



Oil & Gas
Authority

Consultation on proposals to issue OGA Governance Guidance

Date of publication: 20 September 2021
Closing date: 12 November 2021

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The consultation and Impact Assessment can be found on the OGAs website:
<https://www.ogauthority.co.uk/news-publications/consultations/>.

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1. General information

Purpose of this consultation

To set out and seek views on proposed OGA Governance Guidance (“**the Guidance**”) as set out in Supporting Obligation paragraphs 3 and 4 of the OGA Strategy (“**the Strategy**”) which states that the licensees of an offshore license must always apply good and proper governance, including complying with any governance principles and practices as the OGA may from time to time direct.

- This Guidance focusses on 3 areas:
 - The adoption of a recognised corporate governance code or principles, suitable for the size and characteristics of the Licensee, as outlined in paragraph 3.3 of the proposed Guidance.
 - The adoption of certain OGA Strategy specific additional principles, as outlined in paragraph 3.11 of the Guidance.
 - A commitment to assist the UK Government in meeting its net zero target by having in place good environmental, social and governance (“**ESG**”) practices in their plans and operations, as set out in paragraph 3.15 of the Guidance.
- The OGA is intending to use the Guidance only for the purposes of and as set out in the Governance Supporting Obligation within the Strategy.
- This consultation invites views on the proposed Guidance in particular from those who will be required to act in accordance with the Strategy.

Issued: **20 September 2021**

Respond by: **12 November 2021**

Territorial extent: United Kingdom and UKCS

Responding to this consultation

The OGA invites written views and comments on the proposed Guidance, to be made by 12 November 2021. Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Please submit your response by email or post.

The OGA has produced a coversheet for responses submitted by email or post (see **ANNEX 1**) and asks that you complete and include it with your response, which should speed up the processing of responses, and help to maintain confidentiality where appropriate.

Written response to the consultation should be sent to

OGA Governance Consultation
Oil and Gas Authority
AB1 Buildings
48 Huntly Street
Aberdeen
AB10 1SH

Email: governanceconsultation@ogauthority.co.uk

Representative groups are asked to give a summary of the persons or organisations they represent when they respond.

Additional copies:

Other versions of the document in Braille, large print, audio or Welsh can be made available on request. Please contact us using the ‘enquiries’ details to request alternative versions.

Confidentiality and data protection

The OGA will publish a summary of the responses to this consultation. The OGA does not intend to publish individual responses to this consultation. However, the OGA is subject to the requirements of the *Freedom of Information Act 2000* and the *Environmental Information Regulations 2004*. If you think any part of your response should be kept confidential, please place such part(s) in a separate annex to your response and include your reasons why this part of your response should not be published. For example, this may include information such as your personal background and experience. Therefore, if you want your personal details to remain confidential, please provide them in the coversheet only so that the OGA does not have to edit your response.

If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to the OGA to use for its regulatory remit.

Quality assurance

This consultation has been carried out in principle with **the government's consultation principles**.

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

OGA Consultation Coordinator
21 Bloomsbury Street
London
WC1B 3HF

Email: ogaconsultationcoordinator@ogauthority.co.uk

2. Introduction

- 2.1 The revised OGA Strategy, which came into force on **11 February 2021** has two Governance Supporting Obligations, at paragraphs 3. and 4. Paragraph 3. states that a licensee of an offshore license *“must apply good and proper governance at all times, including complying with any governance principles and practices as the OGA may from time to time direct.”*
- 2.2 In addition, paragraph 4. requires that the licensee of an offshore licence must comply with a direction made by the OGA under paragraph 3.
- 2.3 Further, the Introduction to the Strategy states that “[c.] ... to enable maximising economic recovery of petroleum, relevant persons should consider their social licence to operate, and develop and maintain good environmental, social and governance practices in their plans and daily operations” and that “[d.] compliance with the Strategy is intended to lead to investment and operational activities that, on an expected basis, add net value overall to the UK.”
- 2.4 The UK’s corporate governance regime and foundational governance standards have long been admired around the world and generally viewed as an effective model that has influenced other jurisdictions in Europe and Asia as a means to attract and provide reassurance to, international investment. The OGA intends that this is emulated by all offshore Licensees to ensure continued investment and a successful basin. Governance credentials are increasingly an important factor in final investment decisions as a key standard for investment.
- 2.5 Over recent years, the United Kingdom Continental Shelf (“**UKCS**”) has seen a marked increase in Mergers & Acquisitions (“**M&A**”). These transactions have resulted in a very different corporate mix on the UKCS, with some companies divesting long held assets and new entrants acquiring them, many new entrants of which have a private or state-backed controlling interest. Whilst these new entrants have the financial means and motivation to invest, providing the capital for new exploration, development and redevelopment projects, at the same time, however, they may be less likely to face public scrutiny, are typically less accountable to shareholders and are often not required to have the same degree of corporate governance as listed businesses, who are required under the UK Listing Rules to report in their annual report and accounts on how they have applied the UK Corporate Governance Code.
- 2.6 As the draft Guidance makes clear, where the OGA makes any assessment of the governance of a Licensee, this is done specifically and exclusively for the OGA’s own purposes, and not for any other purpose. It is important to note that, as set out in the draft, this Guidance is not intended to replace all the other governance requirements with which each Licensee must comply; and that third parties should not place any reliance on any statement (or absence of any statement), decision, action or inaction of the OGA, or rely on the OGA in any other way, to satisfy themselves as to the adequacy of a Licensee’s governance. Third parties will of course need to carry out their own due diligence on the governance of Licensees.

3. Background

- 3.1 *The Energy Act 2016* created the legislative framework to establish the OGA as a government company and transferred to the OGA certain powers concerning the regulation of offshore upstream petroleum activity in the UK. The OGA has the power to grant licenses that confer exclusive rights on the licensee to 'search and bore for and get' petroleum. The OGA also has the power to enforce the terms of licenses as well as other obligations set out in statute.
- 3.2 *The Petroleum Act 1998*, as amended by the *Infrastructure Act 2015*, provides a legislative basis for the OGA to create a strategy to meet its principal objective.
- 3.3 The OGA's first strategy came into force on the 18 March 2016 and sets out that it and stated others in the offshore industry (such as Licensees) should be obliged to maximise the expected net value of economically recoverable petroleum from relevant UK waters and was intended to lead to investment and operational activities that, on an expected basis, would add net value overall to the UK.
- 3.4 That strategy has been revised and, in February 2021, the new OGA Strategy ("**the Strategy**") came into force. The OGA Strategy includes a revision to the central obligation, reflecting the ongoing global energy transition, to assist the Secretary of State in meeting the net zero carbon by 2050 target.

4. Purpose and Rationale

- 4.1 In this consultation, the OGA presents proposed Guidance (**ANNEX 2**) which seeks to provide a set of principles to be considered by all Licensees.
- 4.2 With a uniquely placed insight into the UKCS and the views of its investors, the OGA considers that good and proper standards of Licensee governance are necessary – including having capable and responsible Boards who plan and deliver appropriate strategies designed to secure the successful long-term delivery of projects. Good and proper governance is critical to sustaining the confidence of investors, and in delivering licence obligations under the Strategy.
- 4.3 The OGA considers that a minimum threshold of good governance is appropriate, one which is proportionate, yet applicable by all those who will be required act in accordance with the Strategy, to ensure appropriate oversight, investment and a successful basin.
- 4.4 The OGA aims to promote the good reputation of the UKCS as a reliable place to do business, to protect the industry's social licence to operate and to ensure that basic levels of propriety are observed and complied with by companies exploiting the UK's natural resources.
- 4.5 This consultation document and the proposed Guidance sets out how the OGA will normally consider Licensee governance structures and arrangements, noting that the proposed Guidance is not a substitute for any regulation or law and is not legal advice.
- 4.6 It is intended that the proposed Guidance will be kept under review and be revised as appropriate in the light of experience, developing law and practice and any change(s?) to the OGA's powers and responsibilities. If the OGA changes its proposed Guidance in a material way, it will publish a revised document.

5. Governance Guidance – OGA Proposal

- 5.1 The *2018 UK Corporate Governance Code* is based around a set of principles that emphasise the value of good corporate governance to long-term sustainable success. By applying the principles, companies can demonstrate through their reporting how the governance of the company contributes to its long-term sustainable success and achieve wider objectives.
- 5.2 The OGA considers it is right therefore that the licensee of an offshore license should apply such good and proper principles of governance, as befits the licensee's size or stage in its growth.
- 5.3 The Guidance will provide the OGA with a means and mechanism to influence and promote good governance, including environmental and social governance, across all Licensees, which will lead to investment and operational activities that deliver the aims of the OGA Strategy.
- 5.4 The heightened interest and prominence of principles relating to good Environmental, Social and Governance (“**ESG**”) disclosures and reporting, as well as the societal transformation around the global climate emergency, means that investment decisions are no longer purely based around profit and returns, but around people, planet and the governance backbone that delivers on that. Industry's social licence to operate is under increased scrutiny, and the OGA can and should make clear the value of good ESG and influence best practice in this area.
- 5.5 The proposed Guidance provides a set of principles which the OGA will consider should it undertake a governance assessment as to whether it considers a Licensee is applying good and proper governance, for the purposes of the Strategy:

Corporate Governance

Paragraphs 3.2-3.9

The OGA does not intend that industry be over-burdened by additional reporting responsibilities. The proposed Guidance seeks to bring into scope those that are currently out-with the scope of an existing recognised UK (or domestic) Code and Principles and expects offshore Licensees to observe a code that is flexible, and appropriate for a company of its size, structure and character.

OGA Strategy specific governance principles

Paragraphs 3.10-3.11

The OGA recognises that the UKCS is now made up of a very diverse corporate mix, with some companies divesting long held assets and new entrants acquiring them, the result of which is an increasing potential for Licensees to have a private or overseas state-backed controlling interest.

Adherence, compliance, and reporting against existing UK codes and frameworks is, for many licensees, not a regulatory requirement. Furthermore, many may be unfamiliar with the OGA and the specifics of the UKCS.

For that reason, the OGA considers it appropriate to set out some minimum expectations within the Guidance related to purpose and leadership, board composition, and director responsibilities. In particular, these relate to having appropriate knowledge of the UKCS and the OGA's Strategy and having an experienced financial officer to ensure sound financial management and responsibility.

Paragraphs 3.12-3.13

The OGA expects the Relevant Board to promote the long-term financial success of the company/Licensee in the context of the unique challenges and complex and corporate and public sector relationships that exist in the oil and gas sector.

These sections relate to the governance requirements as regards to the Relevant Board's oversight of financial resilience and the recognition that a lack of appropriate governance in this area can impact negatively not only on an individual business but also on associated third parties. The OGA differentiates these expectations from our existing Financial Guidance as they are ongoing requirements whereas the Financial Guidance relates to a point in time and based around licence conditions.

It is the intention of these sections that the guidance will provide the OGA with a tool under the Strategy for constructive engagement with Relevant Boards in relation to their oversight of financial responsibility.

Paragraphs 3.14-3.15

The OGA is committed to raising awareness of the importance of ESG factors for investors and expects Licensees to take steps to ensure progression of relevant energy transition opportunities.

The OGA actively supports the need for clarity in ESG disclosure and reporting, and the Strategy emphasises the importance of industry's continued social licence to operate and the need to develop and maintain good ESG practices in Licensee plans and daily operations. In doing so, the OGA expects that Licensees will take appropriate steps to assist the Secretary of State in meeting the net zero target while securing the maximum value of economically recoverable petroleum.

Consultation questions

- Q1** Do you have any comments on the proposed general approach, as set out in paragraphs 3.2-3.9, whereby the OGA expects offshore Licensees to observe a code that is flexible, and appropriate for a company of its size, structure and character. In doing so, this will ensure investor confidence and delivery of MER and the drive to net zero?
- Q2** Do you have any comments on the proposals for all licensees to follow a recognised UK Code, or domestic equivalent?
- Q3** Do you already follow a pre-existing UK (or domestic) code? If so, which?
- Q4** In addition to UK Corporate Governance principles outlined in the recognised Codes, as defined in paragraph 3.8 of the proposed Guidance, do you have any comments on the additional Strategy specific principles under Purpose and Leadership, Board composition and Director Responsibilities?
- Q5** Do you have any comments on the Strategy specific principles under Delivery of License commitments?
- Q6** Do you have any comments on the Strategy specific principles under Audit, risk, internal control and reporting?
- Q7** Do you have any comments on the Strategy specific principles under Environmental Governance?
- Q8** Do you have any comments on the Strategy specific principles under Corporate Social Responsibility?
- Q9** Do you have any comments on the mechanisms under which it is proposed the OGA will monitor and enforce delivery of the Guidance, including the power to direct, and existing OGA sanctions procedures?
- Q10** What impacts do you consider this Guidance to have on industry, mindful of the importance of good & proper governance?
- Q11** Do you believe this Guidance can be incorporated within your company within six months of the Guidance being published (c. H2 2022)?
- Q12** Do you have views or quantitative estimates of the potential impacts (costs and benefits) of the proposed Guidance on your business or industry overall?

Regulatory Impact Assessment and Equality Impact Assessment

The Small Business, Enterprise and Employment (SBEE) Act 2015, as amended by *the Enterprise Act 2016* introduced the Business Impact Target (BIT) which concerns the impact of economic regulation on businesses. Under *the Enterprise Act 2016*, the activities of statutory regulators such as the OGA were brought into scope of the BIT. The OGA is required to publish an annual assessment of the economic impact on business of changes to regulatory policies and practices. The proposed Guidance is intended to set out a relevant framework of governance for Licensees, without imposing new burdens on Licensees that already have a good and proper governance culture in place. In doing so, it aims to support delivery of the Strategy and through compliance with the Central Obligation add net value overall to the UK.

If any reader of this consultation document is of the view that the proposals will lead to material costs or benefits to relevant persons or others, especially costs and benefits that can be quantified, please respond to the consultation with as much detail as possible.


The OGA 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.

Further details can be found at:

<https://www.equalityhumanrights.com/en/equality-act/equality-act-2010>.

Annex 1: Response coversheet

 Oil & Gas Authority	CONSULTATION ON PROPOSALS TO ISSUE OGA GOVERNANCE GUIDANCE						
To: OGA GOVERNANCE CONSULTATION							
YOUR DETAILS Name: Company/Organisation: Position: E-mail address: Address: Representing:							
CONFIDENTIALITY Please tick below if you consider any part of your response is confidential, giving your reasons why: <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Nothing <input type="checkbox"/></td> <td style="width: 50%;">Name/contact details/position <input type="checkbox"/></td> </tr> <tr> <td>Whole response <input type="checkbox"/></td> <td>Company/organisation <input type="checkbox"/></td> </tr> <tr> <td>Part of the response <input type="checkbox"/></td> <td></td> </tr> </table> If there is no separate annex, which parts?		Nothing <input type="checkbox"/>	Name/contact details/position <input type="checkbox"/>	Whole response <input type="checkbox"/>	Company/organisation <input type="checkbox"/>	Part of the response <input type="checkbox"/>	
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If you want any part of your response, your name or your organisation to be kept confidential, can the OGA still publish a reference to the contents of your response including (for any confidential parts) a general summary that does not disclose the specific information or enable you to be identified? <table style="margin-left: auto; margin-right: auto; border: none;"> <tr> <td style="padding: 0 20px;">YES <input type="checkbox"/></td> <td>NO <input type="checkbox"/></td> </tr> </table>		YES <input type="checkbox"/>	NO <input type="checkbox"/>				
YES <input type="checkbox"/>	NO <input type="checkbox"/>						
DECLARATION I confirm that the correspondence supplied with this coversheet is a formal consultation response that the OGA can publish, except as indicated above. However, in supplying this response, I understand that the OGA may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the OGA can disregard any standard e-mail text about not disclosing email contents and attachments. Name: Signed (if hard copy): _____							



Oil & Gas Authority

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Our registered office is at 21 Bloomsbury Street, London, United Kingdom, WC1B 3HF.

For information about how we process data and monitor communications please see our Data Protection Statement and for terms of use please see our Terms and Conditions, both available on our website.

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