



North Sea
Transition
Authority

Sanction Procedure

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Contents

Scope and purpose of this guidance	5
Purpose of this Procedure	5
Sanction Powers	6
Section 2	6
Summary of sanctions powers in the 2016 Act	6
Sanctions arising from a duty under section 9C of the 1998 Act.....	6
Sanctions arising from a term or condition of an offshore licence	6
Sanctions arising from other provisions of the 2016 Act	7
Sanction Procedure	8
Section 3.....	8
Regulatory Enforcement Principles.....	8
Separation of duty within the NSTA regarding enforcement decisions	8
The Sanction Notice Process.....	8
Investigation	9
Section 4	9
Issuing a Sanction Warning Notice	10
Issuing a Sanction Notice	11
Consideration of the Sanction to be applied	11
Guidance on the matters determining the level of financial penalty	12
Appeals.....	13
Publication and withdrawal of a Sanction Notice	13
Contacts.....	13

Scope and purpose of this guidance

Purpose of this Procedure

1. The Energy Act 2016 (the '**2016 Act**') established the powers of the Oil and Gas Authority ('**OGA**'). The North Sea Transition Authority ('**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 requirement¹. These powers commenced on 1 October 2016.
2. The 2016 Act requires that the NSTA must determine and issue a statement of the procedure it proposes to follow in relation to enforcement decisions concerning Sanction Notices (section 59(1)-(4)). This document forms that statement and additionally provides a description of matters related to sanctions. It is not a substitute for any regulation or law and is not legal advice.
3. The procedure will be kept under review and be amended as appropriate in the light of experience and developing law and practice and any change to the NSTA's powers and responsibilities. If the NSTA changes its procedure in a material way, it will publish a revised procedure.

¹ Petroleum-related requirements are defined in paragraph 4.

Sanction Powers

Section 2

Summary of sanctions powers in the 2016 Act

4. Part 2, Chapter 5 (sections 42 to 60) of the 2016 Act details the circumstances when the NSTA is empowered to give Sanction Notices and the approach to be followed to impose a Sanction Notice. Sanction Notices can be issued where a person has failed to comply with one of three petroleum-related requirements:²
 - i. A duty imposed under section 9C of the 1998 Act to act in accordance with the OGA Strategy (the '**Strategy**') for enabling the Principal Objective to be met;
 - ii. A term or condition of an offshore licence; and
 - iii. A requirement imposed on a person by or under the 2016 Act which is sanctionable in accordance with Chapter 5 of the 2016 Act.
5. There are four forms of Sanction Notice (enforcement, financial penalty, revocation and operator removal).³

Sanctions arising from a duty under section 9C of the 1998 Act

6. Further to paragraph 4(i) above, section 9C(1) requires that a holder of a petroleum licence must act in accordance with the current strategy or strategies when planning and carrying out activities.

Sanctions arising from a term or condition of an offshore licence

7. The right conferred on the licensee by a licence to search, bore for and get petroleum in the licensed area is accompanied by a number of duties and obligations (either set out at length in the licence itself or incorporated by reference from the applicable set of Model Clauses⁴).

These clauses have evolved with time, particularly with the introduction of Frontier, Promote and Innovate licences, but the core principles remain consistent throughout.

² Energy Act 2016, section 42(3)

³ The sanction notices are described in sections 43 to 48 of the Energy Act 2016

⁴ See The Petroleum (Current Model Clauses Order) 1999 (SI1999/160).

8. Further to paragraph 4(ii) above, any failure to comply with these licence terms and conditions may result in the NSTA issuing a Sanction Notice. It should be noted that the power to issue a Sanction Notice with respect to a failure to comply with a term or condition of a licence does not fetter the right of the NSTA to exercise powers in respect of the licence.

Sanctions arising from other provisions of the 2016 Act

9. Further to paragraph 4(iii) above, there are certain provisions in the 2016 Act that may also lead to sanctions:
 - i. Chapter 2, sections 21, 23-25
– in relation to disputes;
 - ii. Chapter 3, sections 28, 31, 33-35 in relation to information and samples;
 - iii. Chapter 4, sections 38-40 in relation to meetings.

Sanction Procedure

Section 3

Regulatory Enforcement Principles

10. The sanction procedure described in this document seeks to conform with the following principles of effective regulation by being:
 - i. Transparent: with respect to the process leading to the imposition of a Sanction Notice, including the prior engagement with the relevant persons receiving a Sanction Notice;
 - ii. Consistent: with respect to its approach to the assessment of a suspected failure to comply with a petroleum-related requirement and, subject to case specific circumstances, consistent with respect to previously issued Sanction Notices; and
 - iii. Targeted: to address the underlying cause of the specific failure to comply with a petroleum-related requirement.

Separation of duty within the NSTA regarding enforcement decisions

11. Sections 59(2) and (3) of the 2016 Act provide that an enforcement decision should be taken by a person who was not directly involved in establishing the evidence on which the enforcement decision is based.

The Sanction Notice Process

12. The process the NSTA will follow when considering whether or not to issue a Sanction Notice is described in the following paragraphs and illustrated in Figure 1.

Investigation

Section 4

13. For a sanctions case, the Disputes and Sanctions team will carry out an Initial Assessment to examine whether there is sufficient initial evidence that there has been a failure to comply with a petroleum-related requirement (for example, potential non-compliance with the NSTA Strategy) and whether a full Investigation under the NSTA's sanctions powers is merited or whether it is better to use other regulatory levers/powers (whether formal or informal) at the NSTA's disposal. The NSTA notes that the evidential threshold for commencing its Investigations is low.
14. The NSTA is likely to request information during the investigation stage. This will usually be carried out via exercise of its information gathering powers⁵.
15. When the NSTA opens an Investigation, the NSTA will publish brief details of the existence of that Investigation. The NSTA will not generally name the parties who are the subject of the Investigation at that stage, unless the NSTA considers it would be in the public interest to do so.
16. The Investigation conducted by the NSTA will seek to obtain the information and documentation required to determine whether there has been a failure to comply with a petroleum-related requirement and, if there has been such a failure, whether to issue a Sanction Warning Notice and a subsequent Sanction Notice in relation to that failure.
17. In reaching a determination as to whether there has been a breach of a petroleum related requirement and whether to issue a Sanction Warning Notice and a Sanction Notice, the NSTA will usually take into account the following non-exhaustive list of considerations:
 - a. The strength of the evidence that there has been a failure to comply with a petroleum related requirement;
 - b. The significance of the failure or suspected failure to comply with the objectives of the Strategy. The risk to the fulfilment of the Strategy as a result of the failure to comply, whether that risk is immediate or not and whether that risk is direct or indirect;
 - c. Whether pursuing the failure or suspected failure to comply with a petroleum related requirement will establish a material principle or precedent;
 - d. The prospect of success. Whether there is a reasonable chance that a sanction can be imposed successfully and whether the sanction will be successful in correcting the failure to comply with a petroleum related requirement. This does not mean that the NSTA will focus solely on cases where it considers that a

⁵ Energy Act 2016, section 57(2)

- successful outcome is very likely. There will be instances where the impact on the Strategy is grave and a balance will need to be struck, or where taking action will clarify the Strategy or issues of law;
- e. The relationship of the failure or suspected failure to comply, with the NSTA's broader strategic goals. Whether the failure or suspected failure to comply with a petroleum related requirement relates to and undermines the NSTA's broader strategic goals and/or priorities, including those set out in the NSTA's Corporate Plan applicable at the time;
 - f. The severity of the failure or suspected failure to comply in the context of the relevant petroleum- related requirement. Whether the allegation concerns conduct that is, or that appears to be, a repeated, intentional or flagrant contravention;
 - g. The wider impacts of the failure or suspected failure to comply with a petroleum related requirement. Whether there is a point of wider application with respect to which an Investigation would help to clarify the NSTA's approach for its stakeholders;
 - h. The suitability of the imposition of sanctions to address the failure or suspected failure to comply with a petroleum related requirement;
 - i. Whether there are other alternative resolutions that are likely to achieve the same ends, or deal with the same issues, as the Investigation (for example, would opening a dispute regarding third party access be more appropriate in the circumstances);
 - j. The availability of money, time and resource within the NSTA to continue the investigation and/or pursue the failure or suspected failure to comply with a petroleum-related requirement.
 - k. Whether the input required to conduct an Investigation, given the need to do justice to the interests of the parties likely to be affected, may not be justified when compared to other activity the NSTA may wish to undertake; and
 - l. The urgency for action. Whether there is a continuing urgency to pursue the Investigation, or whether the case can be deferred.

Issuing a Sanction Warning Notice

18. Where the NSTA proposes, as a result of an Investigation, to give a Sanction Notice in respect of a failure to comply with a petroleum-related requirement, the NSTA will first issue a Sanction Warning Notice in accordance with section 49 of the 2016 Act.
19. The Sanction Warning Notice will among other things specify the evidence and the grounds on which the NSTA considers that there has been a failure to comply and provide an indication of the type and level of the sanction being considered.

20. When a Sanction Warning Notice is issued, the NSTA will specify in it the representation period that it considers appropriate in the circumstances. In doing so it will take into account, amongst other matters, the complexity of the case, the number of persons involved and the severity of the indicative sanction.
21. The NSTA will consider representations made by the recipient of the Sanctions Warning Notice where those representations are made during the representation period (or such further period as agreed by the NSTA in writing).

Issuing a Sanction Notice

22. Following the issue of a Sanction Warning Notice, the NSTA will consider upon completion of the representation period the facts and information available in relation to the matter and will decide on one of the following courses of action:
 - a. to issue a Sanction Notice in respect of a failure to comply with a petroleum related requirement as detailed in the Sanction Warning Notice;
 - b. to issue a Sanction Notice in respect of a failure to comply with a petroleum related requirement which differs from the failure detailed in the Sanction Warning Notice; or
 - c. not to issue a Sanction Notice in respect of a failure to comply with a petroleum related requirement.
23. The Sanction Notice will specify the level and type of sanction to apply to the failure to comply with a petroleum related requirement. Where the level and type of sanction in the Sanction Notice is materially different from the indicative level and type advised on the Sanction Warning Notice, the NSTA will advise the affected person(s) of the change and allow 5 days for the affected parties to provide further representations regarding the sanction before, where appropriate, issuing the Sanction Notice.

Consideration of the Sanction to be applied

24. In deciding which type and level of sanction to apply to the failure to comply with a petroleum related requirement, the NSTA's aim is that any sanction should be among other things:
 - a. Effective in addressing the underlying cause of the failure to comply;
 - b. Dissuasive of future failure to comply, either by the person or, further to publication of the Sanction Notice, other persons in similar circumstances; and
 - c. Proportionate to the significance of the failure in the context of the petroleum-related requirement and the impact on the relevant persons.
 - d. The NSTA will also usually take into account matters relating to the specific circumstances of the failure to comply including, but not limited to:
 - i. Any gain (financial or otherwise) made by the person(s) or any

- connected body as a consequence of the failure to comply; the extent to which the person(s) may have sought to benefit from the failure to comply.
- ii. The degree of harm caused to the Principal Objective, or cost incurred by others due to the failure to comply.
 - iii. The severity of the failure to comply in the context of the petroleum-related requirement.
 - iv. The extent to which parties have followed industry Codes of Practice⁶ where these are relevant to their failure to comply.
 - v. The duration of the contravention.
 - vi. Co-operation with the NSTA's Investigation.
 - vii. Mitigating circumstances or behaviours associated with the failure to comply with the petroleum-related requirement, including, but not limited to: action taken by the person in advance to address the failure to comply; previous conduct by the person with respect to this and other petroleum-related requirements; the presence of internal mechanisms/processes intended to prevent the failure to comply.
 - viii. Aggravating circumstances or behaviours associated with the failure to comply with the petroleum-related requirement including, but not limited to: persistent inaction to address the failure to comply; previous conduct by the person with respect to this and other petroleum-related requirements; the absence of internal mechanisms/processes to prevent the failure to comply; evidence of senior management involvement in support of the failure to comply.

Guidance on the matters determining the level of financial penalty

25. The guidance on the matters to which the NSTA will have regard in determining the level of financial penalty is covered in a separate document: the NSTA's financial penalty guidance.⁷ The current maximum amount of a financial penalty is £1 million.

⁶ For example the Infrastructure Code of Practice; the Commercial Code of Practice

⁷ [Link to Financial penalty guidance.](#)

Appeals

26. The 2016 Act makes provision for appeals against certain decisions and actions of the NSTA to the First Tier Tribunal (General Regulatory Chamber)⁸ regarding disputes, information and samples, meetings and Sanctions Notices. A right of appeal to the Tribunal against a Sanction Notice may be based on the grounds that there was no failure to comply with a petroleum related requirement or on the sanction imposed by the Sanction Notice. Appeals are time limited.

Publication and withdrawal of a Sanction Notice

27. Further to the provisions of section 53 of the 2016 Act, the NSTA may publish details of any Sanction Notice⁹ given in accordance with this procedure subject to the condition that the NSTA may not publish anything that, in the NSTA's opinion, is commercially sensitive, not in the public interest to publish or is otherwise not appropriate for publication.

28. The NSTA will publish a Sanction Notice where it considers that such disclosure would be in the public interest.

29. If, after details of a Sanction Notice are published by the NSTA, the Sanction Notice is cancelled or varied on appeal, or withdrawn by the NSTA, the NSTA will publish details of the cancellation, variation or withdrawal.

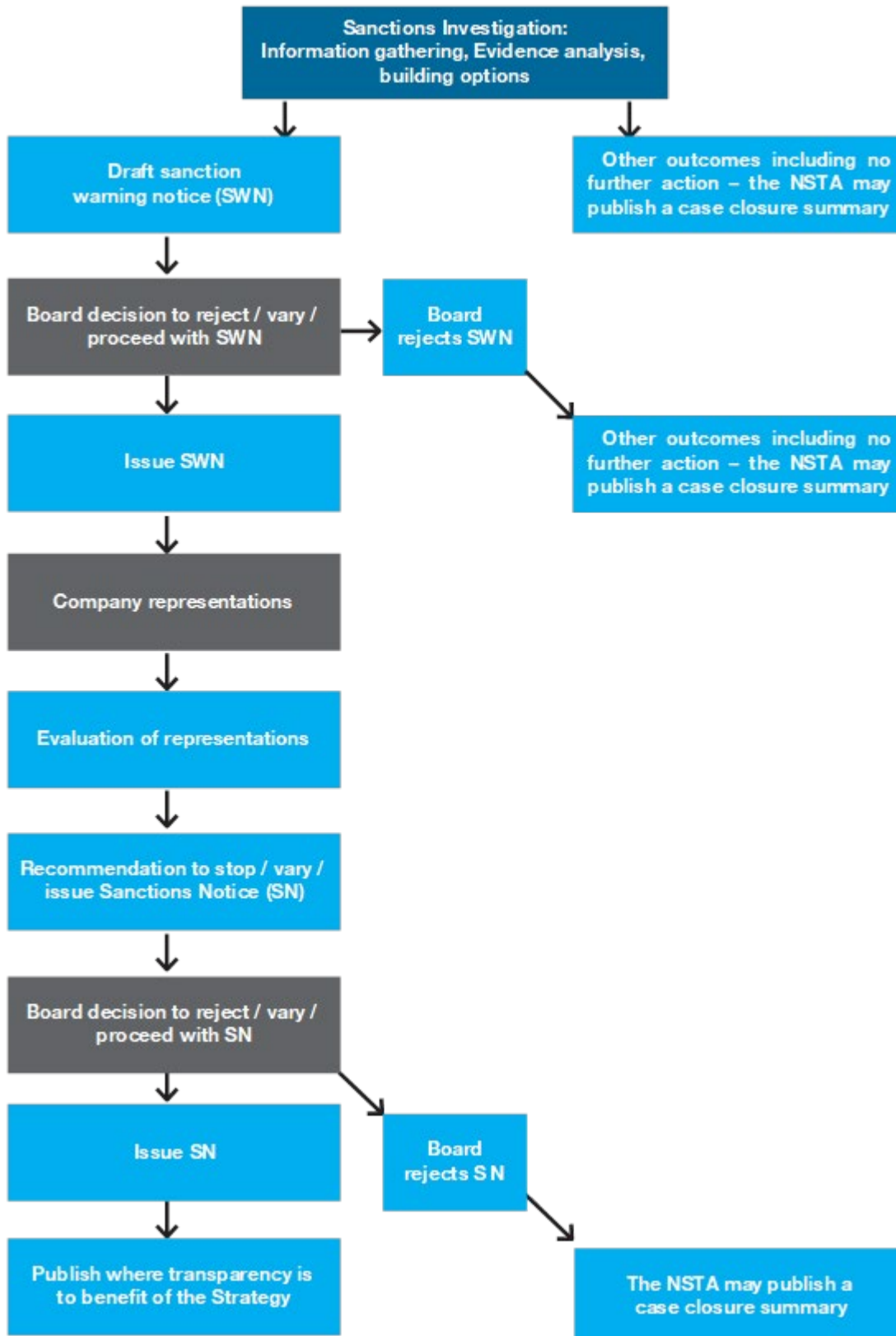
Contacts

30. If you would like to discuss the sanction procedure further, please contact:
disputesandsanctions@ogauthority.co.uk

⁸ The First-tier tribunal – Energy Act 2016, section 18(1). Details of the tribunal procedure may be found here: <https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules>

⁹ Energy Act 2016, sections 50-52

Figure 1



Disclaimer: The flowchart is for indicative guidance purposes only and does not provide legal advice.



North Sea Transition Authority

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