



Oil & Gas
Authority

Guidance on the management of offshore licence work programme commitments

(in relation to paragraphs 11 and 12 of the MER UK Strategy)

Scope and purpose of this guidance

1. This document provides general guidance as to the approach the Oil and Gas Authority ('**OGA**') will usually take in considering and, if appropriate, agreeing with a Licensee that a work programme is "*of the same or a similar nature to the one set out in the licence*" or is "*such other work programme as enables the Central Obligation to be met*", pursuant to Paragraphs 11 and 12 of the Maximising Economic Recovery Strategy for the UK¹ ('**the Strategy**'). This is not guidance on how the OGA will normally assess whether a satisfactory commercial return can be expected on an investment or activity².
2. This guidance considers the situation with regard to firm commitments to carry out a work programme under a Seaward Production licence³ ('**Licence**') in its Initial Term⁴ ('**Initial Term**') including in relation to firm commitments to drill wells in the Initial Term.
3. This guidance is not a substitute for any regulation or law and is not legal advice.
4. This guidance does not seek to extend or redefine any part of the Strategy and its Obligations and Safeguards or the nature of firm commitments under a Licence. This document provides general guidance as to the existing approach the OGA will take in relation to the Obligations, Safeguards and commitments of the Strategy and Licence.
5. This guidance will be kept under review and be revised as appropriate in the light of further experience and developing law and practice, and any change to the OGA's powers and responsibilities. If the OGA changes this guidance in a material way, it will publish a revised document.

Introduction

Licence obligations

6. The work programme – the minimum amount of work (including seismic and technical studies) that an applicant must carry out if awarded a Licence – is an integral part of any application for a Licence that has an Initial Term, and an applicant may propose to carry out some or all the elements of a work programme on a "*firm*" or "*contingent*" basis.
7. A work programme set out in a Licence is, subject to any contingency attached, a contractual commitment by the Licensee to carry out that work programme within the Initial Term; it is a "*firm commitment*" by the Licensee to carry out the work programme in accordance with the terms of the Licence.
8. This is reinforced in any offer of a Licence from the OGA, where the offer letter explicitly reminds the applicant that, by signing the Licence, it will be making a commitment to observe and abide by all its conditions and commitments – and that this includes the Initial Term work programme.
9. As such, firm commitments to carry out work programmes are enforceable obligations under the Licence that the Licensee is obliged to carry out, and the OGA has a number of regulatory

¹ <https://www.ogauthority.co.uk/media/3229/mer-uk-strategy.pdf>

² The OGA's *Consultation on the approach to "satisfactory expected commercial return" in the MER UK Strategy* was published on 13 December and can be found at: <https://www.ogauthority.co.uk/news-publications/news/2017/consultation-on-satisfactory-expected-commercial-return-safeguard-secr/>

³ Issued by the OGA under the Petroleum Act 1998 – these include Traditional, Promote, Frontier and the Innovate Licence

⁴ In this guidance reference to "Initial Term" also includes any phase of the Initial Term of an offshore Innovate Licence.

powers available to it to address any non-compliance, such as licence revocation and sanctions.

10. In this guidance, therefore, the term '**work programme**' should (unless the context requires otherwise) be read as meaning a non-contingent⁵ Initial Term work programme (or element of such a work programme), including, but not limited to, wells, seismic, and studies.

11. Licences on the UK Continental Shelf ('**UKCS**') are awarded through a competitive licensing system and, as outlined in the application guidance for rounds⁶, the proposed work programme is one of the main factors that the OGA will use to judge between competing applications. The OGA therefore views firm commitments as a core part of the licensing regime.

12. In that process, a firm commitment to a work programme is agreed on the basis that the work programme, including any drilling decision in relation to a commitment to drill a well, does not require any further technical work or analysis that will influence whether the activity will be undertaken – for example, whether a well should or can be drilled or not. The Licensee must be certain that it will carry out the work programme, and that there is no technical reason (subsurface or engineering) for not carrying out the work programme as committed to in the Licence. For example, for a firm commitment to drill a well, drilling could begin immediately, subject only to outside factors and reasonable planning activities. The well should therefore be drilled *as soon as practicable* within the Initial Term. The potential situations that this guidance considers are therefore expected to be exceptional.

What the Strategy says

13. The Strategy, in describing how the "*principal objective*"⁷ should be met, sets out a Central Obligation, that "*relevant persons must, in the exercise of their relevant functions, take the steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters*" together with a number of Supporting Obligations and Required Actions and Behaviours – all of which are legally binding on the OGA and industry⁸. The Strategy also contains Safeguards, subject to which the obligations must be read.

14. Paragraphs 10 to 12 of the Strategy set out the Supporting Obligations regarding exploration activities. In relation to an obligation to carry out a work programme:

- paragraph 11 states that, "the licensee of an offshore licence who has made a firm commitment to carry out a work programme in respect of that licence must not relinquish the licence without first having completed the work programme as set out in the licence"; and
- paragraph 12 states that, "where the obligation in paragraph 11 does not apply because paragraph 3 (a safeguard) applies the licensee must carry out a work programme of the same or a similar nature to the one set out in the licence or such other work programme as the licensee may agree with the OGA enables the Central Obligation to be met".

15. These obligations are subject to the Safeguards, including paragraph 3 which states: "*no obligation imposed by or under this Strategy requires any person to make an investment or fund activity (including existing activities) where they will not make a satisfactory expected commercial return on that investment or activity*".

⁵ In this context, a non-contingent Initial Term work programme, in addition to firm commitments at the time of award, includes any work programme that was, or contained, a contingent commitment but, following completion of the contingent element, has been subsequently confirmed by the OGA, in writing, as a firm commitment.

⁶ More information on the process for proposing a work programme as part of a Licence application is set out in the OGA's guidance *Applications for Production Licences General Guidance* which can be found at: <https://www.ogauthority.co.uk/media/3951/general-guidance.pdf>

⁷ The principal objective (of maximising the economic recovery of UK petroleum) is established in Section 9A of the Petroleum Act 1998.

⁸ Petroleum Act 1998, sections 9B and 9C

16. Consequently, where the Safeguard in paragraph 3 applies, a Licensee may not be required to complete the work programme, but will nonetheless be required to comply with the obligation in paragraph 12 to identify and carry out an appropriate alternative work programme.

Sanction powers

17. In brief, under the Energy Act 2016⁹, a failure to comply with a term or condition of a Licence or a failure to comply with a duty to act in accordance with the Strategy are both sanctionable. Further information can be found at paragraph 27.

Licensing decisions

18. In addition, the OGA may take any such failure to comply with a work programme condition of the Licence into account when making future Licence award decisions,¹⁰ or when considering requests to amend any Licence.

Approach

19. The general approach the OGA will usually take when a Licensee does not intend to carry out its work programme is outlined at paragraphs 25 to 38 and summarised in the table in the Appendix to this guidance.

20. It should be noted that the OGA will not expect an assignment of a Licence or a change of control of a Licensee to make a difference to a work programme. Proper due diligence should be undertaken as part of any proposed change of control or assignment in order to understand all commitments under the Licence.

Inform the OGA

21. Where the Licensee no longer intends to carry out its work programme by the end of the Initial Term, the Licensee should inform the OGA, in writing, at the earliest opportunity, and in any case not less than six months before the end of the Initial Term, explaining why it does not intend to carry out the work programme¹¹.

Propose an alternative work programme

22. Where the Licensee can evidence that the Safeguard in paragraph 3 of the Strategy applies as the Licensee considers that it would not make a satisfactory expected commercial return from completing the work programme then, pursuant to paragraph 12 of the Strategy, the Licensee should propose to the OGA, in writing:

- a. a work programme of the **same or a similar nature** ("**same or similar nature**") to the original work programme¹²; or
- b. if the Licensee cannot identify a work programme of the *same or similar nature*, they should propose to the OGA, in writing, **such other work programme that enables**

⁹ Energy Act 2016, section 42

¹⁰ In accordance with the The Hydrocarbons Licensing Directive Regulations 1995, noting in particular Regulation 3(1)(d)

¹¹ This guidance does not cover the approach that the OGA will usually take when a Licensee intends to carry out the work programme but wishes to request an extension to the Initial Term to do so.

¹² References to 'original work programme' are to the extant work programme.

the Central Obligation to be met (an “*enabling*” work programme), for the OGA’s agreement.

23. It should be noted that an *enabling* work programme should **only be proposed when the Licensee cannot identify a work programme of the same or similar nature**.

24. The OGA notes that the Safeguards (and Obligations) of the Strategy, including (in paragraph 3 thereof) that “**no obligation imposed by or under this Strategy** requires any person to make an investment or fund activity (including existing activities) where they will not make a satisfactory expected commercial return on that investment or activity” will apply to any such alternative work programme.

The OGA’s view

25. If the OGA does not object to the Licensee’s view that a satisfactory expected commercial return cannot be made on the original work programme, it will usually consider whether it agrees that:

- a. the proposed work programme is of the *same or similar nature* to the original work programme (see paragraphs 29 to 33 for further guidance on this); or
- b. no *same or similar* work programme can be agreed, and whether the proposed *enabling* work programme enables the Central Obligation to be met.

26. If the OGA **agrees to an alternative work programme** as set out in paragraph 25, then the Licensee must carry out that agreed work programme, and the factors set out in the remaining paragraphs of this guidance should be taken into account by the Licensee.

27. If the OGA considers that the original work programme:

- a. **would** make a satisfactory expected commercial return, **but the Licensee will not carry out** that work programme, the OGA *may consider* initiating a Sanction Enquiry;
- b. **would not** make a satisfactory expected commercial return **but the Licensee does not agree with the OGA an alternative work programme of a same or similar nature** to the original work programme, the OGA *may consider* initiating a Sanction Enquiry;
- c. **would not** make a satisfactory expected commercial return **and** that it is not possible to agree a *same or similar* work programme, then if the Licensee **does not agree an enabling work programme**, the OGA *may consider* initiating a Sanction Enquiry.

28. This guidance does not provide any further detail on the OGA’s sanctions process nor the circumstances under which the OGA will use its powers¹³.

Is the work programme “same or similar”?

29. The OGA considers that a *same or similar* work programme needs to be the same or similar both in terms of the **technical objectives and cost** of the original work programme.

Technical objectives

30. When considering the **technical objectives** of a *same or similar* work programme when the original work programme was to drill a well, the OGA is likely to consider among other things:

¹³ The sanctions process and guidance can be found here: <https://www.ogauthority.co.uk/regulatory-framework/powers-sanctions-guidance/sanctions/>

- the comparative depth of the primary target objectives;
- the stratigraphic formation(s);
- the prospect and well risk (including whether the wells are exploration or appraisal);
- the 'play risk' (sometimes called 'conditional risk') and dependencies on other targets;
- the pressure and temperature regime of the target interval;
- data coverage, vintage and quality;
- any other such considerations as may be relevant.

31. When considering a *same or similar* work programme when the original work programme was to drill a well, the OGA understands a *same or similar* work programme to be one of the following:

- a well with the same or similar objectives on the same Licence;
- a well with the same or similar objectives on another Licence held by the Licensee;
- a well with the same or similar objectives in relevant UK waters not licensed by the Licensee.

Cost

32. When considering the **cost** of a *same or similar* work programme when the original work programme was to drill a well, the baseline well cost will normally be the dry-hole cost at the time that the OGA is informed, in writing, by the Licensee that it does not intend to carry out the original work programme. The OGA considers that such a proxy is appropriate because this represents the original commitment to invest in the UKCS; the OGA will therefore specifically consider the dry-hole cost of the proposed alternative work programme and whether it is the *same or similar* to that of the original work programme.

33. Where there is more than one Licensee, the alternative work programme of the *same or similar* nature may be suggested and carried out, if agreed by the OGA, independently by each Licensee with the cost split in accordance with the percentage of the Licence of a *same or similar* nature work programme.

Does the work programme enable the Central Obligation to be met?

34. In accepting a licence with a firm commitment to a work programme, a Licensee has made a contractual commitment to the OGA to invest on the UKCS. When considering agreeing with the Licensee an *enabling* work programme, the OGA will therefore normally expect the alternative work programme to be of the same or similar **cost** to the original work programme to which a firm commitment was made.

35. Consequently, when considering the **cost** of an *enabling* work programme, if the original work programme was to drill a well, the baseline well cost will normally be the dry-hole cost at the time that the OGA is informed, in writing, that the Licensee does not intend to carry out the

original work programme. The OGA considers that such a proxy is appropriate for the reasons set out in paragraph 32.

36. However, when considering the cost of the enabling work programme, the OGA will also consider the expected benefits of the proposal in enabling the Central Obligation to be met and may therefore accept a work programme that is not of the same or similar cost.

37. The **categories of work** that a Licensee should consider in proposing an *enabling* work programme to the OGA may include (*but are not limited to*) the following or a combination thereof, as appropriate:

a. Alternative wells

- different types of well on the same Licence;
- different types of well on another Licence held by the Licensee;
- different types of well on acreage in relevant UK waters not licensed by the Licensee;

b. Geophysical work

- seismic, electro-magnetic, gravity and other survey work that may be across the same Licence area, other Licensee/joint-venture-held Licences, or other licensed or unlicensed acreage (the latter possibly requiring an exploration licence);
- geophysical technology demonstrations (especially for technologies not previously or routinely used on the UKCS) and data for open release (including field tapes/raw data);

c. Geotechnical and engineering work

- geotechnical work may include regional and area studies using techniques such as rock sampling, shallow boreholes, hydrocarbon seep studies, geochemistry, palaeontology/palynology, core studies, structural and seal evaluations, subsurface modelling;
- engineering work may include studies or operations such as topsides modifications, pipeline works, terminal adaptation;
- any geotechnical and engineering activities will normally be expected to be of wider economic benefit than just to the Licensee or joint venture, and data/studies should be made available for open release in a timely manner.

Other factors to consider

Licence obligations

38. Any alternative work programme, whether the *same or similar* or *enabling*, once agreed by the OGA will be recorded in writing (and executed as a deed by the relevant parties) and formally substituted for the original work programme in the Licence. As such, it becomes an enforceable obligation of the Licence¹⁴, as described in paragraphs 6 to 10. The new work programme will therefore need to be agreed with the OGA in sufficient time for the deed of amendment of the Licence to be executed before the expiry of the Initial Term; otherwise the

¹⁴ In some circumstances, where the agreed alternative work programme is to be fulfilled on a Licence with the same Licensee as the Licence containing the original commitment, the OGA will consider whether that other Licence may be amended to incorporate the alternative work programme.

Licence will determine and the sanctionable requirement to act in accordance with the MER UK Strategy (and the Licence) will not have been met. The OGA usually considers that one month should be a sufficient period to formally *execute* the amendment of the Licence.

Are you proposing a new activity or investment?

39. When proposing an alternative work programme, it should be new activity and investment and not activity or investment which the Licensee is already planning – the OGA may request supporting evidence in relation to this, such as TCM and OCM¹⁵ minutes and presentations and joint venture and internal budget documentation. The Licensee should also inform the OGA of any conflict of interest (actual or potential) whereby any employee, contractor or board member may benefit financially as a direct result of the change to work programme commitments.

Are you making timely progress?

To drill the well?

40. If, through its asset stewardship process, the OGA considers that the progress to carry out a work programme in the Initial Term is not proceeding in a timely fashion, it may ultimately consider using its sanction powers prior to the end of the Initial Term. If the work programme to which a firm commitment has been made is to drill a well, the OGA is likely to take into consideration the following steps that would usually be required to drill a well in a timely fashion prior to the end of the Initial Term.

41. The OGA Asset Stewardship Expectation SE02¹⁶ sets out good practice for timely well investment decisions, and engagements with the OGA on pre-well evaluations for exploration and appraisal (E&A) wells. As set out in that document, in general the OGA expects well investment decisions to be made at least 18 months prior to the relevant licence deadline – for example, the end of the Initial Term or the start of Phase C of an Innovate licence – to allow sufficient time for the well to be planned and executed.

42. In evaluating whether sufficient progress has been made towards drilling a well, the OGA will normally take into account the timing and evidence of intermediate milestones, such as:

- the issuance and approval of a joint venture budget (or internal budget, as applicable) for the firm work programme;
- approval for expenditure (AFE) and ordering of long-lead items;
- a valid site survey;
- an approved well design, pore-pressure or fracture-gradient prognosis, subsurface objectives and decision trees;
- an approved well AFE (dry-hole case);
- signed rig and service contracts.

43. However, the OGA recognises that the timing of these intermediate milestones will vary depending on factors such as the nature of the subsurface targets, well-engineering technical complexity and prevailing supply-chain market conditions, and the OGA may take such factors into consideration and evaluate whether, as a consequence the execution of the well is achievable in the remaining time on the Licence.

¹⁵ Technical Committee Meetings and Operating Committee Meetings

¹⁶ <https://www.ogauthority.co.uk/media/3829/se-02.pdf>

To comply with the alternative work programme?

44. When agreeing to an alternative work programme that is of a *same or similar nature* to the one set out in the Licence or an *enabling* work programme as enables the Central Obligation to be met, the OGA expects the alternative work programme to be complied with in a timely manner which must be agreed with the OGA.

Meetings

45. Licensees are reminded that it is a statutory requirement for the OGA to be invited to Exploration and Appraisal Well Pre-investment Meetings where there is technical peer review on any prospects and undeveloped discoveries, with the intent that this will lead to an investment decision regarding Exploration and Appraisal wells¹⁷. Note that an investment decision may be positive or negative, and therefore it includes recommendations or decisions to not invest.

¹⁷ <https://www.ogauthority.co.uk/media/4220/meetings-statutory-notice-2017.pdf>

APPENDIX

The following table provides a brief summary of the matters considered in this guidance and highlights the paragraphs where further information can be found.

It is not however a substitute for reading the full guidance.

Licence Obligations	Entering into a Licence is a commitment to comply with its terms and conditions. Those terms and conditions are enforceable.	Paragraphs 6-12
Firm Commitments	Any part of a licence work programme that is not contingent in nature is a <i>firm commitment</i> .	6-7
Obligations under the Strategy	Central Obligation Supporting Obligations (Exploration) Safeguards	13-16
Sanctions	Failure to comply with either a term of a licence or the Strategy, are sanctionable under the Energy Act 2016.	17, 27
Inform the OGA early	Explain why it is no longer intended that the work programme will be carried out.	21
Alternative work programmes: Same or similar nature in terms of: - cost - technical objectives Enabling (the Central Obligation to be met) - cost - work category New activity or investment	Where there are grounds (referencing the Strategy Safeguards) to propose an alternative work programme. Baseline cost (if original obligation was to drill a well) likely to be the dry-hole cost Include comparative depth, stratigraphic formations, prospect and well Expected to be same or similar to the cost of the original work programme, but may also take account of the expected benefits of the proposed alternative May include alternative wells, or other work Must not already be a planned activity/cost	14-16, 22-23 22-23, 25, 29-33 29, 32-33 30-31 34-37 34-36 37 39
Make timely progress on: - original work programme - alternative work programme	Failure to do so may be sanctionable Measuring against Stewardship Expectations and milestones Failure to do so may be sanctionable Measuring against Stewardship Expectations and milestones	17, 27, 40 41-43 17, 27, 40 41-44
Meetings	Ensure that the OGA is informed of/invited to relevant (pre-investment) meetings	45
Licence obligations	Any agreed alternative work programme will be an enforceable obligation of the licence	26-27



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