



North Sea  
Transition  
Authority

# Consultation on the publication of company specific information – analysis of responses to consultation and statement

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# Introduction

1. The NSTA licences, regulates and influences the UK oil, gas, offshore hydrogen and carbon storage industries (the '**Industry**'). We help to drive North Sea energy transition, realising the significant potential of the UK Continental Shelf ('**UKCS**') as a critical energy and carbon abatement resource.
2. The NSTA receives and generates information about the sector as a whole and about individual licensee performance and regulatory compliance. We generally consider it appropriate to publish such information where it is in the public interest to do so.
3. Our **29 August 2024** consultation<sup>1</sup> sought views on our proposed approach to the publication of company specific information. The intended effect of our proposals was to establish the NSTA's general policy approach to the publication of company specific information relating to (a) investigations; and (b) decommissioning obligations, and to provide greater transparency about the factors to which we would normally have regard in making general company specific publication decisions.
4. We received a range of responses to the consultation from interested parties which included operators, a non-governmental organisation with an environmental focus and various trade bodies representing both operators and supply chain bodies.
5. We considered all responses to the consultation. In this document we identify and discuss the issues raised by respondents. We also provide our decision in respect of the proposals set out in the 29 August 2024 consultation. We have split our analysis of the feedback to the consultation into three broad areas:
  - a. Information that we would normally expect to publish.
  - b. Factors which we would consider in making publication decisions and the application of the public interest factors to the wider publication of information not specified in **ANNEX A** to the consultation.
  - c. Unintended consequences and other issues raised in the consultation.

<sup>1</sup> Greater transparency on industry compliance under new plans by NSTA

6. In reaching the decisions set out in this document, we have considered the matters set out in section 8 of the Energy Act 2016. We consider the following matters to be particularly relevant to our decisions:

**a. The need to minimise public expenditure relating to, or arising from, relevant activities.**

Greater awareness amongst the public and operators in respect of decommissioning obligations will likely lead to those operators fulfilling those obligations. This in turn will mitigate the extent to which those obligations will need to be fulfilled by recourse to public funds.

**b. The need for the NSTA to work collaboratively with the government of the United Kingdom, with Ofgem, and with persons who carry on, or wish to carry on, relevant activities.**

Transparency fosters trust and collaboration between the NSTA, industry (and the public), aligning with the principles of good governance and regulatory best practice.

Transparency of decommissioning data will encourage greater engagement amongst operators with the NSTA, and in turn compliance in respect of decommissioning obligations.

**c. The need to maintain a stable and predictable system of regulation which encourages investment in relevant activities.**

Making high-quality data more accessible enables industry stakeholders to make better informed investment and operational decisions. Greater transparency of regulatory decisions demonstrates to the public and those persons that are compliant that action is being taken to address non-compliance. It also provides a clear indication to those that the NSTA regulates that they should comply with their regulatory obligations. This in turn promotes confidence in the regulatory system, making it stable and predictable which encourages investment in the UKCS.

# Analysis of responses to consultation and final decisions

## **A. Information that we would normally expect to publish**

### **Publication of company specific information at investigation opening and sanction warning notice stage**

#### ***Summary of responses***

7. Many respondents agreed that the NSTA's regulatory activities should be transparent, recognising the importance of appropriate and visible enforcement action to drive regulatory compliance and maintain public and investor confidence in the proper functioning of the sector. Many respondents also considered that our proposals would support our stated policy objectives set out in the consultation.
8. Other respondents did not agree. For example, they questioned how the publication of company information in the earlier stages of an investigation would deliver the NSTA's core regulatory objectives or benefit the public interest. Some suggested that the sanction register already provided sufficient transparency of enforcement action and that, if the NSTA wanted to highlight specific topics or to demonstrate that it takes action against non-compliant regulated persons, then the NSTA could do this with anonymised information.
9. Some respondents commented that the proposals would have a counterproductive effect, creating reputational and commercial damage to industry and individual companies. They considered that publishing the name of an operator at the initial stages of an investigation would be premature and, until a breach was confirmed, this would not provide the public with any meaningful information. A few respondents considered that reputational and other harms arising from publication of company specific information at investigation opening stage would not be adequately repaired by a later announcement that no breach was found. Another respondent suggested that the best way for operators to avoid reputational damage or adverse publicity would be to comply with their regulatory obligations and that, in this context, greater transparency would likely lead to increased compliance.

10. Some respondents, particularly those not in favour of identifying operators at an earlier stage in the enforcement process, considered that the NSTA should commit to providing regulated persons with the opportunity to review and comment on any publication in advance, with sufficient time for them to discuss the matter with relevant stakeholders. Respondents agreed that this would mitigate the risk of inaccurate information being published.
11. One respondent noted that the evidential threshold for commencing an investigation is low and that, by their calculation, fewer than one in four investigations lead to further action. One respondent considered that, having details of a live investigation in the public domain for several years while an investigation completes would not benefit operator partnerships or provide industry with stability. The same respondent considered that this could lead to a break down or avoidance of contracts and joint venture partnerships, and that publishing an operator's name so early in the sanction process without full details of the breach and surrounding circumstances would be unjust and inequitable.
12. One respondent considered that, if the NSTA decides to implement its proposals and publish names at an earlier stage in the enforcement process, then it should also publish any representations made by the operator, for example, in response to a sanction warning notice.
13. Some respondents considered that the publication of information at an earlier stage is likely to discourage industry from engaging with the NSTA. One respondent considered that further transparency may promote a name and shame culture, encouraging unhelpful media for the industry and damaging its social licence to operate.
14. Some respondents considered that, should the NSTA proceed with its proposals, then it should name all companies on a relevant licence and not just the operator. This would encourage fairness and transparency in joint venture decision making.
15. One respondent encouraged the NSTA to consider expanding its proposals to include analysis of a potential breach when naming a company during the course of an investigatory process.
16. One respondent suggested that the NSTA's proposed approach to publication would be inconsistent with that taken by both the Health and Safety Executive ('**HSE**') and the Offshore Petroleum Regulator for Environment and Decommissioning ('**OPRED**'), where details of enforcement action is only made public once enforcement decisions are finalised and following any appeal proceedings.

### ***NSTA response and decision***

17. Transparency as a regulatory tool is used by other UK regulators to assist in the delivery of their functions. Transparency demonstrates an organisation's confidence and helps to build stakeholder trust.
18. In the consultation, we expressed the view that, increased transparency on the performance of those we regulate can provide a means to better facilitate our statutory functions and deliver on the aims in our corporate strategy, particularly those in respect of decommissioning, the reduction of emissions and strengthening the supply chain. The consultation also described those public interest factors that would likely be furthered by greater transparency. For example, the consultation noted that publication may enable the NSTA to regulate in a way that is more proportionate and cost effective because publication of our enforcement actions can be a less resource intensive means of encouraging compliance amongst operators. The consultation highlighted that there is a public interest in the progress of ongoing investigations, including where a provisional decision has been made about the outcome.
19. Publication would signal to operators the issues that are of concern to the NSTA and would demonstrate to the public and other operators that are compliant that action is taken to address any non-compliance. While it is possible to raise awareness through the publication of industry wide anonymised information, we do not consider that this will achieve the level of pressure needed to encourage greater compliance from the operator in question and others. We have therefore decided to adopt a general policy approach of normally publishing the identity of a company under investigation and confirming when we have issued a sanction warning notice as part of that investigation.
20. We do not agree that, as a general principle, publishing information about a potential breach of regulatory requirements would undermine the impartiality of any ongoing investigation. We also do not agree that publishing the name of a company under investigation or confirming where a sanction warning notice has been issued would necessarily prejudice the outcome of that investigation. Any formal finding of a breach would follow a full investigation and any publication ahead of this would clearly state the scope of the investigation and that no wrongdoing had been found.

21. While the publication of information about an investigation may raise reputational issues for an operator, we do not consider that this outweighs the adoption of a general policy to normally publish this information. However, the NSTA retains the discretion to depart from this general policy on a case-by-case basis, having regard to relevant factors including the public interest factors against publication where “publishing information at too early stage may disproportionately impact on an operator’s commercial/reputational interests at that time” or where publication would create “a competitive advantage for other operators”. There may also be circumstances where the NSTA considers that it is important to maintain confidentiality of the investigation itself.
22. This means that the NSTA will not always publish information about an investigation. By framing the types of information described in **ANNEX A** to the consultation as information that we normally expect to publish we have deliberately sought to retain the discretion to depart from this general policy where we consider that there are good reasons for doing so. This approach is consistent with the exercise of any function of a public authority where it is important not to fetter the discretion of a decision maker.
23. Our consideration of other relevant factors may mean that we include content in a publication that seeks to address risks related to misunderstanding or unintended consequences. For example, where the NSTA publishes information that confirms that we are undertaking an investigation, we will also publish information when we close that investigation, including where there is no finding of a breach. We note that operators will likely have a range of mechanisms available to address potential reputational issues that may arise.
24. To assist the NSTA in understanding where risks related to misunderstanding or unintended consequences may arise, where appropriate we will seek representations before making a final decision to publish information about an operator. In relation to those responses suggesting that the NSTA should publish any representations made by an operator, the NSTA already publishes a summary of any representations made in response to a sanction warning notice. We also note that operators are free to publish information, for example, on their own websites.



25. The NSTA's published Sanctions Procedure<sup>2</sup> describes that it will open an investigation where it has sufficient initial evidence that there has been a failure to comply with a petroleum-related requirement. To date, the NSTA has opened thirty-two investigations and closed only seven without imposing a sanction<sup>3</sup>. The decision to close a case without imposing a sanction can be shaped by several factors, including the potential severity and urgency of the concern, and the extent to which that concern is a priority for the NSTA in the context of any other issues the NSTA may be investigating at that point in time.
26. We do not agree that greater transparency at the investigation opening, or sanction warning stage would necessarily lead to a break down or avoidance of contracts and joint venture partnerships, as had been suggested by some respondents. As we set out above, any publications during the investigation process (i.e. before a decision has been taken to impose a sanction notice) would clearly state the scope of the investigation and that no wrongdoing has been found.
27. We have considered but do not agree with the view put forward by some respondents that publishing information about an investigation at an earlier stage is likely to discourage industry from engaging with the NSTA. We consider that the public and operators generally expect the NSTA to address potential areas of regulatory non-compliance. Greater transparency at an earlier stage in the enforcement process will serve to further demonstrate to the public and other operators our commitment to investigating areas of concern and acting where necessary. This in turn is likely to help maintain Industry's social licence to operate. Greater transparency at an earlier stage in an investigation will also reassure potential notifiers or whistleblowers that any concerns raised with the NSTA about potential regulatory non-compliance will be taken seriously.
28. In relation to responses suggesting that the NSTA should name all companies on a relevant licence and not just the operator, while all licensees are jointly and separately liable, often a joint venture will have nominated a lead operator who takes responsibility for actions carried out on the licence. The NSTA will nonetheless consider whether there is initial evidence to suggest that any co-licensees have breached a relevant requirement and open investigations into those companies where appropriate.
29. In relation to the response suggesting that the NSTA's proposed approach to publication would be inconsistent with that taken by other bodies, the NSTA notes that other regulators have adopted a general policy approach to the publication of information which includes identifying a company which is subject to investigation.

<sup>2</sup> Sanction Procedure

<sup>3</sup> Investigations & Enforcement



## ***Restrictions on publication***

### ***Summary of responses***

30. Some responses suggested that adopting the policy of publishing information proposed in the consultation would not be consistent with section 61 of the Energy Act 2016, which restricts the disclosure of “protected material” otherwise than in accordance with the provisions of Chapter 6 of the Energy Act 2016.
31. Respondents noted that restrictions on disclosure in section 61 of the Energy Act 2016 expressly allows for the publication of details of any sanction notice that the NSTA has issued but is silent on the publication of information at an earlier stage in an investigation.

### ***NSTA response and decision***

32. The restrictions in section 61 apply only to information and samples which have been obtained by the NSTA under Part 1 of the Energy Act 2016, i.e. using formal information gathering powers such as those in section 34.
33. Often, the NSTA discovers a potential breach while exercising its functions under other statutes, for example, the Petroleum Act 1998 or the Energy Act 1976. Information that has come to the NSTA in these circumstances has not been obtained under Part 1 of the Energy Act 2016 and therefore does not come under the restrictions on disclosure in section 61 of the Energy Act 2016.
34. While detailed information obtained using formal powers as part of an investigation under section 57 of the Energy Act 2016 may fall under the restrictions from disclosure, the NSTA will consider the lawfulness of any disclosure on a case-by-case basis but using this general position as a starting point.

35. In any event, we do not consider that the restrictions in section 61 prevents the NSTA from naming a company that is subject to an investigation or identifying the relevant regulatory requirement being considered as part of that investigation. This is because, such disclosure would not include information or samples that have been obtained under Part 1 of the Energy Act 2016. Rather, the publication would reveal only that, in the NSTA's judgement, evidence exists that a potential breach has occurred, and it is appropriate to open an investigation or issue a sanction warning notice.
36. We have therefore decided to implement the proposals in broadly the same form as we consulted on albeit with some amendments, having taken into consideration responses to the consultation.
37. In summary, where the NSTA opens an investigation, we would normally publish the name of the operator and identify the regulatory requirement to which the investigation relates. Where a sanction warning notice is issued as part of an investigation, the NSTA will normally publicise this fact by updating the case register and confirming the regulatory requirement to which the investigation relates. The NSTA will not normally publish its provisional findings including any detailed analysis of whether there has been a breach of a regulatory requirement until a sanction notice is imposed. The information that we expect to publish at investigation opening and sanction warning stage is set out in Table 1 of **ANNEX A**.

## ***Publication of decommissioning information***

### ***Summary of responses***

38. Many respondents supported further transparency in respect of operators decommissioning obligations. Respondents emphasised the importance that proper decommissioning has for the climate and the marine environment. Several respondents considered that the NSTA's proposals here would assist in increasing the pressure on companies to meet their regulatory obligations, encourage other companies to follow suit, and positively drive awareness within the public and industry in general.
39. Several respondents, including supply chain companies, agreed that the proposals would help to provide stability and certainty of opportunities in the supply chain, an important component for effective decommissioning and transition.
40. Some respondents asked what the NSTA meant by the term "inactive wells that require decommissioning", referred to in row 3(a) of Table 1 to the consultation. Linked to this, some respondents noted that the term "inactive wells" will likely cover a range of scenarios, but that there is no scope within the Well Operations Notification System ('**WONS**') to differentiate between these different types of "inactive wells", including those where there is apparently no requirement to decommission. Linked to this, one respondent stated that constraints within WONS mean that wells cannot progress beyond well delivery process 2 (WDP2) without full abandonment including conductor removal to 10 feet below seabed.
41. A few respondents highlighted that there is currently no recognition or mechanism within WONS to accommodate wells that are or may become derogated from the requirement to decommission.
42. A few respondents raised the example of inactive wells in active fields. They stated that, including these inactive wells in a broader metric would be misleading as it would give the impression of an outstanding decommissioning liability despite there often being good reasons for deferring that decommissioning until a later date. Linked to this, a few respondents asked how publication would take into account challenges that are outside of the control of a regulated person.

43. A few respondents highlighted a concern that publication of current well decommissioning deadlines could be taken as an indicator of COP and in doing so create pressure on market behaviours.
44. A few respondents considered that the NSTA's decommissioning data tools already provide sufficient transparency of upcoming decommissioning projects to enable supply chain companies to prepare, bid and deliver on projects. Several of these respondents suggested that the NSTA could consider addressing any perceived gaps in the information available on the data tools already provided or think about presenting that information in a different way.
45. Several respondents raised concerns over how the NSTA intended to treat inactive wells where there is an outstanding application with the NSTA, for example, to suspend a well. These respondents were concerned that including these inactive wells within a wider metric of outstanding liabilities could be misleading.
46. One respondent was concerned that the publication of a table specifying the progress relevant persons have made in respect of their decommissioning obligations could create a negative impression of those operators with the highest number of wells, who will by default find themselves topping the list regardless of underlying compliance and performance. The same respondent did not consider that a simple table could give sufficient context to deliver meaningful information to the public, for example, where an operator is planning a large scale well abandonment campaign.
47. One respondent questioned whether the proposed publication of information would be permitted under the protections in section 61 of the Energy Act 2016, which prohibit the disclosure of "protected material" otherwise than in accordance with the provisions of Chapter 6 of the Energy Act 2016.

## **NSTA response and decision**

48. The NSTA aims to ensure that operators fulfil their decommissioning obligations under their licence in a manner consistent with relevant legislation, the OGA Strategy and NSTA guidance. The NSTA facilitates this through effective stewardship, which relies on operators engaging proactively with the NSTA, for example, by seeking timely consent through the WONS system.
49. In **November 2023**, the NSTA wrote to operators urging them to make progress on the decommissioning of wells and warning that those failing to comply will be held to account<sup>4</sup>. The NSTA's UKCS Decommissioning Cost and Performance Update for 2024 (the '**2024 Update report**')<sup>5</sup> identified that industry had not met its planned attainment targets for the year, achieving only 70% of planned well decommissioning activities while also falling short in other areas such as topside and substructure removals. The 2024 Update report also expressed concern for the growing backlog of well decommissioning work caused by continued deferral of activity and recognised that the failure to undertake this activity in a timely manner is forcing supply chain companies to seek opportunities overseas. This risks contraction within the UK service sector, which will likely push prices further upwards.
50. The NSTA's UKCS Decommissioning Cost and Performance Update 2025 (the '**2025 Update report**')<sup>6</sup> identifies plug and abandonment ('**P&A**') as the activity with the greatest potential for cost saving, and which is forecast to make up about half of the total decommissioning expenditure. The 2025 Update report also identifies P&A as the area causing the greatest concern as too many companies are delaying well P&A work. A backlog of more than 500 wells which missed their original decommissioning deadline has built up, while more than 1000 wells will be due for P&A between 2026 and 2030.
51. The 2025 Update report goes on to identify that operators have not been awarding well P&A contracts quickly enough or on a sufficient scale, prompting rig owners to look for opportunities overseas in hope of securing longer deals and at higher day rates than in the UK. If supply chain capacity continues to shrink in the UK, costs will likely rise further, as there are already not enough rigs in the basin to meet forecast demand. The NSTA is committed to holding industry to account on its legal obligation to decommission wells after they permanently stop producing.

<sup>4</sup> Letter to licensees outlining NSTA's expectations for well decommissioning

<sup>5</sup> UKCS Decommissioning Cost and Performance Update 2024

<sup>6</sup> UKCS Decommissioning Cost and Performance Update 2025

52. We remain of the view that greater transparency is an effective means of encouraging greater engagement amongst operators with the NSTA, and in turn compliance in respect of decommissioning obligations. Further, as well as applying pressure on companies named in any publication to meet their regulatory obligations, transparency is also a means of highlighting those companies that are already performing well. In doing so, the NSTA aims to share examples of good practice that in turn will encourage collaboration through the sharing of knowledge between operators.
53. We have therefore decided to implement the proposals in broadly the same form as we consulted on albeit clarified in several important respects described below, having taken into consideration the responses received.
54. The term “*inactive well*” is defined in the NSTA’s UKCS Well Applications and Consents guidance and includes a production or a subsea development well with no further identified use and not being connected to an installation. While the definition of “*inactive well*” is wide, the NSTA intends to only publicly identify as poorly performing those “*inactive wells*” that are:
- a. post-COP development and/or suspended exploration and appraisal wells,
  - b. which do not have a valid WONS consent, and
  - c. which do not have a valid and complete application for a consent (including for derogation (AB2 (derogated)) in the process of being considered by the NSTA.
55. The NSTA’s consenting process already takes into consideration many of the factors raised by respondents, including access to well and technical feasibility. The NSTA’s consenting process considers among other things:
- a. the visibility and feasibility of an operator’s decommissioning plans in the context of their obligations under a relevant licence or the OGA Strategy,
  - b. organisational capability including the organisation’s financial commitment in terms of signed/committed contracts in the context of their obligations under a relevant licence or the OGA Strategy, and
  - c. potential repurposing, including CCS.

56. Ultimately, all wells must be properly decommissioned. However, the NSTA recognises that there will be circumstances where operators encounter technical challenges while decommissioning wells within their portfolio or where it makes more sense to suspend a well so that it can be decommissioned more efficiently as part of a wider campaign. It is crucial for operators to engage with the NSTA in respect of their decommissioning plans, including on these types of issue. This enables the NSTA to properly scrutinise applications and work with operators to ensure that they have suitable plans in place and the appropriate regulatory consent to effectively decommission the wells in their portfolio.
57. Greater transparency in this area will highlight those operators that are already taking positive steps towards fulfilling their decommissioning obligations while applying pressure on those operators that do not have suitable plans (or regulatory consent) in place. Transparency will signal areas of focus to the supply chain and provide assurance to them and the public that operators are being held to account in respect of their decommissioning obligations.
58. While it is not currently possible for an operator to distinguish between the different types of “inactive wells” on WONS, the NSTA is able to make this distinction by reference to other information held in respect of a particular well, as described in paragraphs 54 and 55 above. In any case, the NSTA’s intended focus here is those inactive wells that do not have a valid WONS consent or is not in the process of being considered by the NSTA as part of a valid and complete application, i.e. the application contains evidence of the operator’s capability to fulfil the work including key contracts with the supply chain.
59. Although the information provided on the NSTA’s decommissioning data tools goes some way to providing transparency in this area, it is not sufficient to meet the aims of the policy, as described above.
60. The consultation recognised that the publication of information must be permitted under the protections on the disclosure of “protected material” in Chapter 6 of the Energy Act 2016. Regulation 8 of the Oil and Gas Authority (Offshore Petroleum) (disclosure of Protected Material after Specified Period) Regulations 2018 provides for the disclosure of summary well information and is relevant to the information that the NSTA intends to publish following this decision.



## **B. Public interest factors and the application of the public interest factors to the wider publication of information not specified in ANNEX A to the consultation.**

### ***Summary of responses***

61. Many respondents supported the public interest factors proposed in the consultation. Some respondents considered that the public interest factors against publication outweighed the benefits to publication, particularly in respect of confidentiality. Others expressed a concern that the public interest factors in the consultation gave too much weight to commercial sensitivity.
62. One respondent suggested that the term “commercial sensitivity” should be defined in a narrow manner to avoid its misuse as a catch-all exemption for an operator to avoid the publication of information, which would undermine the policy objectives of the consultation.
63. Respondents suggested that factors against publication should include the lack of any incremental demonstrable benefit achieved by publication in view of the potential harmful consequences of publication, and a risk that the information published could be misinterpreted, misused or misconstrued, and damage rather than enhance public understanding of the Industry. One respondent considered that publishing information is only beneficial if it is accurate, well understood and used appropriately.
64. One respondent suggested that the NSTA should consider any implications to the security of installations and operators which may be caused by publishing information, for example, from activist groups.
65. One respondent suggested that contrary to the position set out in the consultation, greater public awareness may drive sub-optimal economic and environmental outcomes, which in turn would create avoidable financial stress leading to greater recourse to public funding for decommissioning.
66. The same respondent also suggested that the proposals set an expectation that operators should inform on their competitors, which, in their view, is inconsistent with the NSTA's obligations under section 8 of the Energy Act to work collaboratively with the industry and maintain a stable and predictable system of regulation which encourages investment in relevant activities. That respondent considered that this, in turn, could lead to less confidence in the UKCS resulting in lower investment.
67. One respondent suggested that the public interest factors in favour of publication could benefit from further elaboration. Another respondent questioned the evidential basis supporting the public interest in publishing company information.

68. One respondent suggested that the NSTA's policy objectives would be better achieved with a presumption in favour of publication as the starting point rather than a simple balancing of factors in favour and against publication.
69. One respondent suggested that the NSTA should not implement those public interest factors against publication related to considerations of when "specific details may limit the NSTA's ability to perform its functions effectively" or where publication "could prejudice investigatory or compliance activities of the NSTA or other enforcement bodies." The same respondent recommended that the NSTA consider the relevance of case law on the application of the public interest test including from the Information Commissioners Office.
70. Several respondents noted the intention to publish wider types of information not specified in **ANNEX A**, and raised the expectation that they should be consulted before any such publication takes place. One respondent suggested that the proposals in the consultation should be just the first of further measures to increase transparency.

### ***NSTA response and decision***

71. The consultation set out a framework within which we proposed that decisions about publication would be made. This included a policy that we would normally expect to follow in relation to publication, including the public interest factors that we would consider as part of a decision on: (a) whether to make an exception to our proposed general policy to publish information about a particular subject matter; and (b) what information relating to a particular subject matter will be included in a publication.
72. To assist the NSTA in making a publication decision, we will normally seek representations before making a final decision to publish information set out in **ANNEX A**. The NSTA will also normally seek representations from those affected by a proposed decision to publish information not set out in **ANNEX A**. This will enable the NSTA to consider whether the factors set out in **ANNEX B** apply to a proposed decision to publish certain information and balance any unintended consequences.
73. The inclusion of the public interest factors, and the considerations for and against publication that sit beneath them, gives us the ability to move away from our general policy where appropriate. We therefore consider that it would be inappropriate to introduce a rigid blanket approach to publication, including by narrowly defining specific terms.

74. We do not consider that it is reasonable to suggest that we should never publish information because it may damage an operator's reputation. We consider that our regulatory requirements are in the operator and public interest, and it is appropriate for us to expect all operators to comply with them. While reputational damage, and the consequences that follow, may in a particular case be relevant to our assessment of the factors we will consider in making our decision; however, they are not, and should not be, the only factors. We remain of the view that it is important for the NSTA to consider whether the publication of certain information could limit its ability to perform its functions correctly or where publication could prejudice investigatory or compliance activities of the NSTA or other enforcement bodies.
75. We note the comments from respondents about the content of publications, specifically concerns about the publication of material that could be misleading if it lacked context. In addition to ensuring that information is rigorously checked internally for accuracy before publication, we will normally seek representations from those that are subject of any proposed publication, at which time those parties can raise concerns on factual accuracy.
76. One respondent suggested that we include an additional factor against publication relating to the "lack of any incremental demonstrable benefit". We consider that this would, in effect, prompt the NSTA to consider the proportionality of a proposed decision to publish certain information. The NSTA will in any case consider whether the publication of information is proportionate in the context of the stated objectives. We also note that the NSTA is already prompted to consider proportionality as part of the following factor against publication: "publishing information at too early stage may disproportionately impact on an operator's commercial/reputational interests at that time".

## C. Unintended consequences and other issues raised in the consultation

### *Summary of responses*

77. Some respondents sought clarity on the actions the NSTA would take if, following publication, a company suffers material reputational or financial damage. This, they suggested, could lead to companies seeking compensation by way of damages claims against the NSTA.
78. One respondent suggested that the NSTA should consider its own reputation, which could be damaged if it appeared to be publicly commencing investigations which result in no further action.
79. One respondent raised a concern that the proposed framework afforded too much latitude towards those factors against publication which in turn would allow operators to avoid the publication of information, for example, by arguing that certain information may be commercially sensitive, or that publishing certain information could lead to reputational damage.
80. One respondent suggested that, with the adoption of the proposals, the supply chain could be inadvertently emboldened and prevent projects from progressing.

### *NSTA response and decision*

81. As we set out above, the NSTA retains the discretion to depart from this general policy on publication on a case-by-case basis, having regard to relevant factors including the public interest factors against publication where “publishing information at too early stage may disproportionately impact on an operator’s commercial/reputational interests at that time” or where publication would create “a competitive advantage for other operators.”
82. We will normally seek representations from a party affected by a proposed publication as part of our consideration of the factors in **ANNEX B** and as part of any consideration of whether it is appropriate to depart from our general policy.

83. Further, and as we set out above, any publications during the investigation process (i.e. before a decision has been taken to impose a sanction notice) would clearly state the scope of the investigation and that no wrongdoing has been found. Where we publish information that confirms that we are undertaking an investigation, we will also publish information when we close that investigation, including where there is no finding of a breach. In this context, we do not consider that respondents are justified in a concern that any reputational harm arising from a decision to identify an operator in relation an investigation would be irreparable.

84. We consider that greater transparency in the manner described above will contribute to achieving due process as the NSTA's processes will be transparent. This will provide assurance that we are taking appropriate action and ensure that parties directly involved in a case are treated fairly. Ultimately, we consider that the implementation of the decisions will develop public and investor confidence in the UKCS by demonstrating how the NSTA is acting to ensure that regulatory obligations are complied with.

# ANNEX A – Information that we expect to publish

1. We would normally expect to publish the information on the subject matter set out in Table 1.
2. In relation to the subject matter in Table 1, we will normally consider the factors set out in **ANNEX B** in our consideration of:
  - a. Whether to make an exception to our general policy to publish information about a particular subject matter.
  - b. What information relating to a particular subject matter will be included in a publication, in particular, whether to publish some or all of the related or ancillary material listed in Table 1.

**Table 1: Information that the NSTA would expect to publish**

ENFORCEMENT FUNCTION				
	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material	Frequency and format
1.	A decision to open an investigation into a breach of a petroleum-related requirement.	Name of operator.  Details of the regulatory requirement / petroleum-related requirement the investigation relates to.	The NSTA's powers.  Area of the North Sea concerned.  Date investigation opened.  Status of the investigation.  Stage of the investigation.  Accompanying press statement.	Published on the Investigations and Enforcement section of the NSTA's website following the decision to open an investigation.
2.	A decision to issue a Sanction Warning Notice.	Name of operator/ licensee.  Details of the regulatory requirement / petroleum-related requirement the investigation relates to.	The NSTA's powers.  Area of the North Sea concerned.  Accompanying press statement.	Published on the Investigations and Enforcement section of the NSTA Board's decision to issue a Sanction Warning Notice.

DECOMMISSIONING INFORMATION				
	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material	Frequency and format
3.	Well Operations Notification System (“ <b>WONS</b> ”) metrics:  a. All inactive wells that require decommissioning.  b. Wells with expired well decommissioning deadlines/no NSTA approved decommissioning deadline.	Name of operator.  The licence number.  Location of wells including a numerical identifier.  Number of wells that require decommissioning.  The status of the well in respect of whether there is a valid WONS consent or valid and complete application.  <b>This would not include specific technical well data.</b>	Accompanying press statement.	Published on the Decommissioning section of the NSTA’s website.  Updated at least annually.
4.	Table specifying the progress relevant regulated persons have made in respect of their decommissioning obligations.	Name of operator.  Number of wells that require decommissioning.  The status of the well in respect of whether there is a valid WONS consent or valid and complete application.	Accompanying press statement.	Published on the Decommissioning section of the NSTA’s website.  Updated at least annually.



# ANNEX B – Public interest factors considered in respect of publication of information<sup>7</sup>

## A. The public interest

### *Factors in favour of publication:*

- i. There is a general public interest in regulators being transparent about the actions they have taken in respect of those they regulate.
- ii. Publication may enable the NSTA to regulate in a way that is more proportionate and cost effective. This is because the publication of our enforcement actions can be a less resource intensive means of encouraging compliance amongst other operators.
- iii. Greater awareness amongst public and operators in respect of decommissioning obligations will likely lead to operators fulfilling those obligations. This in turn will mitigate the extent to which those obligations will need to be fulfilled by recourse to public funds.
- iv. Publication may encourage third parties to come forward to provide information about an operator that supports the NSTA's regulatory functions, for example, an investigation into a potential breach of a petroleum-related requirement.

### *Factors against publication:*

- v. Specific details may be protected from disclosure under relevant legislation or licence.
- vi. Specific details may be considered commercially sensitive and/or publication could give rise to competition law concerns.
- vii. Publication of specific details may limit the NSTA's ability to perform its functions effectively, for example, by reducing the likelihood of operators reporting regulatory risk if they know that they are likely to be identified as being the subject of an investigation.
- viii. In some cases there may be a risk that publishing details could compromise confidential sources of information and evidence about potential wrongdoing, for example, where there is a risk of evidence being destroyed or lost.
- ix. In some cases there may be a risk that publishing information could prejudice investigatory or compliance activities of the NSTA or other enforcement bodies, for example, where the content and timing of publication could lead to evidence being concealed or destroyed.

<sup>7</sup> For Operator, also read Licensee where appropriate.

## **B. The sector/operator interest**

### ***Factors in favour of publication:***

- i. Publication signals to other operators the issues that are of concern to the NSTA and that, in turn, will encourage compliance with regulatory requirements and thereby support operators' social licence to operate.
- ii. Publication demonstrates to operators that are compliant that action is taken to address non-compliance. This in turn promotes a stable and predictable system of regulation which encourages investment in the UK Continental Shelf.
- iii. Transparency of upcoming projects (e.g. decommissioning of wells) in the UKCS enables supply chain companies to better prepare, bid and deliver on projects. This in turn is likely to better facilitate competition and lead to cost efficiencies for operators.
- iv. Publication of decisions and reasons for those decisions demonstrates to the supply chain that operators will be held to account in respect of their licence obligations, for example, the decommissioning of wells.

# ANNEX C – Regulatory Impact Assessment

1. The policy establishes the NSTA's general policy approach to the publication of company specific information and to provide greater transparency about the types of information the NSTA will be likely to publish and the factors to which it would normally expect to have regard to in making publication decisions.
2. The table at **ANNEX A** sets out a list of company-specific information that we will normally publish unless there are good reasons not to do so. This includes information relating to the opening of an investigation and the giving of a sanction warning notice. This will also include information in respect of operators' decommissioning obligations in relation to specific wells.
3. We consider that the policy is a necessary and proportionate way to ensure that we are publishing information about operators where it is in the public interest, and to do so in a way that is fair to those concerned.
4. The consultation sought views and evidence on the potential impacts (costs and benefits) to businesses and wider society of the proposals. The NSTA's new Transparency Statement does not impose new regulatory requirements on industry; however, the effect of the policy may lead to higher levels of expenditure to ensure compliance with existing regulatory requirements. Regulated persons are, in any case, expected to comply with all regulatory requirements.
5. Some respondents commented that the proposals may cause reputational and commercial damage to industry and individual companies; however, no quantitative analysis was provided.

6. While the publication of information about an investigation or an operator's performance against its decommissioning obligations may raise reputational issues for an operator, we do not consider that this outweighs the adoption of a general policy to normally publish this information. In any case, the NSTA retains the discretion to depart from this general policy on a case-by-case basis, having regard to relevant factors including the public interest factors against publication where "publishing information at too early stage may disproportionately impact on an operators commercial/reputational interests at that time" or where publication would create "a competitive advantage for other operators. We also note that operators will likely have a range of mechanisms available to address potential reputational issues that may arise.
7. The NSTA has a general duty under the Equality Act 2010 in carrying out its functions to have due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation;
  - advance equality of opportunity between different groups; and
  - foster good relations between different groups.
8. Further details can be found at: [Your rights under the Equality Act 2010 | EHRC](#).
9. We have considered whether the proposals in the consultation would have an adverse impact on persons with protected characteristics. Our assessment is that, given the corporate nature of licensees and operators, there would not be such an impact.



