



North Sea
Transition
Authority

Carbon Dioxide Appraisal and Storage Licence: Licence Transfer and Change in Control Approach

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Introduction and context

1. The North Sea Transition Authority ('**NSTA**') is the business name of the Oil and Gas Authority ('**OGA**'). The OGA remains the legal name of the company. References to the NSTA should be interpreted as the OGA.
2. The storage of carbon dioxide in the United Kingdom's territorial waters and on the United Kingdom Continental Shelf is subject to a licensing regime overseen by the NSTA. Anyone who wishes to explore for or use a geological feature for the long-term storage of carbon dioxide in a UK offshore area must hold a Carbon Dioxide Appraisal and Storage Licence ('**CS Licence**'), pursuant to section 18 of the Energy Act 2008.
3. Under the terms of a CS Licence, licensees have the right, with the consent of the NSTA, to transfer (either in whole or partially) their rights under the licence to another company or arrange a change in control of the licensee. These rights are governed by the clauses headed *Transfer of licence* etc. and *Change in control of licence holder* respectively in a CS Licence and certain provisions of the Energy Act 2023 (as applicable).
4. Any transaction in which one or more companies enter or withdraw from an extant CS Licence within its Appraisal or Initial Term¹, is referred to in this guidance as a **Transfer**.
5. Any transaction in which a licensee has a change in control event (as defined in the relevant CS Licence) is referred to in this guidance as a **Change in Control**.
6. Transfers and Changes in Control are prohibited unless they have the prior consent of NSTA. This applies equally to Transfers between unaffiliated companies, to Transfers between affiliated companies, and to Transfers to the remaining participants on the withdrawal of a company from a CS Licence.
7. The NSTA will consider any Transfer and/or Change in Control made without prior consent as a very serious breach of the CS Licence terms and will consider all the powers available to the NSTA (including but not limited to the immediate full or partial revocation of the CS Licence).
8. This document sets out how the NSTA will generally approach its decision on whether or not to grant consent to a Transfer or Change in Control primarily during the Initial or Appraisal Term of the CS Licence, although similar principles may be applied during the Operational Term² of the CS Licence.
9. This document is not a substitute for any regulation or law and is not legal advice. It does not have binding legal effect. Where the NSTA departs from the approach set out in this document, the NSTA will endeavour to explain this in writing to the person seeking a decision from the NSTA.
10. This approach will be kept under review and amended as appropriate in the light of further experience and developing law and practice, and any changes to the NSTA's powers and responsibilities. If the NSTA changes its approach in a material way, it will publish a revised document.

¹ As defined in the underlying CS Licence

² As defined in the underlying CS Licence

Application process

11. Even though much of the information the NSTA will need to consider whether or not to grant consent to a Transfer or Change in Control will come from the incoming party, the current licensee is responsible for applying for consent for either a CS Licence Transfer or Change in Control. For the purposes of this document, the entity responsible for applying for consent will be referred to as the **Applicant**.
12. Applications for CS Licence Transfers/ Changes in Control should be made in writing to the NSTA via approvals@nstauthority.co.uk. The application should make clear what the proposed Transfer/Change in Control is, the companies involved and underlying rationale.
13. Whilst the application sets out the basic information and underlying rationale behind the transfer, the NSTA reserves the right to seek further information in order to consider any applications made.
14. In processing applications, the NSTA routinely consults colleagues within the NSTA, the Department for Energy Security and Net Zero, The Crown Estate/ Crown Estate Scotland (where applicable) and Ofgem (where appropriate). The NSTA may also provide certain information to other relevant persons including, but not limited to, HM Revenue & Customs ('**HMRC**').
15. Consent will not be granted unless the NSTA has all required information and is satisfied that Transfer and/or Change in Control considerations have been met, as set out in the section *Matters considered by the NSTA* in this document.
16. The NSTA charges a fee for such applications. Guidance on the NSTA's charging regime for can be found on the NSTA's website [here](#).

Matters considered by the NSTA

17. CS Licences are not prescriptive as to what the NSTA must take into consideration when deciding whether or not to consent to a Transfer or Change in Control.
18. The NSTA understands that the development of the carbon capture and storage industry, and the requirements of other regulators, may lead to the creation of different corporate structures to manage a CS Licence; in particular this could be a newly established Incorporated Joint Venture or other Special Purpose Vehicle ('**IJV/SPV**') rather than an existing company. The NSTA will consider each structure on a case-by-case basis in line with the underlying regulatory regime at the time.
19. When considering a Transfer, the NSTA will consider whether the aggregate impact of the Transfer on its statutory functions and duties is positive (or neutral).
20. When considering a Change in Control, the NSTA will consider whether it has been demonstrated that such Change in Control will not prejudice the ability of the licensee to meet its licence commitments, liabilities and obligations and whether the aggregate impact of the Change in Control on the NSTA's statutory functions and duties is positive (or neutral).
21. The assessment of a potential Transfer or Change in Control will take into account all relevant factors, including those set out below in paragraphs 22 to 33 (where applicable):

Technical capability of the licensee:

22. The NSTA will undertake a review of whether the Applicant can demonstrate that the incoming party has the technical capability to discharge its licence obligations. As a minimum, information provided should include, but not be limited to:
 - a. An overview of the incoming party's understanding of the plans on the licence and how it intends to participate and meet its licence obligations;
 - b. An overview of the technical competence of the incoming party (incl. staff organograms and training programmes);
 - c. An overview of any commitments from the Appraisal Term Work Programme (if applicable) not yet completed and how the Transfer/Change in Control is likely to facilitate completion.

Financial capability of the licensee

23. The NSTA will undertake a financial review as part of the Transfer/Change in Control application. For more information relating to licensee financial capability please contact licensee.finance@nstauthority.co.uk

Corporate governance, fitness of licensees and persons exercising control:

24. The incoming party will need to demonstrate its independence in carrying out or controlling the activities under the licence, including acting promptly to meet the requirements of the licence and the applicable law and regulations, as well as cooperating with the NSTA on such regulatory matters in a timely fashion. The incoming party should identify which corporate governance code they intend to comply with. The NSTA's current guidance on corporate governance for offshore oil and gas licensees should be referred to³ as the principles are equally applicable to carbon storage.
25. Good corporate governance is essential to a company's success, and to that end the NSTA would expect an appropriate balance of non-executive and independent non-executive directors ('**NEDs**') are on the incoming party's board to ensure that no one individual or small group of individuals dominates the board's decision making. Independent NEDs can provide constructive challenge, foster independent decision making and mitigate potential conflicts of interest. This is expected to be equally important where the incoming party is structured as an IJV/SPV; understanding the Shareholder Agreement and/or other governance documents will be important in this regard.
26. The 'fitness' of licensees and other persons connected with licensees is critical to the NSTA's statutory duties and objectives. Directors of the incoming party and individuals involved

in the management of the licensee and incoming party, must have knowledge of, and comply with, the NSTA's requirements as to 'fitness'. The incoming party should refer to the NSTA's general approach to assessing the 'fitness' of licensees, Directors of licensees, and individuals involved in the management of licensees; and of those who control licensees⁴.

27. Shareholder disputes can sometimes act as an obstacle to timely compliance with regulatory and legal obligations, or the smooth running of operations, therefore, the proposals for licence management by the incoming party should be outlined with specific reference to how this is dealt with (e.g., in a shareholder's agreement). This information is particularly important given the developing nature of the carbon storage industry, and the management arrangements (including, but not limited to, the proposed regularity of operating and management committee meetings) should be explicitly set out in the application.

Effect on exploration operatorship arrangements:

28. The NSTA will consider the effect of a Transfer/Change in Control on exploration operatorship arrangements, including but not limited to where a Transfer/Change in Control may leave operations without an approved exploration operator.

³ NSTA Governance Guidance (nstauthority.co.uk)

⁴ OGA's general approach to assessing the 'fitness', Directors and individuals involved in the management of licensees; and of those who control licensees (nstauthority.co.uk)

Participation:

29. The NSTA will further consider cases where one company may gain a completely dominant position on a CS Licence (or within an IJV/SPV). The NSTA will want to understand if this may lead to an incoming party with a small interest in the CS Licence or IJV/SPV being unmotivated or disincentivised to participate in exploiting the licence or storage site but yet able to block work.

Intragroup transfers:

30. Where a Transfer to an affiliated company is made specifically to restructure licence holdings prior to a disposal of CS Licence(s) interests via a Change in Control, the NSTA will need to be informed who the ultimate licensee is before a decision is taken on the Transfer.

31. Where the reason for the Transfer or Change in Control is tax related, the NSTA recommends that the Applicant discusses the proposal with HMRC in the first instance. The NSTA may inform HMRC of Transfer/Change in Control applications as we receive them.

Separation of assets within company group

32. The NSTA will not generally consent to a Transfer that enables a company or other entity to avoid its CS Licence commitments and obligations at no cost to itself, but to the detriment of fellow licensees, shareholders, infrastructure co-owners or the Exchequer.

Information and Samples Plan ('ISP')

33. An ISP must be submitted and agreed with the NSTA before legal completion of the Transfer or Change in Control occurs. For further information, please contact ISC@nstauthority.co.uk

Decision and Execution

34. The NSTA will generally not consent to a Transfer or Change in Control unless it has all required information and, among other things, is satisfied that relevant Transfer and/or Change in Control considerations have been met, including (amongst other things) the matters set out in paragraphs 19 and 20 (as applicable).
35. If consent is granted for a Transfer and/or Change in Control, the consent will normally be valid for 90 days. However, if completion of the Transfer/Change in Control is delayed beyond the consent validity, a further application will be required and the NSTA will consider whether or not to allow further time for the completion to occur.
36. Such further application should include the reason(s) why the Transfer/Change in Control could not be completed within the consent/approval period and confirmation that the details in the original application remain valid.
37. Consent for a Transfer may be conditional on the deed effecting the Transfer substantially conforming to a draft approved by the NSTA, which can be found in ANNEX A.
38. Any changes to that example deed should not materially alter its effect (for instance, the company names can be moved to a Schedule). It does not include execution or attestation clauses, which should be added as required. The company can disapply the Contracts (Rights of Third Parties) Act 1999/ Contract (Third Party Rights) (Scotland) Act 2017 in relation to the deed, and/or provide for the execution of the deed in counterpart. It must also decide whether jurisdiction should lie with the English and Welsh, Scottish or Northern Irish courts (refer to the Civil Jurisdiction (Offshore Activities) Order 1987 (1987/2197)). No other jurisdiction will be acceptable. Use of the approved draft is not compulsory, but if a company wishes to use a different draft it must submit it in advance for consideration by the NSTA's Legal Directorate, which may increase our processing time.
39. Legal completion of the transaction (whether a Transfer or Change in Control) must be confirmed, as required in the applicable consent, by emailing all relevant execution documents which evidence the Transfer or Change in Control has taken place (which may include, but not limited to, a deed substantially conforming to a draft approved by the NSTA; Deed of Interest Assignment; JOA Novation; shareholder agreement) as outlined in any applicable consent. For further information, please contact approvals@nstauthority.co.uk

ANNEX A – Indicative Deed relating to Licence Transfer

This Deed of Assignment is made on [date] between:

- (1) [Current licensee 1] whose registered office is at [Address 1];
[Current licensee 2] whose registered office is at [Address 2];
...
(all such parties being hereinafter together referred to as the “**Assignors**”);
- (2) The Assignors other than [Assigning company], together with [Acquiring company], (all such parties being hereinafter together referred to as the “**Assignees**”); and
- (3) Oil and Gas Authority (hereinafter referred to as “**OGA**”).

Whereas:

- (A) The Assignors are the holders of United Kingdom Carbon Dioxide Appraisal and Storage Licence [licence number] (the “**Licence**”) granted with effect from [date] under the Energy Act 2008; and
- (B) The OGA has [in a letter dated] [on] [date] given its consent to the execution of this Assignment.

Now this deed witnesses that:

1. The Assignors hereby assign unto the Assignees all rights, interest, obligations and liabilities of the Assignors in, under, pursuant to and in respect of the Licence to hold the same unto the Assignees subject to the performance and observance by the Assignees of the terms and conditions contained in the Licence and on the part of the Licensee therein described to be performed and observed.
2. The Assignees jointly and severally covenant with and in favour of the OGA and the Assignors (and each of them) that they will perform and observe the terms and conditions contained in the Licence and on the part of the Licensee to be performed and observed.
3. The construction, validity and performance of this Agreement shall be governed by [English and Welsh/Scottish] Law and each party hereby submits to the jurisdiction of the [English and Welsh/Scottish] Courts.



North Sea Transition Authority

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The North Sea Transition Authority is the business name for the Oil & Gas Authority, a limited company registered in England and Wales with registered number 09666504 and VAT registered number 249433979. Our registered office is at Sanctuary Buildings, 20 Great Smith Street, London, United Kingdom, SW1P 3BT.

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