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Insights

Q1 2024 UK OIL AND GAS SECTOR UPDATE

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SUMMARY

The Oil and Gas sector in the UK has seen the following changes in Q1 2024:

1. how a change of control is treated under a UK licence;

2. a revised charging scheme for the approval of offshore decommissioning programmes[1]; and

3. the extension of the windfall tax.

Details of the changes are set out below but the key points to note are:

- the change of control authorisations, although not substantially altering the practice for companies that sought comfort letters from the NSTA, introduces an additional administrative step. Companies affected by this change must now ensure that consent is obtained prior to completing transactions which would trigger the change of control provision; and
- the adjustment in the decommissioning cost recovery measure and the extension of the windfall tax increases the financial pressure on oil and gas companies. While these policies may appease the public in respect of rising energy bills and ensure that decommissioning programmes are not funded from central budgets, it prompts speculation on how the oil and gas sector will adapt to these additional costs. Further details on the charging regime are essential for industry stakeholders.

CHANGE IN CONTROL OF OIL AND GAS LICENSEES

The Energy Act 2023 (the "**Act**") (in force as from 26 October 2023) amends[2]model clauses contained in exploration and production licences[3]to introduce requirements for consent to be obtained from the North Sea Transition Authority ("**NSTA**") to change control of the licence holder prior to the transaction completing and to enable the NSTA to obtain information in relation to a change of control.

A change of control of the licensee is defined as any event by which a person who did not have control of a licensee when that licence was granted, or last assigned, comes to control that licensee. Present/past control will mean a change in the control where a party acquires either:

1. the greater part of the share capital or issued capital;
2. the greater part of the voting power;
3. so much of the issued share capital of the company as would, on the assumption that the whole of the income of the company were distributed among the participators, entitle the acquiring party to receive the greater part of the amount so distributed; or
4. in the event of the winding up of the company (or in any other circumstances), entitle the acquiring party to receive a greater part of the assets of the company in comparison to the other participators.

Previously, licensees could undergo a 'change of control' without NSTA approval although the NSTA had the power to revoke a license after the event. While a comfort letter was often in practice sought to pre-emptively avoid the exercise of such powers, it was not legally required, leading many to overlook this step.

Under the new rules, licensees must obtain consent from the NSTA, who may:

1. consent to the change in control unconditionally;
2. consent to the change in control subject to conditions; or
3. refuse consent to the change in control.

In cases (b) and (c), the NSTA must allow the license holder to make representations before making a final decision. The NSTA is required to decide on an application within three months and has the option to delay its decision by notifying interested parties in writing.

The regulations stipulate the conditions that could be imposed, on the person taking control (as well as on the company) may relate to (non-exhaustive):

- the arrangements for the change in control;
- the date by which the change of control must occur;
- the performance of activities permitted by the licence; and
- financial conditions,

which must be notified in writing to the interested parties (as defined in the amended provisions).

NEW CHARGING SCHEME FOR APPROVAL OF OFFSHORE DECOMMISSIONING PROGRAMMES

The Energy Bill policy statement (March 2023) comments on how the previous charging framework was no longer fit for purpose and how the reforms advance the importance of ensuring there is a full cost recovery for the government when future offshore oil and gas decommissioning (including carbon storage) takes place.

The Secretary of State can now charge for payments[4], subject to consultation with representative organisations, in connection with the approval of offshore decommissioning programmes. Secondary legislation will determine details on how/when a charge is to be paid and who the payment will be paid to (which the Secretary of State has a discretionary power to decide). It has not yet been announced when further statutory instruments in relation to this programme will be introduced.

EXTENSION OF THE WINDFALL TAX

The Government announced its plans to extend the Energy Profit Levy (the "**EPL**") to 2029. The controversial policy was introduced in May 2022 after the sharp rise in energy prices following the start of the war in Ukraine. The tax imposed on the profits of oil and gas companies operating in the UK (including the UK continental shelf) was originally set at 25%, but rose, following the Autumn Statement in November 2022, to 35% taking the overall tax burden to 75% with the temporary measure changed to last until 2028.

The Chancellor has said: "[The Government] will also legislate in the Finance Bill to abolish the Energy Profits Levy should market prices fall to their historic norm for a sustained period of time[5]." However, there are concerns the 2024 extension weakens investor confidence at a time when the UK is seeking record levels of investment to deliver transition to net zero[6].

The justification for the latest measure, the Chancellor contends, is the Ukraine war is continuing to enhance oil and gas companies' profits. He has indicated that the extension of the EPL could raise up to £1.5 billion[7]for the public purse. Whilst many oil and gas companies undertake energy transition operations and decommissioning programmes, it is important public policy strikes a balance with companies' plans so as not to stifle growth.

This article was written with Trainee Solicitor Sarah Bakare.

FOOTNOTES

[1] The Energy Act 2023 (Commencement No 1) Regulations 2024 (first two bullet points)

[2] Section 300 and Schedule 21.

[3] The Petroleum (Production) (Landward Areas) Regulations 1995 (S.I. 1995/1436); the Petroleum (Current Model Clauses) Order 1999 (S.I. 1999/160); The Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004 (S.I. 2004/352); The Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 (S.I. 2008/225); Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (S.I. 2014/1686).

[4] Section 38C The Petroleum Act 1998.

[5] https://www.gov.uk/government/speeches/spring-budget-2024-speech.

[6] https://www.independent.co.uk/money/government-extends-windfall-tax-on-oil-and-gas-companies-b2507988.html.

[7] https://www.bbc.com/news/uk-scotland-scotland-business-68489807

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