

All's Well That Ends Well? NSTA Launch Investigation Into Oil Well Decommissioning Delays

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On 15 July 2024, 10 days into the UK Labour Government, the North Sea Transition Authority (“NSTA”, formerly known as the Oil and Gas Authority) announced that its Directorate of Regulation is opening an investigation into missed deadlines for well decommissioning.

NSTA’s Regulatory Background

The NSTA regulates, amongst other things, well decommissioning in the UK Continental Shelf. It derives these regulatory powers from petroleum licences granted to licensees pursuant to the Petroleum Act 1998; the model clauses incorporated into licences prescribed by the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008^[1] (the “Model Clauses”) and the Energy Act 2016 (the “2016 Act”).

Who Will the Investigation Target?

The NSTA have not published the names of operators under investigation.

Cl. 19(10) of the Model Clauses obliges licensees to decommission wells not less than one month before the expiry or determination of its rights in respect of the area in which a well is drilled. Alternatively, in limited circumstances the NSTA may require licensees perform well decommissioning within a stated period. Where there is more than one licensee, these obligations are joint and several.

Consequently, the NSTA is likely to be targeting licensees who have failed to decommission wells within that one-month (or such other stated) period.

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Statutory Enforcement Action to enforce Well Decommissioning

In deciding whether to take enforcement action, the NSTA carries out an “Initial Assessment”. One possible outcome of the Initial Assessment is a sanctions investigation, prompting the following process.

Stage 1: Warning Notice

The NSTA may not issue sanctions without first issuing a warning notice to the breaching licensee. The warning notice will particularise the nature of the delay, and offer the licensee an opportunity to make representations to the NSTA.

Upon the representations, the NSTA may decide to issue a sanction notice.

Stage 2: Sanction Notice

There are four types of sanction notice. Each notice requires the NSTA to comply with certain requirements regarding its substance and service.

- Enforcement notice: directing a licensee to take steps to remedy a delay to decommissioning, pursuant to s.43 of the 2016 Act.
- Financial penalty notice: requiring a licensee to take steps to remedy the delay and to pay a financial penalty of up to £1 million pursuant to ss.44-46 of the 2016 Act.
- Revocation notice: revoking a licence, pursuant to s.47 of the 2016 Act; a right also contained within Cl. 41(2)(b) of the Model Clauses. In practice this may not be as helpful for the NSTA, as a licensee’s decommissioning obligation usually arises towards the expiry of a licence.
- Operator removal notice: requiring a licensee to remove a specified operator operating under a licence, pursuant to s.48 of the 2016 Act. Nevertheless, as it is licensees who are responsible for decommissioning per Cl. 19(1), it is unlikely that non-licensee operators will be the subject of such notice.

It is not clear from the NSTA’s press release whether they have already carried out an Initial Assessment in relation to the purported delays. In any event, and in deciding whether to take enforcement action, the NSTA will consider its prioritisation criteria, [available here](#).

Contractual Avenues to Enforce Well Decommissioning

The Model Clauses confer certain contractual rights on the NSTA which could deter delays, especially given there are no contractual limits on a licensee's contractual liability in the Model Clauses.

Significantly, where a licensee fails to perform its Cl. 19 decommissioning obligations, the NSTA may execute any works and to provide and install any equipment which its opinion may be necessary to secure decommissioning and to recover the costs and expenses of so doing from the licensee.

Further, to the extent a failure to decommission causes third party claim, a licensee must keep the NSTA indemnified of that claim. There are no carve outs to this indemnity.

Comment

The NSTA's announcement follows their [1 November 2023 open letter](#) reminding licensees of their well decommissioning obligations and confirming that they do not expect to receive deferment requests. Together, they mark a step change in the NSTA's attitude to the delays, in order to secure costs-conscious regulatory compliance from operators and ultimately support the UK's drive for energy security along with net zero. We therefore anticipate that the NSTA is evaluating all enforcement tools available to it. Whether there will be an increase in warning and sanction notices remains to be seen.

Given this increased focus from the NSTA, licensees may need to plan further in advance to secure the availability of contractors to carry out the decommissioning work required.

Finally, while the maximum financial penalty is relatively low, licensees should note that the UK Government has the option to use its delegated powers in the 2016 Act to promulgate regulations to increase the maximum financial penalty to £5 million.

The NSTA's press release can be found [here](#).

[1] As amended by the Petroleum and Offshore Gas Storage and Unloading Licensing (Amendment) Regulations 2017