



North Sea  
Transition  
Authority

# Financial Penalty Guidance

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# Scope and purpose of this guidance

1. This document provides guidance as to the matters to which the North Sea Transition Authority ('**NSTA**') will have regard when determining the amount of the financial penalty to be imposed by a financial penalty notice given pursuant to the Energy Act 2016 ('**the 2016 Act**').
2. The guidance is not a substitute for any regulation or law and is not legal advice.
3. The 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 powers being exercised by the NSTA. If the NSTA proposes to revise this guidance, it will do so pursuant to section 45(3) of the 2016 Act.

# Introduction

4. The 2016 Act established the powers of the Oil and Gas Authority ('**OGA**'). The NSTA is the business name of the OGA. The OGA remains the legal name of the company and references to the NSTA in this document should be taken as referring to the OGA and vice versa. The powers established by the 2016 Act include, among others, powers to give Sanction Notices for failure to comply with a petroleum related requirement. These powers commenced on 1 October 2016.
5. The 2016 Act requires that the NSTA must determine the procedure it proposes to follow in relation to enforcement decisions,<sup>1</sup> including "when determining the amount of the financial penalty to be imposed by a financial penalty notice."<sup>2</sup> The procedure can be found on the [NSTA website](#).
6. This guidance is less example-based than the financial penalty guidelines published by some other regulators due to the NSTA's limited previous history in the imposition of financial penalty notices. However, further to section 45(3) of the 2016 Act, the guidance may be revised and updated in due course, subject to further consultation.<sup>3</sup>
7. This guidance is being updated with reference to the OGA's name change to the NSTA. As the substance of the guidance has not changed, it is not considered necessary to conduct a further public consultation from that done in relation to the original guidance.

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<sup>1</sup> [Energy Act 2016](#), section 59.

<sup>2</sup> [Energy Act 2016](#), section 45(2)(a).

<sup>3</sup> Revision of the guidance will be in accordance with the provisions of subsections 45(3)-(6) of the Energy Act 2016.

# Sanction notices

8. Sections 42 to 60 of the 2016 Act details the circumstances under which the NSTA is empowered to give sanction notices and the process to be followed (including in relation to any appeal). Sanction notices can be issued where a person has failed to comply with one of three petroleum-related requirements. These are:<sup>4</sup>
  - 8.1. a duty imposed under section 9C of the 1998 Act to act in accordance with the Strategy in force at the time the financial penalty was issued;
  - 8.2. a term or condition of an offshore licence; and
  - 8.3. a requirement imposed on a person by or under the 2016 Act which is sanctionable in accordance with Chapter 5 of the 2016 Act.<sup>5</sup>
9. There are four forms of sanction notice - enforcement notices (section 43), financial penalty notices (sections 44-46), revocation notices (section 47) and operator removal notices (section 48).

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<sup>4</sup> [Energy Act 2016](#), section 42(3).

<sup>5</sup> See: [Energy Act 2016](#), sections 21(6), 23(9), 24(4), 25(4) (Disputes); 28(4), 31(8), 33(3)(b), 34(4), 35(5) (Information and Samples); 38(10), 39(4), 40(5)

(Meetings); 43(4), 48(8) & 57(4) (Sanctions); and section 87B of the [Energy Act 2011](#) (as amended by section 70 of the Energy Act 2016) (failure to provide information under section 87 of Energy Act 2011).

# Financial penalty notices

10. Sections 44, 45 and 46 of the 2016 Act set out the details of financial penalty notices that are relevant to this guidance, and are summarised in paragraphs 10, 11 and 12 below.
11. Section 44 of the 2016 Act defines a financial penalty notice as a notice which gives details of the failure to comply with the specified petroleum-related requirement and requires, among other things, the person(s) to pay to the NSTA the amount of financial penalty specified in the notice before the end of the period specified in the notice (which must not be less than 28 days). It may also, where appropriate, require the person(s) to remedy the failure to comply with the petroleum-related requirement within a timeframe specified in the notice.
12. Section 45 of the 2016 Act limits the amount of the financial penalty to £1 million. The Secretary of State may by regulations amend that limit to an amount not exceeding £5 million.
13. Section 46 of the 2016 Act provides that if a financial penalty notice is given to two or more persons, those persons are jointly and severally liable to pay the penalty under it. The payment is recoverable as a civil debt if it is not paid before the end of the period specified for payment.
14. Money received under a financial penalty notice must be paid into the Consolidated Fund.<sup>6</sup>

## Matters for determining the amount of financial penalty

15. The matters to which the NSTA will have regard when determining the level of financial penalty are intended to be consistent with the principles of best regulatory practice. In adopting these principles, the NSTA has considered the approach taken by other regulators,<sup>7</sup> though noting the difference in their regulatory objectives from the NSTA's.

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<sup>6</sup> The Consolidated Fund is the Government's general bank account and does not benefit the NSTA directly.

<sup>7</sup> For example; Health and Safety Executive Enforcement Management Model: [www.hse.gov.uk/enforce/emm.pdf](http://www.hse.gov.uk/enforce/emm.pdf); Environment Agency Enforcement and Sanctions Guidance: [www.gov.uk/government/uploads/system/](http://www.gov.uk/government/uploads/system/)

[uploads/attachment\\_data/file/468315/LIT\\_5551.pdf](http://uploads/attachment_data/file/468315/LIT_5551.pdf); Ofgem REMIT Penalties Statement: [www.ofgem.gov.uk/sites/default/files/docs/2015/06/remit\\_penalties\\_statement\\_23\\_june\\_2015\\_1.pdf](http://www.ofgem.gov.uk/sites/default/files/docs/2015/06/remit_penalties_statement_23_june_2015_1.pdf); and Ofcom Penalty Guidelines: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/96101/Penalty-guidelines-2015-Section-392-of-the-Communications-Act-2003.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/96101/Penalty-guidelines-2015-Section-392-of-the-Communications-Act-2003.pdf).

16. The NSTA considers that any financial penalty determined should be among other things:
  - 16.1. Effective in addressing the underlying cause of the failure to comply;
  - 16.2. Dissuasive of future failure to comply, either by the person or, further to publication of the penalty notice, other persons in similar circumstances; and
  - 16.3. Proportionate to the significance of the failure in the context of the petroleum- related requirement and the impact on the relevant persons.
17. The NSTA may also take into account when determining the amount of the financial penalty matters relating to the specific circumstances of the failure to comply including, but not limited to:
  - 17.1. Specific criteria relevant to adjust the starting figure of any financial penalty such as:
    - 17.1.1. Any gain (financial or otherwise) made by the person(s) or any connected body as a consequence of the failure to comply;
    - 17.1.2. The degree of harm caused, or increased cost incurred, by the failure to comply;
    - 17.1.3. The severity of the failure to comply in the context of the relevant petroleum-related requirement, specifically a failure to comply with: a duty imposed under section 9C of the 1998 Act to act in accordance with the Strategy in force at the time the financial penalty was issued; or a term or condition of an offshore licence; or a requirement imposed on a person by or under the 2016 Act which is sanctionable in accordance with Chapter 5 of the 2016 Act.
    - 17.1.4. The extent to which the person(s) may have sought to benefit from the failure to comply;
    - 17.1.5. The extent to which parties have followed industry Codes of Practice<sup>8</sup> where these are relevant to the failure to comply; and
    - 17.1.6. The duration of the contravention;

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<sup>8</sup> For example, the Infrastructure Code of Practice and the Commercial Code of Practice.



17.2. Mitigating circumstances and/or behaviours associated with the failure to comply with the petroleum-related requirement such as:

17.2.1. Action taken by the person(s) in advance to address the failure to comply;

17.2.2. Previous conduct by the person with respect to this and other petroleum related requirements;

17.2.3. The presence of internal mechanisms/processes intended to prevent the failure to comply; and

17.2.4. Co-operation with the NSTA's investigation.

17.3. Aggravating circumstances and/or behaviours associated with the failure to comply with the petroleum related requirement such as:

17.3.1. Persistent inaction to address the failure to comply;

17.3.2. Previous conduct by the person with respect to this and other the petroleum related requirements;

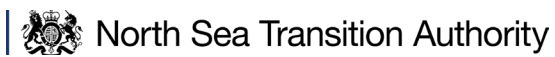
17.3.3. Absence of internal mechanisms / processes to prevent the failure to comply; and

17.3.4. Evidence of senior management involvement in support of the failure to comply.

18. The NSTA will consider the factors listed above (to the extent they are relevant) and any other circumstances relevant to the particular facts under consideration in determining the appropriate sanction. Where a financial penalty is envisaged as the sanction, or part of the sanction, then the amount considered as appropriate in light of the factors set out above will appear in the sanction warning notice. Where the NSTA receives any representations in response to a sanction warning notice<sup>9</sup> then these will be considered in determining the amount of financial penalty set in the sanction notice

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<sup>9</sup> [Energy Act 2016](#), section 49.



North Sea Transition Authority

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