



North Sea
Transition
Authority

Commercial Alignment and Delivery

Stewardship Expectation 7

July 2019

1. Expectation

The OGA expects that the adoption and implementation of good commercial practice should enable activity to be progressed in a manner, and at a pace, consistent with obligations in the MER UK Strategy.

1.1 This includes in the following areas:

- Parties can demonstrate that their decision makers have:
 - (i) taken into account their MER obligations^A in entering into and pursuing commercial activity; and
 - (ii) given due consideration to their obligation to collaborate with their counterparties and the OGA;
- All commercial activity is carried out in a timely manner.

1.2 The Expectation applies to all relevant persons who are subject to the MER UK Strategy. It may also be seen as guide to good practice for any prospective parties seeking to enter the UKCS and negotiating with existing parties. It does not apply to supply chain interactions.

2. Reason for the Expectation

2.1 The OGA is aware of poor commercial practices and/or parties' mis-alignment causing delay and eroding value, consequently failing to comply with the MER UK Strategy.

2.2 This Expectation supports and encourages the adoption and implementation of existing voluntary codes of practice^B put in place by industry.

2.3 This expectation supports the MER UK Strategy, in particular the Central Obligation (paragraph 7) and paragraphs 8, 17, 26, 27 and 28.

3. Delivering the Expectation

Relevant persons are expected to:

A: Assess

- A.1 Undertake an internal assessment to determine the appropriate approach to the management and execution of commercial activity, taking account of the complexity of the activity and its significance^C.
- A.2 For example, it would be expected that activities rated 'high' for complexity and/or significance will be managed with a higher level of senior management oversight and engagement than activities that are rated 'low' for both, and this assessment will be reflected in the further steps outlined below.
- A.3 In relation to the parties' obligations for maximising economic recovery an assessment of any wider MER opportunities and their implications for the commercial activity should be undertaken.

B: Mandate

- B.1 Establish and record a negotiating mandate to be delegated to a suitably competent practitioner, that is consistent with the significance and complexity of the negotiation/commercial activity, the internal assessment of the party's obligations under the MER Strategy and includes a process for escalation.

C: Frame

- C.1 Hold a joint framing session with the appropriate counterparties consistent with the significance and complexity of the activity as determined by the internal assessment, including engagement with appropriate senior management or MD.

^A MER – the principal objective of maximising the economic recovery of UK petroleum¹, as set out in s9A of the Petroleum Act 1998 (as amended)², and the obligations under that Act on relevant persons to comply with the Maximising Economic Recovery Strategy for the UK (MER UK Strategy).

^B In particular the Commercial Code of Practice (CCoP)³.

^C Significance in this context should reflect absolute significance to MER, the significance to the party and the significance for counterparties.

C.2 The objective of the joint framing session is to establish:

- parties' alignment on the scope and objectives of the negotiation/commercial activity,
- the 'negotiating space'/'area of agreement' to eliminate extreme and/or anchored negotiating positions,
- the key points of difference for further negotiation, and
- appropriate escalation and/or dispute resolution paths, including mid activity re-engagement with the decision makers, and engagement with the OGA.

D: Plan

- D.1 Agree and follow a realistic, joint plan and timetable for progressing and completing the commercial activity.
- D.2 Where consistent with the significance and complexity of the activity, include a 'mid activity' assessment to ensure the activity remains on schedule and/or, if appropriate, to re-frame the commercial activity.
- D.3 Escalate in a timely manner if the commercial activity is not progressing in accordance with the agreed timetable.

E: Contract

- E.1 Adopt and implement OGUK standard form agreements where they exist. The aim should be, where possible, to implement standard agreements with the minimum necessary changes in preference to being used simply as the opening point of a negotiation. Where they exist, use supporting guidance notes as a means to resolve outstanding issues.
- E.2 With reference to Table 1 below, and in accordance with good practice, the OGA expects that joint ventures will generally:
- following award of a new licence, execute a JOA within six months; and,
 - (noting that DSAs should normally be in place for existing fields) execute a field-wide post-tax DSA within six months after first production.

F: Timelines

- F.1 In order to provide some context for timeliness in commercial activity, the following indicative durations are set out below for (a) the negotiation and execution of the following standard form⁴ and other commonly used agreements and (b) carrying out and issuing approvals (or otherwise) for the following assessments (Table 1). If proposed timelines for completion of an activity differ significantly from the OGA's indicative durations, and/or the activities take longer than expected, parties should be prepared to explain and account for this to the OGA, and demonstrate that MER UK has not been compromised as a result.

OGUK Standard Form Agreements	
Confidentiality Agreement	2 weeks
Pipeline Crossing Agreement	1 month
Proximity Agreement	2 weeks
Model Form Study Agreement	1 month
Joint Operating Agreement	6 months
Standard Form Construction and Tie-in Agreement	6 months
Decommissioning Security Agreement	6 months
Other Common Agreements	
Third-party processing agreements (e.g. TPOSA, TPA) ^D	6 months
Unitisation and Unit Operating Agreement (UUOA)	6 months
Corporate Transactions/M+A	
New co-venturer/operator financial capability assessment	3 months
New operator technical capability assessment	3 months

Table 1: Indicative timeframes for execution of industry agreements

^D Taking account of the requirements of the Infrastructure Code of practice (ICoP) including the Automatic Referral Notification process.

G: Review

- G.1 Complete a post-activity review, appropriate for the scale and significance of the negotiation/commercial activity, using the OGA template⁵ in order to:
- highlight good practice,
 - consider the level of compliance with this Expectation and its effect on the delivery of MER.

4. Demonstrating delivery

- 4.1 The OGA currently engages with licensees, operators and other parties on a number of levels and in a number of ways, and information obtained from those engagements will help inform the OGA of the extent to which a party may be delivering this Expectation. These include, for example:

Annual Stewardship Survey

- 4.1.1 The OGA's Annual UKCS Stewardship Survey collects a range of data from licensees and operators for each production licence in the UKCS. The OGA may request additional information or reports. The OGA generally uses its powers under section 34 of the Energy Act 2016 to obtain such survey data and additional information.

Performance Benchmarking

- 4.1.2 The OGA may produce benchmarking data on a variety of metrics derived from the Stewardship Survey data and other information provided to it. These data will generally be presented to industry in aggregated form and used in Tier Reviews with companies to improve performance.

Tier Reviews

- 4.1.3 The OGA will request an operator's participation in Tier Reviews in accordance with the OGA's Stewardship Review Guidance⁶. That guidance provides further detail on the Tier Review structure, prioritisation, planning, execution and follow-up. The OGA will set the agenda for the Tier Review to focus on issues it considers present the greatest stewardship impact, and based on data received in the Annual UKCS Stewardship Survey, benchmarking and delivery against this Expectation.

5. References

- 1 The Maximising Economic Recovery Strategy for the UK
- 2 Section 9A, Petroleum Act 1998 (as amended)
- 3 Oil & Gas UK Commercial Code of Practice and associated guidance on negotiations best practice and transactions best practice:
<https://oilandgasuk.co.uk/commercial-code-of-practice-2/>
- 4 Oil & Gas UK Standard Form Agreements:
<https://oilandgasuk.co.uk/commercial-behaviours/>
- 5 Commercial Managers Forum After Action Review Process and Template:
<https://oilandgasuk.co.uk/product/guidance-and-tools-on-conducting-a-post-negotiation-after-action-review/>
- 6 Stewardship Review Guidance
- 7 OGA 'Measured Escalation' process and use of powers:
<https://www.ogauthority.co.uk/regulatory-framework/disputes-and-sanctions/>
- 8 Enquiry Guidance
- 9 Industry Behavioural Guidelines for Creating Quality Area Plans:
<https://www.ogauthority.co.uk/about-us/mer-uk-forum-task-forces/cultural-change/>
and 'Collaborative Behaviours Case Study Template':
<https://www.ogauthority.co.uk/media/5032/collaborative-behaviours-case-study-template-2018.pdf>

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