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